
(2011) 03 DEL CK 0342

In the Delhi High Court

Case No : Writ Petition (C) No. 17456 of 2005

S.P. Bhatnagar

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 33

Citation : (2011) 03 DEL CK 0342

Hon'ble Judges : Veena Birbal, J;Anil Kumar, J

Bench : Division Bench

Advocate : Nemo, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The Petitioner has challenged the order dated 11th March, 2005 in OA No. 1668/2004 titled as Satgur Pershad Bhatnager v. UOI through Secretary, Deptt. of Indl. Policy & Promotion and Anr., challenging the dismissal of his original application.

2. The Petitioner was a Section Officer (Class-II) during April, 1978 and on deputation, he was posted as PR & CO (Class I) in the Ministry of Industry, Department of Industrial Development. On deputation, he did not opt for the scale of pay of the post of PR&CO but preferred to draw the scale of pay of his substantive post of SO. The Petitioner was also allowed to draw the deputation (duty) allowance (DDA) in addition to his substantive pay @ Rs. 100/- per month. The Petitioner retired on 31st August, 1979. On the retirement of the Petitioner on 31st August, 1979, the element of DDA was included in his pensionary average emoluments were included in accordance with para 2 of the regulatory OM and FR 9 (21) (a) read with FR 9 (25) and Rule 33 of CCS (Pension) Rules as were then prevalent. The Petitioner's basic pension was also raised from time to time as per the revision in the Pension Rules, which was subsequently incorporated but at no stage the Petitioner raised any question with regard to the inclusion of the element of DDA in determining his basic pay for the

purpose of calculating the revised pension.

3. As per the recommendation of 5th Central Pay Commission on the subject of "Revision of Pension" the pay of the Petitioner had to be notionally fixed as on 1st January, 1986. The Respondents, while notionally fixing his pay, excluded the element of DDA treating it to be a special pay, which did not form part of pay as defined in FR 9 (21)(a). Aggrieved by this the Petitioner made representations and then filed the original application before the Central Administrative Tribunal.

4. The Tribunal noted that the provision of Rule-33 of the Pension Rules were amended making it clear that as per CCS (Revised) Rules, 1986, the entitlement of pension is to be calculated on the basis of basic pay as defined under FR-9(21) (a)(i) and the pay does not include special pay. It was further held that the element of DDA being in the nature of special pay, therefore, has not to be treated as sacrosanct and not special and the plea of the Petitioner would not be tenable as the Rules had been amended/revised subsequently. In these circumstances, it was held that the recommendation had already been made and accepted by the Govt. and therefore, there was no curtailment of the pensionary benefits to the Petitioner and there was no disadvantage to him and thus dismissed the original application on the ground that Rule 33 of the Pension Rules was amended making it clear that as per CCS (Revised) Rules, 1986 the entitlement of pension is to be calculated on the basis of basic pay as defined under FR 9(21) (a) (i) and the pay would not include special pay. The element of DDA was in the nature of special pay and therefore it was excluded in accordance with rules.

5. No one is present on behalf of the parties. In these circumstances, the writ petition is dismissed in default. The pending applications, if any, are also disposed of.