(2019) 12 DEL CK 0046

In the Delhi High Court

Case No : Civil Writ Petition No. 8705 Of 2014, 2262 Of 2015

Union Of India & Anr — APPELLANT

Vs

Nilamani Mohanty — RESPONDENT

Date of Decision : 05-12-2019

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

Citation : (2020) 1 AD(Delhi) 525

Hon'ble Judges : Dr. S. Muralidhar, J;Talwant Singh, J

Bench : Division Bench

Advocate : Ruchir Mishra, Sanjiv K. Saxena, Ramneek Mishra, Mukesh Tiwari, Dr. Amit George, Akshat Gupta, Swaroop George

Final Decision : Dismissed

Judgement

Dr. S. Muralidhar, J

1. Both the present petitions by the Union of India are directed against orders of the Central Administrative Tribunal ("CAT") and involve an identical question of law and are accordingly being disposed of by this common order.

2. While W.P.(C) 8705/2014 challenges the order dated 18th March, 2014 passed by the CAT in O.A. No. 925/2013 as well as the subsequent order dated 31st July, 2014 in R.A. No. 136/2014, W.P.(C) 2262/2015 challenges the order dated 30th July, 2013 of the CAT in O.A. No. 2461/2012 and the order dated 7th January, 2015 in R.A. No. 186/2014.

3. In all the above applications before the CAT, the applicants were former employees of the Department of Space and the Indian Space Research Organisation ("ISRO"). The common issue in all these petitions is whether the enhancement of "special pay" granted to the Respondents from Rs.2000/-to Rs.4000/- in terms of the recommendations of the 6th Central Pay Commission ("CPC") formed part of "pay" for the purposes of calculation of pension?

4. In all the impugned orders, the CAT has, while deciding the issue in favour of the Respondents/Applicants, issued directions to the Petitioners to revise the pension payable to the Respondents on the basis that special pay, which stands enhanced from Rs.2000/- to Rs.4000/-, forms part of "pay". In its order dated 30th July, 2013 in OA No. 2461 of 2012 the CAT has issued the following directions:

"1. Revision Pension Pay Orders in respect of the applicants impugned in this OA are quashed and set aside;

2. Respondents are directed to extend the benefits of enhanced Special Pay of Rs. 4000/- (50% for pensionary purpose) to the applicants as have been recommended as per the CCS (Pay) Rules, 2008 w.e.f. 01.01.2006 and consequently revise their pension by taking full pension (50%) which is granted upon 20 years of completed service for post 2006 reitrees and bring them at par with the post 2006 retirees with prospective effect of 01.01.2006.

3. The exercise ordained above be completed within a period of three months from the date of receipt of certified copy of this order.

4. There shall be no order as to costs."

5. Similar directions have been issued in the second impugned order dated 18th March, 2014 by the CAT in OA 925 of 2013. The basis for the above directions was judgment of the Supreme Court in D. S. Nakara v. Union of India (1983) 1 SCC 305.

6. At this stage, it requires to be noticed that another set of employees of the Department of Space/ISRO as well as Scientists serving in the Defence Research Development Organisation ("DRDO") had approached the CAT, Principal Bench, New Delhi and other Benches of the CAT claiming that special pay granted to them of Rs.2000/- with effect from 1st January, 1996 and Rs.4,000/- with effect from 1st January, 2006 would constitute part of "pay" for the purposes of revision of pension and pensionary benefits. One such O.A. No. 1750/2012 (O. P. Nijhawan v. Union of India) came to be decided by the CAT by a judgment dated 22nd January, 2013 with the following directions:

"(1) The claim of the applicants are allowed for reckoning the special pay of Rs.2,000/- admissible from 01.01.1996 and Rs.4,000/- admissible from 01.01.2006 in the respective grade pays as enumerated in the OM dated 13.05.2009 for pension and pensionary purposes.

(2) It is further directed that those who fall within the eligible categories as cited above are to be allowed this benefit without their being required to approach this Tribunal.

(3) This, of course, is a measure of exception and leaves the question of law undetermined."

7. Against the above judgment dated 22nd January 2013, the Union of India filed

W.P.(C) 3095/2014 (Union of India v. O. P. Nijhawan) in this Court. By a judgment dated 18th July, 2014, this Court dismissed the writ petition. Against the said dismissal, the Union of India approached the Supreme Court with S.L.P. (C) 24745/2015 which, after grant of leave, came to be registered as Civil Appeal No.12040/2018. That appeal, along with a batch of similar appeals arising out of several orders of the CAT and the High Courts all over the country, was decided by the Supreme Court by its judgment dated 3rd January, 2019 in Union of India v. Dr. O. P. Nijhawan 2019 OnLine SCC 4. The issues addressed by the Supreme Court are set out in paragraph 14 of the judgment and read as under:

"(i) Whether the appellants are precluded to question the impugned judgment of Central Administrative Tribunals/High Courts directing for inclusion of special pay of Rs. 2,000/- or Rs. 4,000/- for computation of pension, since at earlier stages, similar orders passed by Central Administrative Tribunals/High Courts have attained finality due to dismissal of Special Leave Petitions filed by the Union of India?

(ii) Whether the Orders issued by the Union of India implementing the orders by giving effect to the decisions of the Central Administrative Tribunals and High Court directing for inclusion of special pay of Rs.2,000/- or Rs.4,000/- in computation of pension, the Union of India is precluded/estopped from questioning the earlier decisions?

(iii) Whether special pay of Rs.2,000/- or Rs.4,000/- sanctioned to the Scientists in Departments of DRDO, DAE and DOS w.e.f. 1.01.1996/01.01.2006 respectively has to be included in the definition of pay as contained in Rule 9(21)(a)(i) for the purposes of computation of pensionary benefit under 1972 Rules?"

8. After discussing Rule 9 (21) (a) (i) of the Fundamental Rules ("FRs") which defines "pay", Rule 9 (25) of the FRs which defines "special pay", Rule 33 of the Central Civil Services (Pension) Rules, 1972 which defines "emoluments", as well as orders issued from time to time by the Central Government by way of the implementation of the recommendations of the 4th and 5th CPCs, the Supreme Court, while answering issues (i) and (ii) held as under:

"The fact that appellant has implemented the earlier orders passed by the Central Administrative Tribunals and the High Courts and issued order for including special pay in the pay for the purpose of computation of pension, the Union of India is not precluded to raise the issues again, the principle of res judicata or estoppel are not attracted."

9. In coming to the above conclusion, the Supreme Court relied on its own judgment in B. J. Akkara v. Union of India (2006) 11 SCC 709.

10. The Supreme Court then took up the main issue, i.e. issue (iii) and held as under:

"29. The definition of Fundamental Rule 9(21)(a)(i) clearly excludes following two from the definition of pay, i.e., (i) the special pay or, (ii) pay granted in view of his personal qualifications. The special pay as occurring in Fundamental Rule 9(21)(a)(i) has to take colour from the definition of special pay as contained in Rule 9(25). The special pay as defined in Rule 9(25) is sanctioned to a government servant or to a post looking to the special arduous nature of the duties or a specific addition to the work or responsibility, which is related to essentially performance of duties and specific addition to the work. The second exclusion, i.e., it is granted in view of professional qualifications also indicates that the special pay is only taking into consideration the personal qualifications of a person. Thus, special pay is in recognition of aforesaid factors and for compensating in the above circumstances. Special pay is granted for specific purposes and in response to specific situation and circumstances. Thus, there is a rational for excluding special pay from the pay as defined in Rule 9(21)(a)(i) but the special pay granted by Office Memorandum dated 03.02.1999 to the respondents was not in any of the circumstances as mentioned in Rule 9(25). Rather the said benefit of Rs.2,000/- was in lieu of a separate higher pay scale. It is, thus, clear that grant of special pay of Rs. 2,000/- was in lieu of a separate higher pay scale, which does not fit in the nature of special pay as contemplated by Rule 9(25). Thus, the addition as granted by Office Memorandum dated 03.02.1999 also does not fit in the special pay, which is excluded from the definition of pay given under Rule 9(21)(a)(i). Thus, addition of benefit of Rs. 2,000/- w.e.f. 01.01.1996 styled as special pay has to be included in the definition of pay given under Rule 9(21)(a)(i) looking to the true nature and character of the benefit, which was extended to Scientists on the basis of peer review.

We, thus, do not find any infirmity in the decisions of the Central Administrative Tribunals or High Courts holding that the amount of special pay of Rs. 2,000/- w.e.f. 01.01.1996 and Rs. 4,000/- w.e.f. 01.01.2006 to be treated as part of pay for the basis of computation of pension. For the reasons as mentioned above, we, thus, do not find any merit in these appeals, which are accordingly dismissed."

11. It must be noticed at this stage that the present petitions were being adjourned by this Court from time to time awaiting the above judgment of the Supreme Court in Civil Appeal No.12040/2018.

12. The Court was informed at the hearing of these petitions on 22nd November, 2019 that the judgment of the Supreme Court had been accepted by the Department of Space and an Office Memorandum dated 29th March, 2019 has been issued. A copy thereof was placed in W.P.(C) 2262/2015 enclosed as Annexure-III to C.M. APPL. 40068/2019. The said OM states that "in continuation of an earlier DOS letter dated 4th August, 2010, "it is decided that the Special Pay of Rs.2000/- w.e.f. 01.01.1996 and Rs.4000/-w.e.f. 01.01.2006 to 30.06.2017 granted to Scientists/Engineers-H shall be treated as pay for the purpose of pension and pensionary benefits."

13. In that view of the matter, the directions issued by the CAT as referred to

hereinabove are consistent with the decision of the Supreme Court and do not call for interference.

14. Counsel for the Petitioner states that the direction issued by the CAT for revision of the pension of the Respondents who retired even prior to 1st January, 2006 by giving them the benefit of the enhanced special pay is erroneous. This Court is unable to agree with the above submission. A careful perusal of the judgment of the Supreme Court in Union of India v. O. P. Nijhawan (supra) makes it clear that the CAT was right in issuing the above directions in its impugned orders which do not call for any interference.

15. The petitions are accordingly dismissed.