

(2012) 11 DEL CK 0218
In the Delhi High Court
Case No : Writ Petition (C) 2331 of 2011

Suraj Mal

APPELLANT

Vs

Punjab National Bank

RESPONDENT

Date of Decision : 07-11-2012

Acts Referred:

Citation : (2012) 194 DLT 399

Hon'ble Judges : Suresh Kait, J

Bench : Single Bench

Advocate : K.G. Mishra with Petitioner in person, for the Appellant; Ankur Mittal, for the Respondent

Final Decision : Allowed

Judgement

Suresh Kait, J.—The petitioner joined the respondent Bank on 16.04.1985 as Armed Guard. On 16.08.2010, the respondent Bank issued a Circular No. 8/10 dated 16.08.2010 giving second pension option to its working employees as well as to its retired employees and as per para 3(A) of the said pension circular, the petitioner, being working employee, was entitled to the second pension option. For convenience, the said para 3(A) is quoted below:-

3. In terms of Settlement/Joint Note dated 27th April 2010, another option for joining the existing Pension Scheme shall be extended to:-

(A) EMPLOYEE/OFFICERS WHO WERE IN THE SERVICE OF THE BANK PRIOR TO 29TH SEPTEMBER 1995 AND CONTINUED TO BE IN THE SERVICE OF THE BANK ON THE DATE OF SETTLEMENT/JOINT NOTE DATED 27.04.2010 AND THEREAFTER OR HAVE RETIRED ON OR AFTER 27.04.2010 PROVIDED THAT THEY:

(a) Exercise an option in writing within 60 days from the date of offer, to become a member of the Pension fund and

(b) Authorize the Trust of the Provident Fund of the Bank to transfer the entire

contribution of the bank along with interest accrued thereon to the credit of the Pension Fund.

(c) Employee/Officers in service including those who retired on or after 27.04.2010 will also have to contribute their share in contribution towards meeting 30% of funding gap from their arrears received on account of Wage Revision. It has been worked out @ 2.8 times of the Revised Pay for the month of November 2007.

(d) However, the employees who had retired on or after 27.04.2010 will in addition to the said 2.8 times of revised pay have to refund Bank's Contribution to the Provident Fund along with up to date interest paid to them on retirement.

2. On account of the upward wage revision settlement dated 27.04.2010, the arrears of difference of upward wage revision from 01.11.2007 were paid to employees of the Bank and accordingly were paid to the petitioner in the month of July, 2010 after deducting an amount of Rs. 36,932/- equivalent to 2.8 times of the Revised Pay for the month of November, 2007 as envisaged in terms of para 3(A)(c) of the circular dated 16.08.2010.

3. In terms of the aforesaid circular dated 16.08.2010, the petitioner opted the pension scheme on 09.09.2010. Thereafter, on 31.10.2010, he retired on superannuation and received his retrial benefits/dues from the respondent Bank including the provident fund.

4. On 03.01.2011, a sum of Rs. 3,29,682.52 equivalent to 100% of Bank's contribution towards provident fund and accrued interest was deducted from petitioner's account and credited to the Pension Fund account. Thereafter, on 21.01.2011, the said amount was refunded back to the petitioner account by the Bank.

5. Pursuant to which petitioner wrote a letter to the Bank on 21.02.2011 requesting to take back the 100% of Bank's contribution to the provident fund along with up to date interest paid to them on retirement, as envisaged in para 2(A)(d) of the settlement dated 16.08.2010 but with no result.

6. Learned counsel appearing on behalf of the petitioner has submitted that the petitioner had completed all the formalities required. Thereafter, the Bank never communicated to the petitioner to do further any formalities required as per the scheme. He has further submitted that instead of giving employees contribution to provident fund on superannuation, Bank also refunded (contrary to mandate of petitioner) its contribution towards provident fund, whereas the same was required to be retained and to be transferred to the Pension Fund.

7. He further submitted that para 8 of the circular dated 16.08.2010 clearly stipulates that Bank will separately communicate to the pension optee about the amount to be refunded by them, which respondent Bank failed to do so.

8. Learned counsel for the petitioner has relied upon a case where similar issue

has been dealt with by this Court in W.P. (C) No. 1617/2011, titled as Smt. Bhateri Vs. Punjab National Bank, decided on 18.05.2011, wherein this Court has observed that the petitioner exercised the option for becoming a member of the Pension Fund and also deposited the money within the stipulated time is indicative of the petitioner having exercised the option and having not been able to deposit correct amount for the reason of having been not informed of the same.

9. This Court, accordingly, allowed the aforesaid writ petition and the petitioner therein was granted time to deposit the amount required for the scheme as per the circular.

10. Learned counsel for the petitioner has pointed out that at the time of retirement, the respondent Bank refunded the amount deposited for the scheme, but refunding alone does not bar the right of the petitioner to opt the pension scheme.

11. To strengthen his arguments, learned counsel for the petitioner has relied upon a case of Tej Ram Vs. Indian Overseas Bank and Others, , wherein the Supreme Court has observed as follows:-

5. Having heard the learned counsel for the parties and on examining the relevant materials produced before us, even assuming that the subsequent authorization did not reach the employer within 60 days; but later than 60 days, we think it would be equitable to allow the appellant to be brought over to the pension scheme evolved by the bank particularly when the entire contributory provident fund stood transferred to the bank accounts and there has been no contribution from the bank since November, 1993.

6. In the aforesaid circumstances, we set aside the impugned judgment of the High Court and direct that the appellant be brought over to the Pension Scheme of the bank and appropriate pension amount be sanctioned in his favour. This may be done within three months from today.

12. On the other hand, learned counsel appearing on behalf of the respondent Bank submitted that the petitioner was required to deposit/refund the Bank's contribution of provident fund totaling a sum of Rs. 3,29,682.52 by the cut-off date i.e. 24.11.2011, however, he made a request only on 03.01.2011 that is after the lapsing of the scheme.

13. He further submitted that the petitioner has no legal or vested right to claim pension despite not having complied with the provisions of the scheme in the time bound frame. As per the scheme, it contemplates that in case the full amount is not received by the stipulated dates, the option will be rendered as invalid.

14. Learned counsel for the respondent Bank further submitted that delay in depositing the money/refund under the scheme cannot be condoned. A bare perusal of the entire scheme formulated and provided in the circular dated

16.08.2010 would reveal that there is no provision in the entire scheme, which provides for condonation of any delay, whatsoever, in depositing the full amount of refund beyond the stipulated dates. On the contrary, clause 11 of the circular/scheme stipulates that any option not received or full amount of refund not made by the stipulated dates will render the pension option invalid.

15. He has further submitted that as per para 3(A)(d) of the circular dated 16.08.2010, the employees who had retired on or after 27.04.2010 in addition to the said 2.8 times of revised pay have to refund Bank's Contribution to the Provident Fund along with up to date interest paid to them on retirement.

16. He also submitted that the amount which the petitioner had deposited, the same has been refunded on 03.01.2011 after his retirement.

17. I have heard the learned counsel for the parties.

18. It is emerged from the submissions that the petitioner opted for the pension scheme vide communication dated 09.09.2010, which has been duly received by the official of the respondent Bank, wherein stated as under:-

I hereby declare that I have read and understood the terms of the Settlement/joint Note dated 27.4.2010 for extending another option to join Pension Scheme. I have understood that the terms of the settlement/Joint Note have been arrived at on the basis of the Unions/Associations offering to contributed to 30% of the initial funding gape assessed for extending another option for joining the pension scheme. I am agreeable to the said contribution of 30% towards the initiation funding gap and hereby voluntarily opt to become a member of the Bank's Pension Scheme as per the provisions of the said Settlement/Joint Note and cease to a member of Contributor Provident Fund Scheme and irrevocably authorize the Bank/Trustees of the Contributory Provident Fund to transfer the entire contribution of the Bank along with entire interest accrued thereon to the credit of Pension Fund to be created for this purpose. I also authorize the bank to transfer to the pension fund an amount equal to 2.8 times of my revised pay for the month of November 2007 representing my share in the 30% contribution mentioned above from the arrears paid on account of wage revision in terms of Bipartite Settlement/Joint Note dated 27.4.2010.

19. On perusal of the above option form dated 09.09.2010, it is clear that the petitioner agreed to all the terms and conditions of the scheme and authorized the Bank to transfer to the pension fund an amount equal to 2.8 times of his revised pay for the month of November 2007 representing his share in the 30% contribution mentioned above from the arrears paid on account of wage revision in terms of Bipartite Settlement/Joint Note dated 27.4.2010. It is further stated that he was agreeable to the said contribution of 30% towards the initiation funding gap and thereafter voluntarily opted to become a member of the Bank's Pension Scheme.

20. I am of the considered view that it was the duty of the respondent Bank to

transfer the amount from the account of the petitioner in terms of the scheme as the petitioner had given all the powers to the respondent Bank to do the needful. No doubt, the respondent Bank refunded the amount to the petitioner, who is an ex-serviceman and retired as an Armed Guard from the Bank. At the time of receiving the total amount, he was not clear as to whether the Bank has transferred some amount for the scheme or not. He only realized thereafter and accordingly, when the respondent Bank did not transfer the amount from his account, then only he deposited the amount as required as per the scheme.

21. Thereafter, the respondent Bank communicated the petitioner that since the last date was over, therefore, they refunded the amount to his account.

22. Facts remain that as per the clause 8 of the scheme, the respondent Bank was duty bound to communicate or advise the petitioner to do the needful as he had already sent his option for scheme, which respondent Bank failed to do so.

23. In view of the above, I find merit in the instant petition. The same is allowed.

24. Consequently, the respondent Bank is directed to send a demand to the petitioner to deposit the required amount with them within two weeks from the date of receipt of this order. Thereafter, the petitioner shall deposit the amount so demanded by the respondent Bank within a period of three weeks from the date of receipt of the demand from the respondent Bank for becoming a member of the Pension Fund under the aforementioned scheme dated 16.08.2010.

25. In view of the above discussion, the instant petition stands disposed of with no orders as to costs. The Registry of this Court is directed to send a copy of this order to the respondent Bank for compliance.