(2013) 09 DEL CK 0515

In the Delhi High Court

Case No : Writ Petition (C) No. 339 of 2011

Sh. Raj Singh Rathee APPELLANT

Vs

The Chairman DVB Pension and Others RESPONDENT

Date of Decision : 18-09-2013

Acts Referred:

Citation : (2013) 09 DEL CK 0515

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Somvir Singh Deswal, for the Appellant; Sumeet Pushkarna, Advocate for Pension Trust and Mr. S.N. Choudhri, Advocate for Respondent Nos. 2, 3 and 5, for the Respondent

Final Decision : Allowed

Judgement

Valmiki J Mehta, J.—The only relief which is claimed before me on behalf of the petitioner is entitlement to claim pension because a period of 19 years, 9 months and 90 days should be taken as a period of 20 years of qualifying service as per Rule 49 of the CCS Pension Rules. An identical issue has been decided by me in the case of Smt. Pawan Vohra Vs. The Chairman, DVB Pension Trust and Anr. in W.P. (C) No. 1680/2012 decided on 17.5.2013. In the present case like in the case of Pawan Vohra (supra), petitioner will also be entitled to benefits of Rule 48-B as it existed on the date of retirement of the petitioner, and therefore for this additional reason petitioner will meet the qualifying service period of 20 years for grant of pension. Paras 2 to 5 of the judgment in the case of Pawan Vohra (supra) are relevant and the same read as under:-

2. There are two issues which arise in this writ petition. First is whether the petitioner has the necessary qualifying service so as to get the pension in terms of Rule 48-A of the CCS (Pension) Rules, and which admittedly applies to the parties by virtue of the Tripartite Agreement entered into between the DVB, Government of NCT of Delhi and the DISCOM. The second issue is that if the petitioner is entitled to pension payment, which is the entity which will bear the

liability i.e. whether the DISCOM/respondent No. 2 or the pension trust/ respondent No. 1.

2. Let me at the outset reproduce the relevant pension rules namely Rules 48-A, 48-B and 49. For the completion of narration I may state that though Rule 48-B as of date stands deleted, however, at the relevant point of time it was applicable. Therefore, vested rights which existed in favour of the petitioner by virtue of this applicable Rule 48-B, cannot be taken away by the subsequent deletion of said Rule 48-B. These aforesaid rules read as under:-

48-A. Retirement on completion of 20 years'' qualifying service

(1) At any time after a Government servant has completed twenty years'' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3)-Deleted

(3- A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and [retirement gratuity] of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who-

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an autonomous body of a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION.-For the purpose of this rule the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

Rule 48-B. Addition to qualifying service on voluntary retirement

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) or Rule 48-A of Clause (k) of Rule 56 of the Fundamental Rules of Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule (1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1) (b) or FR 56(j).

Rule 49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month''s emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred

rupees per mensem.];

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupee three hundred and seventy-five] per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(5) & (6) Deleted

4. It is not an issue that the petitioner had completed service of 19 years, 10 months and 20 days. As per Rule 48-A, the entitlement to voluntary retirement comes into effect after 20 years of service and the petitioner has not served for 20 years. The issue is that can the provisions of Rule 48-B and 49(3) help the petitioner. In my opinion, the provision of Rule 49(3) is absolutely clear for being read in favour of the petitioner. This provision specifically states that for calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed half-year and reckoned accordingly for qualifying service. Since the petitioner has completed more than 19 years and 3 months of service, by virtue of Rule 49(3) the position will be that the petitioner will be taken to have completed 20 years of service. Once petitioner is held to have completed 20 years of service the petitioner will have the qualifying service of 20 years to bring into application entitlement of voluntary retirement in terms of Rule 48-A. I therefore hold that the petitioner had completed qualifying service of 20 years and was entitled to voluntary retirement in terms of Rule 48-A. I may at this stage add that it is not disputed before me that on completion of qualifying service of 20 years, pension liability will accrue in terms of SVRS 2003. Accordingly, for the aforesaid reasons and conclusions I hold that the petitioner will be entitled to benefits of pension under SVRS 2003 and it is not open to the respondent No. 2 to contend that the petitioner has not completed 20 years of service as required under Rule 48-A.

5. Another reason for me to hold that 20 years of qualifying service stand completed is because of the provision of Rule 48-B. The provision of Rule 48-B has been interpreted by a Division Bench of this Court in the case of Retd. Major

A.S. Dahiya E.C. No. 59676 Vs. Union of India (UOI) and Others, . The Division Bench has held in this judgment that for determining the qualifying service, benefit of Rule 48-B has to be given by adding of five years of service to the normal period of service. Accordingly, following the ratio in the case of A.S. Dahiya (supra) for this second additional reason also, I hold that the petitioner would have completed 20 years of qualifying service for being entitled to voluntary retirement in terms of Rule 48-A.

2. There are two respondents in this case. Respondent No. 1 is the pension trust and the DISCOM-BSES Rajdhani Power Ltd. is represented by respondent Nos. 2 and 3. It is the respondent No. 1 which stopped pension inasmuch as according to Pension Trust/respondent No. 1, petitioner cannot get benefits as he has not completed 20 years. There is no inter se dispute between the DISCOM and the Pension Trust that it is the Pension Trust which would be liable to pay the amounts to the petitioner.

3. Therefore, adopting the ratio in the case of Pawan Vohra (supra) this writ petition is also allowed and it is directed that the petitioner will be deemed to have completed 20 years of qualifying service for the purpose of grant of pension. Petitioner will be accordingly granted that monetary benefits by the respondent No. 1. Impugned orders issued by the respondents are set aside. Respondent No. 1 will now pay the necessary amounts to the petitioner alongwith interest @ 9% per annum simple for the period of delay in paying the pensionary benefits from 1.9.2008 till the date of payment. Writ petition is allowed and disposed of accordingly, leaving the parties to bear their own costs.