
(2013) 02 P&H CK 0096

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 14174-CAT of 2012

Union of India and Others

APPELLANT

Vs

Bakhtaur Singh and Another

RESPONDENT

Date of Decision : 08-02-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 2 SCT 142

Hon'ble Judges : A.K. Sikri, C.J.;Rakesh Kumar Jain, J

Bench : Division Bench

Advocate : Sanjay Joshi, for the Appellant; Jagdeep Joshi, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, C.J.—The respondent herein initially joined Indian Army as Naik and was transferred to the pension establishment w.e.f. 30.06.1985. At the time of release from Army, the respondent herein was drawing basic pay at the stage of Rs. 288/-. Being an Ex-Serviceman the respondent herein got re-employed as vehicle mechanic in the respondent department w.e.f. 1.7.1985. There was no break in the re-employment of the respondent and he was granted the pay scale of Rs. 260-6-290-EB-6326-8-390-10-400. However, his pay was fixed at the minimum of the pay scale i.e. Rs. 260/- instead of protecting his pay at the stage of Rs. 288/-, which he was drawing while in Army service. The respondent herein submitted that his pay should have been fixed at Rs. 288/- thereby protecting the pay he was drawing while he was in army service and that could not have been fixed at a lower level at Rs. 260/- which is minimum of the pay scale. His case was recommended by the office of I.O.C. EME Records vide letter dated 17.10.1997. It was also recommended by the Major, OIC, Adm. GP for 316, Station Workshop, vide his letter dated 06.11.1997. Still the petitioners did not accede to his request. He thereafter even served legal notice dated 26.09.2006 which also went unheeded. Thereafter the respondent filed O.A. before the Tribunal which was disposed of on 11.08.2008 with a direction to the petitioner

to consider the claim of the respondent herein as per Rules. The matter was considered but the petitioners rejected the claim of the respondent vide orders dated 01.04.2009 on the ground that in a similar case DOP&T had clarified that when a reemployed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale and the question of granting advance increment would arise only if there is any hardship. It was also mentioned that the question of hardship is to be seen from the point of view of whether minimum pay of re-employed post plus full pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no such hardship, no advance increment can be granted. The order further spelt out that as in the case of the respondents there was no hardship, inasmuch as the minimum pay of the re-employed post plus full pension plus pension equivalent to gratuity (whether ignorable or not) was not less than the last pay drawn at the time of retirement. The petitioner thus maintained that the respondent's pay had rightly been fixed at the minimum of the pay scale in absence of any hardship.

2. This order of the petitioners was challenged by the respondent herein by filing Original Application (O.A.) which has been allowed by the learned Tribunal vide orders dated 11.07.2011. In coming to this conclusion that the respondent's pay needs to be protected, the Tribunal has referred to orders passed in O.A. No. 1322-PB of 1996 titled as Ex-Havaldar D.P.S. Kang v. Union of India. The Tribunal has noted that similar prayer made by Shri D.P.S. Kang was allowed and the benefit was extended to him. Therefore, there was no reason to meet out a different treatment to the respondent herein. Precise reasons given in this behalf are contained in para No. 5 of the orders of the Tribunal which are as follows:-

5. It is apparent, from a conjunctive perusal of the pleadings raised by the parties, that the respondents did not dispute the applicability of the judgment in Ex-Havaldar D.P.S. Kang's case to the case of the applicant, but have raised a plea that they cannot grant similar relief to the applicant in view of the instructions of the Ministry of Finance and the clarification issued by the DOP&T. It is not a plea raised by the respondents that the judgment rendered in the case of Ex-Havaldar D.P.S. Kang had been challenged in judicial review. It, thus, follows that the judgment rendered by the Tribunal in the case of D.P.S. Kang was allowed to attain finality. In the light of that judgment, the respondents cannot resist the grant of relief to the applicant by relying upon the administrative instructions issued by the Ministry of Finance and the clarification issued by the DOP&T. It is to state the obvious that the administrative instructions cannot outweigh the judicial view.

Union of India has filed this writ petition under Article 226 of the Constitution of India challenging the veracity of the orders passed by the Tribunal. The reason contained in the rejection order dated 01.04.2009 is emphasized submitting that it was not a case of hardship and the pay was rightly fixed. Learned counsel for the petitioners at the time of arguments referred to the judgment of Apex Court

in the case of Director General, ESI Corporation, New Delhi and Another Vs. Shri M.P. John and Others,

3. We do not find any merit in the aforesaid contention of learned counsel for the petitioners. It is sought to be projected that the case of the respondent is not that of hardship and therefore his claim is not maintainable. The reason given in the order dated 01.04.2009 is as under:-

AND WHEREAS, in a similar case DOP&T has clarified that when a re-employed pensioner asks for re-fixation of pay under the 1983 orders, his pay has to be fixed at the minimum of the scale. The question of granting him advance increments will arise only if there is any hardship. Hardship is seen from the point of view of whether minimum pay of re-employed post plus frill pension plus pension equivalent of gratuity (whether ignorable or not) is less than the last pay drawn at the time of retirement. If there is no such hardship no advance increment can be granted.

4. What is overlooked in passing the aforesaid order is that the instant case is not that of grant of advance increments. The respondent herein never claimed that while fixing his pay in the pay scale of Rs. 260-6-290-EB-6326-8-390-10-400 he should be granted any advance increment. It is only if he had asked for advance increment, the aforesaid rational would have been relevant. The judgment of the Supreme Court in the case of M.P. John (supra) also deals with that aspect; instead the claim of the respondent was for pay protection. At the time of leaving the Army Service, he was drawing pay of Rs. 288/- and now he wanted protection of this pay and did not want any advance increment. As far as the protection of his pay is concerned, the case is squarely covered by the orders passed in the case of Ex-Havaldar D.P.S. Kang v. Union of India which order was implemented by the petitioners themselves in that case. The case of the respondent is exactly the same as that of Mr. D.P.S. Kang's case and therefore, the Tribunal rightly allowed the O.A. of the respondent herein. We find no merit in the present petition as the order of the Tribunal is without blemish. Accordingly, this writ petition is dismissed.