
(2001) 12 RAJ CK 0041
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3946 of 2001

Union of India (UOI) and Others

APPELLANT

Vs

Mool Singh and Another

RESPONDENT

Date of Decision : 07-12-2001

Acts Referred:

Citation : (2002) 4 WLN 603

Hon'ble Judges : Rajesh Balia, J; O.P. Bishnoi, J

Bench : Division Bench

Advocate : Vijay Bishnoi, for the Appellant; P.R. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Mr. R. Balia, J.—Heard learned counsel for the parties.

2. The respondent-applicant before the CAT had been initially appointed as Signaman on 26.6.66 and after serving 15 years actively and being kept on reserved list for two years, he was retired from the services on 31st August, 1981. Thereafter, he was re-employed in the Telecommunication Department as Telephone Operator on 26th February, 1982 in the pay-scale of Rs. 260-480. At the time of his retirement, the applicant was drawing pay of Rs.250/- plus 20=270, which was more than the minimum of the pay-scale in which he was appointed on re-employment. So also the minimum of the pay-scale applicable to the post of re-employment was lower than the maximum of the pay-scale in which the respondent-applicant was drawing his emoluments at the time of his discharge from the defence service. His pay-scale at the time of retirement was Rs. 205-265. By considering that the respondent-applicant has been appointed in pay-scale higher than in which he was drawing his emolument in his previous employment, he was fixed at the minimum of pay-scale at Rs. 260 per month.

3. Aggrieved with fixation at the minimum of the pay-scale as the Telephone Operator, the petitioner represented that he is entitled to be fixed at that stage of the scale at which he was drawing pay while he was serving in the Army.

4. The employer having not agreed with the demand of the applicant, an Original Application was filed before the Central Administrative Tribunal raising grievance about fixation of pay in the pay-scale of Rs. 260-480 on his re-employment by the Telecommunication Department.

5. The respondent U.I.O. contended before the Tribunal that the applicant was drawing his emoluments in the pay-scale of Rs. 260-265 (sic 205-265 ?) in the Indian Army and he was re-employed on the post of Telephone Operator which carries the higher pay-scale Rs. 260-400. He was, therefore, not entitled to be fixed at any higher stage in the pay-scale, but could be fixed at the minimum of the pay-scale. The Tribunal held, following its earlier decision rendered in *Shyam Lal Saran v. Union of India* in O.A. No. 36/2000, that the fixation of pay on re-employment in the case of Shyamlal was held to be as per terms of Office Memorandum dated 25.11.58 and 14.3.68 which entitled the applicant in the aforesaid case to be fixed at that stage of the pay-scale after according increment for the number of years served in the previous employment.

6. Following the aforesaid decision, the application filed by the applicant was allowed by directing the respondents to fix his pay in accordance with O.M. dated 25.11.58 and 14.3.68 by grant of advance increment equal to the number of completed years of service with the Indian Army.

7. Aggrieved with the order dated 10th April, 2001, this writ petition has been preferred by the Union of India in its Telecommunication Department.

8. It has been contended by Mr. Bishnoi, learned counsel for the petitioners, that in terms of Regulation of Pay during Re-employment, the fixation of the respondent-applicant at the lowest of the pay-scale applicable to the post was rightly done for the reasons noticed by us above as per the contention raised before the Tribunal.

9. He has further pointed out that decision in *Shyam Lal's* case (supra) by the CAT which was founded on joint reading of the office memorandum dated 25.11.58, 11.4.63 and 14.3.68 was subjected to D.B. Civil Writ Petition No. 3144/2001 (*U.O.I. v. Shyam Lal Saran*). He, therefore, states that no finality could be attached to the decision passed by the Tribunal in O.A. No. 36/2000.

10. So far as the decision in *Shyamlal's* case is concerned, the writ petition has since been dismissed and was so informed by the learned counsel for the respondents) on 3rd December, 2001 holding that the office memorandums issued after 25.11.85 (sic 25.11.58 ?) were not merely clarificatory but were in fact modifying the earlier memorandum. The office memorandum dated 25.11.58 provided fixing of the pay in the pay-scale applicable to the post on which the ex-employee is re-employed at the minimum of the pay-scale applicable to the post. Only in the case of hardship, the power has been conferred on the Appointing Authority to remove such hardship and it has further been provided that in case the emoluments fixed under the re-employment fall-short of last drawn pay of the previous service, it is to be treated as hardship needing exercise of such

authority.

11. It appears to be true that for removing such hardship by fixing the pay at the minimum of the pay-scale/ under O.M. dt. 25.11.58. But the question needs consideration after fixation of emoluments as per Rules governing such fixations. The later circulars, to which reference has been, issued in 1963 and 1968 extended further benefits in the matter of fixation of pay on re-employment by providing the fixation at the stage in the pay-scale applicable to the post, at which stage the incumbent was drawing his pay in the previous employment and that exercise was to be done prior to considering the question of hardship for the purpose of further increase in the pay fixation to a higher level.

12. In coming to this conclusion, the Tribunal has placed reliance on the ratio laid in *Director General of Posts v. B. Ravindran* [(1997) 1 SCC-641 in which the Supreme Court by referring to the Office Memorandum dated 25.11.58 and subsequent Memorandums issued in 1963, 1964, 1978 and 1983 has held that the intention behind the orders issued in 1963, 1964, 1978 and 1983 was to give some benefit to the re-employed pensioners/ex-servicemen. The effect of the benefit was to be given at a stage prior to the consideration of hardship as per the O.M. dt. 25.11.58. The ignorable part of the pension was to be ignored while totalling up the initial pay plus the pension in order to find out whether the retired pensioner thereby was likely to get more or less than what he was getting at the time of his retirement. To that extent the 1958 policy stood altered or modified.

13. The Court further observed that though the said four orders did not directly deal with the aspect of hardship they did by widening the gap between the initial pay plus the non-ignorable part of the pension and the pay he drew before his retirement and thereby further necessitated giving of advance increments to alleviate hardship.

14. Thus, the Court held that by issuing subsequent orders, the Office Memorandum dt. 25.11.58 was not superseded but was brought into operation after fixation of pay under the subsequent circulars initially. If still there was a gap between the last drawn pay and pay fixed under the said memorandums plus non-ignorable part of the pension.

15. The Rules of 1979 envisage that all ex-servicemen within the meaning of Rules, any person who has served in any rank whether as combatant or as a non-combatant in the Regular Army, Navy and Air Force of the Indian Union and who has retired from such service after earning his pension is deemed to be an ex-serviceman for the purpose of re-employment. The fixation in the Central services was reserved for re-employment, such ex-servicemen subject to relaxation in age limit and educational qualification.

16. By issuing another order dated 31st July, 1986, the Central Govt. provided the criteria for fixation of pay to re-employment pensioners an order was known as Central Civil Services (Fixation of pay of Re-employed Pensioners) Orders,

1986.

17. Learned counsel contends in terms of Clause 4 of the said Order respondent No. 1 on his re-employment has to be fixed at the minimum of pay-scale of the post only. The Clause 4 reads as under :

Clause 4 : Fixation of pay of re-employed pensioners

(a) Re-employed pensioners shall be allowed to draw pay only in the prescribed scales of pay for the posts in which they are re-employed. No protection of the scales of pay of the posts held by them prior to retirement shall be given.

(b) (i) In all cases where the pension is fully ignored, the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

(ii) In cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement. If there is no such stage in the re-employed post, the pay shall be fixed at the stage next above that pay. If the maximum of the pay scale in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the scale of pay of the re-employed post. Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post. However, in all cases, the non-ignorable part of the pension shall be reduced from the pay so fixed.

(c) The re-employed pensioner will in addition to pay as fixed under para (b) above shall be permitted to draw separately any pension sanctioned to him and to retain any other form of retirement benefits.

(d) In the case of persons retiring before attaining the age of 55 years and who are re-employed, pension including pension equivalent of gratuity and other forms of retirement benefits shall be ignored for initial pay fixation to the following extent:--

(i) in the case of ex-servicemen who held posts below commissioned officer rank in the Defence Forces and in the case of civilians who held posts below Group "A" posts at the time of their retirement, the entire pension and pension equivalent of retirement benefits shall be ignored.

(ii) In the case of service officers belonging to the Defence Forces and Civilian pensioners who held Group "A" posts at the time of their retirement, the first Rs. 500/- of the pension and pension equivalent of retirement benefits shall be ignored.

18. Having perused this provision, we are of the opinion that this provision does not carry the case of the petitioners any further. Clause (a) envisages that there is no protection of the scales of pay of the posts held by them prior to retirement

snail be given.

19. Clause (b) classifies the cases in two categories, one is the case where the pension is fully ignored. So far as in the case of such ex-serviceman, who is re-employed on the post and his pension is fully ignored, sub-para (i) of Para (b) directly provides that the initial pay on re-employment shall be fixed at the minimum of the scale of pay of the re-employed post.

20. Other is the class of persons in whose case pension is not fully ignored Such cases are governed by Para b(ii) of Cause 4.

21. Para (d) of Sub-clause (b) states that any person who retires before attaining the age of 55 years and who is re-employed pension shall be ignored to the extent mentioned therein only.

22. Thus, it is dear that where a person who is retired before attaining the age of 55 years is re-employed, in fixing his pay on re-employment his pension is not to be fully ignored but is ignored only to the extent provided in para (d) of Clause 4 and his pay is to be fixed as per Clause b(ii), where he is re-employed. In such case Rule is not to fix the pay at the minimum of pay-scale applicable to the post. But has to be fixed at the same stage at the last pay drawn before retirement.

23. Apparently the case of the applicant-respondent No. 1, who is retired before attaining the age of 55 years after serving 15 years on active service and remaining on reserved list for two years 1982 is governed by the criteria laid in Sub-clause (ii) of Clause (b).

24. Reading that provision makes the following criterion for fixation of pay on re-employment in clear terms (i) that in cases where the entire pension and pensionary benefits are not ignored for pay fixation, the initial pay on re-employment shall be fixed at the same stage as the last pay drawn before retirement.

25. As per this general principle the respondent-applicant is entitled to be fixed at the same stage at the test pay drawn by him in his previous employment.

26. Exception to the general rule has been provided in the following manner : (i) where the maximum of the pay scale of pay in which a pensioner is re-employed is less than the last pay drawn by him before retirement, his initial pay shall be fixed at the maximum of the pay of re-employed post. Obviously, this is not exception in which applicant's case falls inasmuch as he has not been re-employed at the maximum of pay-scale which is less than last drawn pay maximum. We have noticed above that last drawn pay for the purpose of Rs. 270 whereas maximum of pay-scale in which he has been found Rs. 400/-. (ii) Similarly, if the minimum of the scale of pay in which a pensioner is re-employed is more than the last pay drawn by him before retirement, his initial pay shall be fixed at the minimum of the scale of pay of the re-employed post.

27. It is also dear that since the minimum of the pay-scale of the pay of the post in which pensioner is re-employed is not more than the last pay drawn by him before retirement. He cannot be fixed under this exception also inasmuch as minimum of the pay-scale of pay in which the pensioner has been re-employed is Rs. 260/-. whereas last drawn pay of the respondent-applicant was Rs. 270/- is more than that.

28. In these circumstances, as per the provisions of Order of 1986 relied upon by the petitioners also the respondent-applicant was entitled to be fixed in the pay-scale of the post on which he was re-employed at the same stage at which he was last drawing the pay in his previous employment.

29. In view of this it cannot be said the order of Tribunal suffers from any error apparent from record which may justify issue of writ of certiorari by invoking extraordinary jurisdiction.

Accordingly, we do not find any force in this writ petition and the same is hereby dismissed with no order as to costs.