(2013) 01 DEL CK 0373

In the Delhi High Court

Case No : W.P. (C) 2141/2001

Union of India	APPELLANT
Vs	
Dalip Singh and Others	RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Citation : (2013) 01 DEL CK 0373

Hon'ble Judges : Veena Birbal, J;Pradeep Nandrajog, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Pradeep Nandrajog, J.—The writ petition lays a challenge to an order dated July 6, 2000 allowing O.A. No. 1410/1997 passed by the Central Administrative Tribunal. The respondents were the applicants before the Tribunal and had challenged the order dated May 23, 1997 as per which the benefit of increment granted to the respondents when pay scales were replaced w.e.f. January 01, 1986 was sought to be withdrawn after the respondents had retired.

2. The facts noted by the Tribunal are that the applicants before the Tribunal retired as ad-hoc Assistants in the pay scales of Rs. 1640-2900. It was their case that the Department of Expenditure, vide memorandum dated March 23, 1995, had taken a conscious decision that a Government servant whose increment fell due on January 01, 1986 would be allowed an option to get their pay re-fixed w.e.f. January 01, 1986 in the following manner:-

The pay in the revised scale as on January 01, 1986 may be fixed without taking into account the increment due on January 01, 1986. After the pay in the revised scale is so fixed, the increment may be allowed on January 01, 1986 in the revised scale.

meaning thereby that the manner of the implementation as afore noted would give the benefit to the employee of having pay fixed in the replacement scale with no increments earned in the previous pay scale and thereafter one increment being granted w.e.f. January 01, 1986 in the revised pay scale.

3. The Tribunal has noted that the employees were asked to fill an option and were made known that where no option was exercised it would be presumed that the employee had opted to get his pay fixed by drawing increment in the pre-revised scale and thereafter pay fixed in the revised pay scale. The Tribunal noted that all the applicants before it had exercised their options as required and in terms of the option exercised the pay scales were fixed and increments benefit given. The Tribunal noted that on December 06, 1996, the Union of India had issued a letter withdrawing the benefit accorded to as per the memorandum dated March 23, 1995.

4. In allowing the application the Tribunal had noted that a conscious decision was taken by the Government when the memorandum dated March 23, 1995 was issued. The Tribunal noted that the memorandum dated December 6, 1996 (somewhere referred to in the impugned decision as the memorandum dated June 12, 1996) was actually no decision but was only a clarification and thus has opined that the same could not be read to alter a policy decision. The Tribunal also noted a decision of the Tribunal reported as 1992 (20) ATC 576 G.B.K. Jain v. Union of India & Ors. which held that except for correcting clerical errors, once sanctioned, pension could not be revised. The Tribunal further noted that memorandum dated May 23, 1997, the impugned memorandum, was not intended to correct any clerical error. The Tribunal further noted that an attempt was being made to withdraw a benefit correctly allowed to the employees who had retired since long. The Tribunal has further noted that the principle of estoppel would operate against the Government.

5. Prima facie, the reasoning of the Tribunal is correct but since none appears in the writ petition at the hearing today we dismiss the writ petition in default noting further that after rule D.B. was issued in the instant writ petition which was filed in the year 2001 stay of operation of the impugned order was not granted inasmuch as the writ petitioner never pressed CM No. 3701/2001, which still lies undecided in the records of the instant writ petition. There would be no order as to costs.

CM No. 3701/2001

Dismissed for non prosecution.

