

(2007) 08 DEL CK 0189

In the Delhi High Court

Case No : Writ Petition (C) No. 854 of 2007

Union of India (UOI) and Others

APPELLANT

Vs

Bipin Behari Das

RESPONDENT

Date of Decision : 24-08-2007

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48A
Industrial Disputes Act, 1947 — Section 10, 25FFF
Liberalized Pension Rules, 1972 — Rule 465A(2)

Citation : (2007) 98 DRJ 624

Hon'ble Judges : S.L. Bhayana, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : R.V. Sinha and Mayank Bhargava, for the Appellant; A.P. Mohanty, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Bhayana, J.—Union of India, petitioner-herein, has assailed the order and judgment, dated 04.05.2006, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the Tribunal"). The Tribunal, while allowing the O.A. of the respondent directed the petitioner to accord payment of pension and other retiral benefits to the respondent herein along with interest calculated @ 12% p.a., w.e.f. 21.02.1976 till it is actually paid, with arrears thereof, within a period of two months from the date of receipt of a copy of the said order.

2. The facts culminating into filing of the present writ petition are : Respondent in the year 1976, while on the post of UDC, resigned from his service on 9th February, 1976 from his work in the Defunct Dandakaranya Project. The said resignation was duly accepted by the petitioner vide order dated 18th February, 1976. After acceptance of the resignation, the respondent represented to withdraw the aforesaid resignation. The petitioner's order of acceptance of resignation was challenged before the District Judge, Koraput, Orissa. Learned District Judge vide his order dated 12.5.1978 upheld that the respondent's

resignation was accepted and withdrawal of his resignation was rightly declined. The order was affirmed by the High Court as well as by the Supreme Court.

3. On 29.11.1989, Central Industrial Tribunal, on a reference made by the Government of India u/s 10 of the Industrial Disputes Act, referring 18 items of demand raised by the employees of Dandakarnya project, adjudicated the claims and passed an award. The demands related to regularization of all muster roll workers, who had completed 240 days with consequential benefits, reinstatement of muster roll workers with back wages, stoppage of retrenchment of all workers and other items of claim. We are concerned, in the present case, with reference of the claim of the respondent as Item No. 4, which was as under:

Grant of permanency from 1972 and grant of retirement from 1976 to Shri B.B. Das, former Branch Secretary of Class-III and Class-IV Employees Association and former General Secretary and presently President of Rehabilitation Employees Union by accepting his letter dated 21.2.76 withdrawing the conditional resignation.

4. The Tribunal, as regards the respondent's case, gave the following finding:

We are Therefore of the view that it should be taken that Shri Das retired voluntarily with effect from 21.2.76 treating him as a permanent employee. It is however made clear that he will not be entitled to any other service benefits excepting retirement benefit.

5. The Tribunal in the Award also held that 425 N.M.R. employees had been denied equal treatment with similarly placed work charged employees by the management of the Dandakarnya project and direction was given that similar arrangement as in the case of work charged employees should be made for their absorption in service. The aforesaid Award was upheld by the High Court as regards the claim for regularization and Item No. 4 is noted above.

6. The Management of Dandakarnya project, Koraput filed a SLP in the Supreme Court bearing No. 22-23/1997 wherein it challenged the findings in the Award in respect of the claim Nos. 1 & 3 relating to regularization and stoppage of retrenchment of workers of Dandakarnya project. The Supreme Court held that decision of the Tribunal to regularize the workers was not sustainable and that the High Court had committed an error in not interfering with the Award of the Tribunal. Further, workers were held to be entitled to compensation as provided u/s 25FFF of the Industrial Disputes Act. However, the challenge in the Supreme Court was confined to these items and not the item relating to the respondent.

7. Petitioners have submitted before us that Orissa High Court only decided that the respondent was a permanent employee but did not decide on the issue whether it was a case of resignation or voluntary retirement. Petitioner further urged that the Court held that the respondent herein was not entitled to any service benefit except retiral benefits. In our view, the above is clearly a misreading of the order of the High Court as reproduced above.

8. The respondent filed writ petition No. 88 of 2000 before the Hon"ble Supreme Court. The said writ petition was dismissed as withdrawn, vide order dated 24.04. 2001 granting respondent liberty to approach the Tribunal or the High Court. The respondent pursuant to the orders of Supreme Court, approached the Tribunal. The Tribunal vide its order dated 11.01.2002 dismissed the OA of the respondent on the ground that the Tribunal cannot execute the orders of the Supreme Court.

9. Aggrieved with the order of the Tribunal, the respondent filed a writ petition CWP No. 3164 of 2002 before the High Court and vide order dated 30.05.2002, the High Court remanded the matter back to Tribunal for reconsideration with the following observation:

In our opinion the learned Tribunal went wrong in arriving at a decision that the petitioner wanted to implement the order of High Court or wanted to clarify and interpret its order. It was for the Ld tribunal to consider the grievance of the petitioner on its own merit. We may observe that the petitioner in support of its contention relied upon the judgment of Orissa High Court but not the execution thereof. We, Therefore, are of the opinion that the impugned judgment passed by the learned tribunal cannot be sustained. Accordingly, the matter is remitted to the learned tribunal for its consideration of the matter.

10. The Tribunal on reconsideration vide order dated 8th October, 2002 again dismissed the OA of the respondent holding it cannot entertain the O.A. as the case was earlier adjudicated upon by Central Industrial Tribunal and later on by the Hon"ble High Court of Orissa and Hon"ble Supreme Court of India and has thus attained finality. Aggrieved by the aforesaid order, Respondent filed writ petition No. 1787 of 2003 and the High Court, vide its order dated 05.12.2005 remanded the case back to the Tribunal for reconsideration of the case and gave a finding, which is as under:

...the respondents (UOI) accepted the judgment of the Orissa High Court so far as it concerned the petitioner herein. Accordingly, the aforesaid observations of Orissa High Court passed against the petitioner became final and binding.

11. It may be noted that during the pendency of the aforesaid writ petition, respondent expired on 15.5.2005.

12. The Tribunal vide order dated 04.05.2006 partly allowed the OA and directed the petitioners to accord payment of pension and other retiral benefits to the respondent with simple interest at 12% p.a. w.e.f. 21.02.1976 till the date of payment with arrears thereof.

13. The petitioner has challenged the said order in the present petition on the ground that tribunal has acted in a mechanical manner without having considered the rules applicable in the said case.

14. We have heard learned Counsel for the parties and perused the documents available on record. The matter between the petitioners and the respondents is

quite old and has seen series of litigation without any finality to the remedy sought. We are conscious of the chequered history of litigation between the parties. The numerous rounds of litigation is a matter of record. The respondent expired during the course of litigation and now the legal heirs of the deceased are before us. Petitioner, Union of India is aggrieved of the order of Tribunal, that has decided the application of the respondent on merits albeit almost 30 years of his retirement on the directions of this Court. The contention raised by the petitioner is that Rule 48A of the CCS (Pension) Rules, 1972 was not applicable as at that point of time, the said Rule was not in force. The Tribunal in its impugned order has held as under:

Applicant who has been voluntarily retired being a permanent employee, any grievance relating to non-payment of retiral benefits is a service matter within the definition of Administrative tribunals Act 1985, to which redressal has to be effected from the tribunal.

Rule 48-A allows one who is voluntarily retired as a consequence thereof payment of pension and retiral dues, which cannot be withheld without any justification. I do not find any justification tendered by the respondents to withhold the retiral dues of the applicant.

15. Counsel for the petitioner submits that the said provision was introduced in the year 1978, whereas the respondent retired in the year 1976, Therefore, the aforementioned provision is not applicable.

16. We have gone through the said provision and also the argument of the petitioner herein. The respondent all his life had been embroiled in litigation and had only sought retiral benefits, which is, his right in view of the fact that he was a permanent employee who sought voluntary retirement which was duly accepted. The petitioner had not assailed the order of Orissa High Court and to that extent the decision of the Orissa High Court had attained finality and has become binding on the parties. The said order, when challenged in Supreme Court, the counsel of parties limited their arguments on the findings other than the issue affecting the respondent.

17. It is an admitted case of the parties that the respondent had put in 25 years of service and that the Orissa High Court had held him to be a permanent employee. We are in agreement with the said finding. The Rules categorically provide that an employee, who has put in 25 years of service is eligible to pension and the same cannot be held back without any justification. The counsel for petitioner has argued that the pension period be counted from year 1978 and not from 1976, as it is only in year 1978 that the rules came into force. We are not in agreement with the argument of counsel for the petitioner. If a person has put in 25 years of service and then seeks retirement, he cannot be denied the pensionary benefits. Rule 465-A(2) of Liberalized Pension Rules (as corrected up to 1972) compiled by Swamy's 4th Edition enunciate as under:

for officers mentioned in article 349-A, the rule for grant of retiring pension is as

follows:

1) XXX XXX 2) A retiring pension is also granted to an officer who is required by government to retire after completing twenty-five years" qualifying service or more

18. The said rule was applicable in 1976, when the documents of retirement were submitted to the authorities is similar to Rule 48-A of the CCS (Pension) Rules, 1972 presently applicable.

19. In view of the discussion made above, we find no infirmity in the impugned order. The petitioners have unnecessarily denied the respondent his retiral benefits, which he was entitled to as a matter of right. It is unfortunate that even after almost 30 years of litigation and even after the death of the respondent the petitioners have unnecessarily raised non-issues resulting in harassment of the respondent's heirs. It may also be noted that the petitioners were liable to pay the retirement benefits in 1995, once the Orissa High court had directed the same. It has been 12 years since the order was passed in favor of the respondent who has been denied benefits without a justified reason on the part of the petitioners.

20. We, Therefore, dismiss this writ petition being devoid of any merits with costs of Rs. 10,000/- to be paid to the legal heirs of the respondent.