(2019) 03 DEL CK 0238

In the Delhi High Court

Case No : Civil Writ Petition No. 5700 Of 2017

Union Of India And Anr — APPELLANT

Vs

D.L. Khillan — RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 8, 9, 33, 70

Citation : (2019) 03 DEL CK 0238

Hon'ble Judges : S. Ravindra Bhat, J;Prateek Jalan, J

Bench : Division Bench

Advocate : Anjana Gosain, Rabiya Thakur, M.K. Bhardwaj

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J

1. The Central Government and the Airports Authority of India (AAI) prefer this writ petition, questioning a decision of the Central Administrative Tribunal, directing that the pension fixation in respect of the respondent should be in accordance with the instructions and guidelines applicable prior to the Office Memorandum (OM) issued on 19.09.2003; their contention is that the principles contained in that OM would apply to the respondents.

2. The National Airports Authority (NAA) came into existence w.e.f. 01.06.1986, when the Central Government employees started working in the Directorate General of Civil Aviation/Civil Aviation Department at various airports and they were transferred to NAA on 'as is where is' basis. Some of the employees were absorbed in the AAI with effect from 02.10.1989. At the time of absorption, the Central Govt. gave three options to the employees as regards their retirement benefits, which are: (a)100% lump sum amount on the basis of commuted value of full pension; (b) Pro-rata pension; (c) Pension under-Central Government Rules from the date of their superannuation from AAI- subject to payment of capitalization value of pension and gratuity by AAI for the period of service-

rendered by such employees in the AAI. The applicant/employee- arrayed as respondent (hereafter "Khillan") chose option (c). By a clarification dated24.11.1997, the Ministry of Civil Aviation and Tourism clarified that the emolument drawn by the pensioners in AAI at the time of retirement would be taken for the calculation of revised pension in terms of Note 10 under Rule 33 of the Central Civil Service (Pension) Rules 1972 (CCS Pension Rules) and that such pensioners would be entitled to ?Dearness Relief" on pension at such rate to be determined in the future.

3. On his retirement on 31.01.1994, the applicant's pension was sanctioned @Rs. l440/- per month on pay drawn by him on the basis of the Dearness Allowance drawn by him in the Central Dearness Allowance pattern (CDA) existing in the AAI on the date of his retirement. The pay scales in AAI were revised to Industrial Dearness Allowance (IDA) pattern, retrospectively, w.e.f. 02.10.1989 and Khillan"s revision of pay scales was given effect to, from the date of his retirement. Khillan was dissatisfied with the pension revision, and filed OA No. 48/1998 before the Central Administrative Tribunal (CAT) which was allowed, on 13.11.2000 (in Jagdish Tuli &Ors. v. Union of India), with a direction that the petitioners" pension (including that of Khillan)ought to be fixed in accordance with CCS (Pension) Rules on the basis of last pay drawn and also to pay arrears from the due dates up to the date of retirement along with interest @ 12% and to make the payment of other retiral benefits on the same basis. The Tribunal further directed AAI to take note that fixation of pension in accordance with CCS (Pension) Rules would mean fixation of pension @ 50% of the average emoluments drawn during the last 10 months preceding to the date of retirement in each case. Pursuant to this order, Khillan"s pension fixation order (PPO) fixing the pension at Rs. 3175/- p.m. was issued on 29.05.2001 based on the IDA pay scale with Dearness Relief payable at IDA pattern. The differential commuted value too was paid; these amounts did not carry interest. The order of the CAT was challenged before this Court in a writ petition.

4. The order dated 13.11.2000 came under challenge in W.P. (C) 1597/2001 by AAI. A Division Bench of this Court, by order dated 5. 05.2006, did not find any reason to interfere with the directions of the Tribunal, particularly when a similar relief was already given to Sh. A.K. Mukherjee and two others. However, the Division Bench of this Court reduced the rate of interest to 9%.In the meantime, the 5thCentral Pay Commission gave its recommendations which was implemented w.e.f. 01.01.1996 by OM dated 19.09.2003,by the Department of Pension and Pensioners" Welfare, which instructed the method to be followed for pension revision and other attendant benefits to retired Central Government employees on IDA pay scales and who opted for pensionary benefits for combined service in Government and Public Sector Undertakings w.e.f. 01.01.1996.

5. The relevant extract of the OM (dated 19.09.2003) is as below:

"(a) For the purpose of fixation of pension as per O.M. dated 10.2.1998, all absorbees shall be notionally brought on to CDA scale w.e.f. 1.1.1996. for this purpose:

i) Concerned administrative Ministries shall work out the corresponding equivalent scale in CDA pattern, as on1.1.1986, and in cases where it is not feasible to clearly establish the corresponding equivalent pay scale in CDA pattern, the final decision shall be taken by the Head of Department in consultation with the Department of Expenditure and Department of Personnel &Training as envisaged in para 14 of Department of Pension & P.W.'s O.M. dated 10.2.1998.

ii) The pay and pension of the absorbees would then be notionally determined as on 1.1.1986 as per this equivalent scale.

iii) Notional consolidation, as on1.1.96, shall thereafter be done.

(b) For the purpose of fixation in terms of provisions contained in O.M. dated 17.12.1998, equivalent scale as on 1.1.1996 shall be worked out. Pension shall thereafter be calculated at 50% of the minimum of that scale.

(c) The higher of the two amounts as in (a) and (b) above, shall be taken as the revised pension on 1.1.1996 and DR on CDA pattern be granted thereon.

(d) In all those cases, where the pension of the absorbees have already been consolidated as per O.M. dated 27.10.1997, using DR on IDA pattern, and such consolidated pension together with IDA happens to be higher than the revised pension plus DR arrived as above, the pensioner may be allowed to draw such higher amount by allowing personal pension to the extent of the difference which shall be absorbed in subsequent increase in the future.

(e) Provisions of this O.M. shall not apply to the past pensioners of this category who have, in the past, been given a special dispensation on account of specific orders of the courts as accepted and implemented by the government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them."

6. Following the OM dated 19.09.2003, Khillan"s pension of Rs.l440/- p.m. fixed on the CDA pattern of pay scales was consolidated/re-fixed at Rs.4342/-, following the formula prescribed by the Department of Pension & Pensioners" Welfare. Under OM dated 27.10.1997 for revision/consolidation of pension on CDA pay scales, Khillan"s pay scale had been revised to Rs. 1440/- on his retirement from AAI; which was further revised to Rs.3175/- on IDA pay scale in compliance with earlier directions of the CAT in OA No.480/1998. In terms of para 1(e) of the OM dated 19.09.2003, cases with such dispensation were to be decided with the specific order applicable to them. AAI was of the view that since the earlier order of the CAT (in OA No. 480/1998) did not contain any specific direction to revise the pension as per IDA pay scales as on 01.01.1996 and there was nothing unique to cover under sub-para1(e) as this was similar to other employees who opted to draw pension in respect of service rendered in the

Government as well as AAI. Khillan therefore filed OA No.577/2005 challenging his pension revision to Rs.4342/- w.e.f. 01.01.1996 by order dated 17.10.2003.

7. The CAT heard the second OA and in its order of 10.11.2006, allowed Khillan"s application, and directed as follows:

"14. In any case, respondents have relied on Office Memorandum dated19.9.2003 to state that they have now re-fixed the pension of the applicant as per the above said O.M. but even this O.M. makes it clear in sub-para (e) of Para 1that provisions of this O.M. shall not apply to the past pensioners of this category, who have, in the past, been given a specific dispensation on account of specific orders of the Courts as accepted and implemented by the Government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them.

15. According to me, since specific orders were already been passed in the case of applicant, which have been upheld by the Hon'ble High Court, accepted and implemented by the respondents, his case would be covered under sub-para(e). As such, this OM would not apply in the case of applicant. Since the only defence taken by the respondent was that they have re-fixed his pension as per this OM and this OM is not even applicable in the case of the applicant, therefore, the letter dated 17.10.2003 is not sustainable in law. The same is accordingly quashed and set aside. Moreover, if respondents feel that applicant has been given something extra wrongly or by mistake, they cannot recover it or adjust it from the arrears of pension without following due process of law i.e. without giving notice to the applicant. In the instant case, admittedly before issuing letter dated17.10.2003, no notice was given to the applicant. Therefore, on that account also letter dated 17.10.2003 is not sustainable in law and is liable to be quashed.

16. It is however, made clear that is certain amounts have been given to the applicant by mistake by the bank, as suggested by the respondents, they would have liberty to recover the same from the applicant after giving him show cause notice and opportunity of being heard and after considering his reply thereon. Respondents are directed to revise the pension of the applicant as per the rules, after recommendations of the 5thPay Commission and if any arrears become due to the applicant, on refixation, the same shall be paid to the applicant along with calculation sheet, within a period of four weeks from the date of receipt of copy of this order. Since all this while, the matter was under litigation, no interest shall be paid to the applicant. It is also made clear that this order shall not be used as a precedent in other cases as it has been decided in peculiar facts of the case."

8. The applicant moved the CAT in miscellaneous proceedings (MA 648/2007) seeking clarification of its earlier order dated 10. 11.2006 to the extent that para 1(e) of the OM dated 19.09.2003 applied to him and his pension w.e.f. 01.01.1996 had to be revised in its terms as the Central Government had not issued any other relevant guidelines for pension revision fixed under the IDA pay

scales in respect of recommendations of the 5th Pay Commission recommendations.

9. Khillan"s application was disposed of in terms of the following observations and directions contained in the impugned order:

"15. The bone of contention, primarily is that whether sub-para 'e' of Para 1 of OM dated 19.09.2003, will be applicable to the case of the applicant or not. This had been already gone into in OA 577/2005 that OM dated 19.09.2003,which has been relied upon by the respondents to refix the pension of the applicant, is not applicable in the case of the applicant in; accordance with sub-para 'e' of para 1, which provides that this Q.M.' shall not apply to the past pensioners of this category, who have, in the past, been given a special dispensation on account of specific orders of the Courts as accepted and implemented: by the Government. Cases of this nature shall continue to; he. governed'' as ' per the -existing provisions specifically applicable to them.

16. Therefore, in our view, no more clarifications are required to the order dated 10.11.2006 and the pension already fixed by the respondents earlier shall not be disturbed. The order dated 17.10.2003 has already been quashed and set aside by order dated 10.11.2006"

10. AAI"s counsel, Ms. Anjana Gosain urges that the pension under Central Government CCS Pension Rules is fixed @ 50% of the average emoluments drawn by the employees during the last 10 months of their service. The pay scales at the Central Dearness Allowance (CDA) pattern in the Central Government were lower than equivalent pay scales at Industrial Dearness Allowance (IDA) pattern.

As such, the pension of IDA pay scale is fixed at higher amount than the pension fixed at the equivalent CDA pay scales. However, since the Dearness Relief on the pension fixed on the IDA pay scale is lower than the Dearness Relief on the pension fixed on the CDA pay scale, the total pension payable on the IDA pay scale and that on the CDA pay scale remains almost similar.

11. She submitted that after revision of the pay scale on IDA pay pattern w.e.f. 02.10.1989 in the AAI, Khillan"s pension had to be revised on the basis of emoluments drawn on IDA pattern in terms of the formula and on the basis of CCS Pension Rules i.e. 50% of the average emoluments drawn by the employees during the last 10 months of their service but this could not be done in view of the instructions from the authorities from time to time. OM dated 27.10.1997 issued by the Department of Pension and Pensioners" Welfare was cited. It prescribed the formula for consolidation of pension drawn by Central Government employees based on CDA pattern, taking into account the components payable on the basis of CDA pay scales annexing thereof a table of consolidation of pension fixed on CDA pay scale as on 01.01.1996 and the amount so arrived would be the consolidated pension/family pension on CDA pattern w.e.f. 01.01.1996. It was further submitted that the pension of the applicants and

others were not revised from the date of their retirement pursuant to the revision of the pay scales in the AAI on IDA pattern, and that the earlier OA No.577/2006 was allowed on 11.11.2006 directing revision of pension w.e.f. the date of their retirement on the basis of the emoluments drawn on IDA pattern. She further submitted that Khillan"s pension was re-fixed on the revised IDA pay scales from the date of his retirement and was further consolidated/revised w.e.f. 01.01.1996 following the OM dated 19.09.2003 issued by the Department of Pension and Pensioners Welfare.

12. Ms. Gosain further argued that the order dated 11.11.2006 with respect to the applicant/respondent was in terms of the Government of India instructions as the same was revised on the basis of OM dated 19. 09.2003. It was next submitted that the respondents cannot claim higher pay scale of IDA with the Dearness Relief on CDA pattern, which is higher, and the respondents can be paid either pay scales of IDA pattern with Dearness Relief, which is lower, or the CDA pattern scale with Dearness Relief which is higher.

13. It was also argued, importantly that the CAT"s impugned order has completely overlooked and, rather not complied with the orders of this court dated 20.11.2012 (in WP (C) 4073/2007), made in the course of a clarification application by AAI). The court had then stated as follows:

"8. We indeed find it very strange that the applicants/respondents, in the first place, are seeking a clarification in respect of the order of this Tribunal in OA No. 577/2005, which, if granted, would be contrary to the decision of the Tribunal, in that, OA. Secondly, OM dated 19.09.2003 has been issued by the Ministry of personnel, Public Grievances and Pensions (Department of Pensions and Pensioners' Welfare), Sub-para (e) of the said OM reads as follows:-

"(e) Provisions of this O.M. shall not apply to the past pensioners of this category who have in the past, been given special dispensation on account 6f specific orders of the Courts as accepted and implemented by the Government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them."

The Tribunal, in its order dated 10.11.2006, had merely stated that the case of the applicant' would be covered under sub-para (e) and, hence, OM would not apply in the case; of the applicant.

9. In view of the facts and circumstances mentioned above, the only clarification that this: Tribunal ought to give is that the order of this Tribunal in OA No. 577/2005 dated 10.11.2006 had granted relief to the applicant in terms of sub-para (e) of OM dated 19. 09.2003, if any further clarification is needed with regarded to sub-para (e) aforementioned, applicants/respondents may choose their own remedy.

It is clear that the question, which was before the Tribunal pursuant to the order passed by this Court on 6th March, 2007, was whether the OM dated19th

September, 2003, applied to the respondent or not. The second and related aspect was that incase the said OM dated 19th September, 2003,was upheld by the Tribunal to be inapplicable to the respondent, the Tribunal was required to clarify, as to which rule/circular/OM/instruction would be applicable to the respondent. Unfortunately, the Tribunal has not clarified the position.

Consequently, although the learned counsel for the petitioner submitted that this matter may be decided by this Court itself in view of the fact that we have heard the matter extensively, we feel that as the Tribunal has not clarified the position in terms of the direction given by this Court, it would-be appropriate to set aside the order and send the matter back to the Tribunal to comply with the directions in view of the liberty granted by this court. Consequently, the impugned order dated 26th April, 2007, is set aside, the petitioner's application, being MA.No. 648/2007, is restored to the file of the Tribunal'. The Tribunal shall consider the arguments advanced by the parties and pass appropriate orders in accordance with the directions given by this Court by virtue of the order dated 6th March, 2007, and the directions contained herein."

14. It was submitted that the impugned order is in violation of this Court"s order as mentioned above and that the CAT virtually re- examined the matter. Plainly, the pension revision done by AAI was in accordance with prevailing instructions and therefore, the circular dated 19.09.2003 was squarely applicable to the facts of this case.

15. Mr. M.K. Bhardwaj, counsel for Khillan argued that as a pensioner, the applicant had to repeatedly knock at the doors of the CAT, and was driven to this Court too. It was pointed out that since the order of 13.11.2000 (the CAT directing re-fixation of pension in OA No. 48/1998), the said order had become final with the dismissal of the writ petition by this Court. In the meanwhile, the OM of 19.09.2003 was brought into force, prompting the AAI to launch a fresh exercise of the revision of pension. The PPO issued to the applicant again was not acceptable to him because it sought TO reduce the amount receivable as pension. This led to OA No. 577/2006, which was quashed. No doubt, the order of 20.11.2012, prima facie hints that possibly clause 1(e) applied. But the full meaning and purport of that condition and the previous history of the case had not been considered in that order.

16. The present effort of the AAI, in the opinion of this Court, is untenable and unmerited. The pension revision carried out of the applicant"s previously fixed pension (on the basis of rules existing then) was disputed; he preferred OA No. 48/1998, which was allowed on 13.11.2000; that order (of the CAT) was upheld by this Court in its judgment. Thus, the directions in that order with regard to pension revision entitlement of Khillan, became final. The OM dated 19.09.2003 triggered re-fixation adverse to the applicant; he again approached the CAT, this time too, his application (OA No. 577/2006) was allowed.

17. Para 1(e) of the OM dated 19.09.2003, issued by the Central Government

states as follows:

"(e) Provisions of this O.M. shall not apply to the past pensioners of this category who have, in the past, been given a special dispensation on account of specific orders of the courts as accepted and implemented by the government. Cases of this nature shall continue to be governed as per the existing provisions specifically applicable to them."

18. There is no dispute that prior to the issuance of this OM (of 19. 09.2003) the order of the CAT directing upward revision in the case of Khillan had been made on 13.11.2003. That order was later confirmed by this Court. Clearly therefore, the applicant-Khillan fell into the category of individuals answering the description in clause 1(e). AAI"s attempts to show that the present order of the CAT, impugned in this petition amounts to defiance of this Court"s (clarificatory) order dated 20.11.2012, in the opinion of this Court, is without substance. This Court had not considered the history of Khillan"s past application (OA No. 48/1998) and the order of this Court confirming it. Nor did the court render any findings as to what other condition or notification applied. All that was required of the CAT was to render specific findings whether clause 1(e) applied, and if not, indicate, what did apply. However, that view cannot be considered conclusive as the court did not have an occasion to consider the previous order of the CAT and further, that the directions in that order had become final. The AAI"s argument on this aspect, therefore, have to fail. Consequently, the present writ petition cannot succeed.

19. We also notice that this Court in Director General Civil Aviation & Anr. v. Iqbal Singh Vedi & Others(WP 5687/2007) had to deal with an identical situation. In the judgment disposing of that writ petition (on 06.03.2017) it was held as follows:

"19. Under Rule 70 of CCS (Pension) Rules 1972, pension once authorised after final assessment shall not be revised to the disadvantage of the Government servants, unless such revision becomes necessary on account of detection of a clerical error subsequently and Rule 70 of CCS (Pension) Rules 1972 reads as under: -

"70. Revision of pension after authorization

(1) Subject to the provisions of Rule 8 and 9, pension once authorized after final assessment shall not be revised to the disadvantage of the Government servant, unless such revision becomes necessary on account of detection of a clerical error subsequently;

Provided that no revision of pension to the disadvantage of the pensioner shall be ordered by the Head of Office without the concurrence of the Department of Personnel and Administrative Reforms if the clerical error is detected after a period of two years from the date of authorization of pension.

[(1-A)) The question whether the revision has become necessary on account of a clerical error or not shall be decided by the administrative Ministry or Department.]

(2) For the purpose of sub-rule (1), the retired Government servant concerned shall be served with a notice by the Head of Office requiring him to refund the excess payment of pension within a period of two months from the date of receipt of notice by him.

(3) In case the Government servant fails to comply with the notice, the Head of Office shall, by order in writing, direct that such excess payment, shall be adjusted in instalments by short payments of pension in future, in one or more instalments, as the Head of Office may direct."

20. In our view the Office Memorandum dated 19.09.2003 is applicable to those Central Government employees, who have retired or are retiring on IDA pay scales and opted for pensionary benefits of the combined service in Government and Public Sector Undertaking and admittedly, the respondents No. 1, 2 & 3 have not retired in IDA pay scales and as such the respondents No. 1, 2 & 3 are not covered by it. Admittedly, the pension of the respondent No. 1, 2 & 3 have been considerably reduced by the petitioners herein by three PPOs dated 30.10.2006. Further under Rule 70 of CCS (Pension) Rules, the pension of a retired Government servant cannot be reduced to his detriment or disadvantage.

21. It is clear as crystal that the respondents No. 1, 2 & 3 have opted for pension under CCS (Pension) Rules 1972 and the directions of the Tribunal in OA No. 480/1998 titled as "Jagdish Tuli &Ors. v. Union of India", dated 13.11.2000 were upheld by the Division Bench of this Court dated 05.05.2006 in WP (C) No. 1597/2001 except on the point of interest, which was reduced to 9%, which has attained the finality and has been implemented by the petitioners with regard to similarly placed retired employees of the department/autonomous body, we are not inclined to interfere with the directions given by the Tribunal by the impugned order. Since the respondents No. 1, 2 & 3 are in the age group of 85-87 years, as they had retired in the year 1990, we expect from the petitioners to implement the directions given by the Tribunal by way of impugned order within a period of four weeks from the date of receipt of the order.

22. The petition is dismissed accordingly. No costs."

20. In the present case, too, apart from clause 1(e), the rationale given in the case of Iqbal Singh Vedi also additionally applies.

21. For the above reasons, the writ petition fails and is accordingly dismissed without order on costs.

