(2001) 09 DEL CK 0202

In the Delhi High Court

Case No : CW No. 3104/99

Shri K.P. Aggarwal APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 08-09-2001

Acts Referred:

Citation : (2001) 60 DRJ 394

Hon'ble Judges : Sharda Aggarwal, J;B.A. Khan, J

Bench : Division Bench

Advocate : Mr. P. Chaturvedi, for the Appellant; Mr. Sanjay Jain, for the Respondent

Final Decision : Dismissed

Judgement

Sharda Aggarwal, J.—Petitioner joined as a Stenographer in the office of Director General of Audit, Central Revenue, New Delhi on 9th December, 1955 and worked up to 25th February, 1965. he went on deputation to Cement Corporation of India Ltd. on 1st February, 1968 where he got absorbed and his resignation was accepted for the post of Stenographer w.e.f. 1st February, 1968. The petitioner was informed by the respondent that he was entitled to pro-rata pension w.e.f. 9th December, 1985. Vide judgment dated 9th December, 1986, the Supreme Court of India in the case of Common Cause, A Registered Society and Others Vs. Union of India (UOI), , issued directions to the Union of India to restore 1/3rd of commuted value of pension with regard to civilian employees after 15 years from the date of retirement w.e.f. 1st April, 1985. These directions were implemented by the Government vide OM dated 5th March, 1987. The benefit of this OM was later on extended vide OM dated 30th September, 1996 to all the government servants who got absorbed in Public Sector Undertaking/ Autonomous/Statutory Bodies notwithstanding the fact that having commuted the full pension they were not in receipt of monthly pension.

2. Relying on the office orders dated 5th March, 1987 and 30th September, 1996 of the Government of India, petitioner made number of representations resting

with his final representation dated 26th August, 1997 claiming the restoration of his commuted value of pension after 15 years from the date of his retirement i.e. 1st February, 1968. Though 15 years from the date of his retirement completed in the year 1983, he claimed restoration w.e.f. 1st April, 1985 being the effective date as directed in the Common Cause case. The petitioner''s pension was actually commuted and the commuted value was credited to his bank account on 2nd May, 1989. The respondent relying on some office orders subsequent to 5th March, 1987 and 30th September, 1996, rejected the petitioner''s representation vide its order dated 10/23rd September, 1997 holding that the period of 15 years, except in cases where the commuted value is paid during the first month of retirement, is to be reckoned for the date of commutation and not from the date of retirement. The petitioner challenged the above order of the respondent in OA.No.548/98 before the Central Administrative Tribunal (in short the Tribunal), which was dismissed vide the impugned order dated 25th January, 1999. Aggrieved by the same, the petitioner was has preferred the present writ petition before this Court.

3. The short question for consideration in this petition is whether 15 years period for restoration of commuted pension is to be calculated from the petitioner''s deemed date of retirement i.e. 1st February, 1968 or from 2nd May, 1989 which was the date he received the commuted value of pension.

4. Learned counsel for the petitioner vehemently contended that the office order dated 5th March, 1987 which implemented the Supreme Court directions in Common Cause case (supra) and office order dated 30th September, 1996 extending the benefit of restoration of commuted pension to all the Government servants absorbed in Public Sector Undertaking/Autonomous/Statutory Bodies etc. still hold the field and the period of 15 years in the case of the petitioner should be reckoned with effect from the date of his retirement and not from he date of commutation of his pension.

5. Learned counsel for the respondent refutes the contention of the petitioner and submits that the Common Cause case was considered by the Supreme Court in subsequent decisions holding that the 15 years period is to be reckoned from the date of commutation of pension. In fact it is also pointed out that the present matter is covered by a recent Supreme Court judgment reported as R. Gandhi Vs. U.O.I. and Another, . Reference has also been made to office memorandum dated 22nd August, 1990 which had revised the earlier memorandum dated 5th March, 1987 and provided for restoration of the commuted value of pension after 15 years from the date of commutation and not from the date of retirement. The office memorandum dated 22nd August, 1990 revising the earlier memorandum of March, 1987 was under challenge before the Supreme Court while deciding the point in issue referred to other three decisions reported as Public Enterprises v. Union of India reported in, (1991) 2 SCC 265 , Bharat Petroleum Corpn. Ltd. Ex-Employees Association and others Vs. Chairman and Managing Director, Bharat Petroleum Corpn. Ltd., Bombay and others, and Welfare Association of Absorbed

Central Government Employees in Public Enterprises and others Vs. Union of India and another, , wherein Common Cause case was considered. It was noticed that the Supreme Court in first Welfare Association case (supra) and Bharat Petroleum case (supra) held that on expiry of 15 years from the date of the commutation, the entire pension would revive. The first Welfare Association case was rendered on 12th April, 1990 and it was only pursuant to that judgment the Government brought into force the office memorandum dated 22nd August, 1990 by which the earlier office memorandum dated 5th March, 1987 was revised. The Supreme Court held that the office memorandum dated 22nd August, 1990 was not contrary to the judgment in Common Cause case and agreeing with the decisions in Welfare Association Case and Bharat Petroleum case (supra) held as under:

"This Court strikes at arbitrary action of the State and accordingly it did in ''Common Cause'' by interdicting the arbitrary action of the Government in paying the reduced pension as a result of commutation of 1/3rd pension for the rest of the life of the pensioners and issued an equitable direction to restore the full pension after 15 years "from the period of retirement" to the pensioners who had commuted 1/3rd of the pension. The period of 15 years has been arrived at after taking into consideration various factors mentioned above. it is a well-settled principle that the words in the judgment of the Court cannot be interpreted as the words in a statute. By the said direction this Court never intended to confer any unfair or undue advantage on the pensioners. It only ensured fairness in the treatment of pensioners at the hands of the Government in respect of deduction of pension consequent upon the commutation of the portion of the pension. The decision in Common Cause has been understood in all subsequent judgments of this Court as 15 years from the date of commutation and we are in respectful agreement with the same. This neither prejudices the rights of any of the parties nor confers any undue or unfair advantage upon any party."

6. In view of the above, the petitioners''s case is fully covered by the Supreme Court decision in R.Gandhi''s case (supra) and he would be entitled for restoration of commuted value of pension on the expiry of 15 years from the date when commuted value of pension was credited in his account i.e. w.e.f. 2nd May, 1989 and not from the date of his retirement. The Tribunal relying on he office memorandum dated 22nd August, 1990 rightly dismissed the petitioner''s OA. We find no infirmity or illegality in the orders of the Tribunal. The petition is accordingly dismissed. There is no order as to costs.

