
(2009) 08 DEL CK 0324

In the Delhi High Court

Case No : Writ Petition (Civil) No. 10598 of 2009

Union of India (UOI)

APPELLANT

Vs

Smt. Sushila Devi

RESPONDENT

Date of Decision : 10-08-2009

Acts Referred:

Citation : (2009) 08 DEL CK 0324

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Chandan Kumar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner has filed this writ petition against the order dated 20th May, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred as "Tribunal") in O.A. No. 1775/2003 whereby Tribunal directed the Petitioner to re-fix the pension of the Respondent, reckoning the running allowance, at Rs. 1544/- per month. Petitioner was also directed to pay arrears of pension and family pension w.e.f. 30th November, 1999 within three months.

2. Respondent is widow of late Sh. M.C. Gupta, who retired on 30th November, 1993 from the post of Guard (Goods). Since his pension was incorrectly fixed at Rs. 1374/- instead of Rs. 1544/- by the Petitioner, he filed O.A. No. 1775/2003 before the Tribunal. However this OA was dismissed vide order dated 28th July, 2003 on the ground that it was barred by limitation. Sh. M.C. Gupta filed a writ petition bearing WPC No. 9501/2003 challenging the aforesaid order passed by the Tribunal. During the pendency of this writ petition Sh. M.C. Gupta died and the Respondent being his widow was brought on record.

3. Vide order dated 12th December, 2007, a Division Bench of this Court set aside the order dated 28th July, 2003 passed by the Tribunal and remanded the matter back to the Tribunal for fresh adjudication regarding relief of re-fixation of

pension of late Sh. M.C. Gupta. Thereafter, vide impugned order dated 20th May, 2009, Tribunal disposed of the O.A. and has re-fixed the pension, which we have already noted above.

4. In the O.A. it was alleged that pension of Sh. M.C. Gupta should have been fixed by counting last ten months' salary. Earlier he was working as Guard (Goods). At the time of retirement also he was working as Guard. From 12th May, 1985 till 27th May, 1993 he worked as Welfare Assistant (Sports). During this period he was given benefit of 30% of pay. While working as Guard (Goods) Sh. M.C. Gupta was fully benefited of 55% of the pay towards "running allowance". While computing the pension the above benefit should have been given. According to him, his pension ought to have been fixed at Rs. 1544/-. Details of calculation were specifically mentioned in the O.A. for arriving at the figure of Rs. 1544/- towards pension.

5. As per the Petitioner, para 49 of the Railway Pension Manual provided that increase in pay, which was not actually drawn, could not have formed part of emoluments of Sh. M.C. Gupta. He worked as WLA (Sports) on his own volition and, therefore, was not entitled to the benefit of running allowance. Thus, according to the Petitioner, pension was rightly fixed at Rs. 1374/-.

6. The Tribunal held that Petitioner could not have been allowed to reprobate and approbate simultaneously. In the year 1988 Petitioner had itself passed an order holding that Sh. M.C. Gupta would continue to draw the pay of parent post together with benefit of 30% of the running allowance for working against a stationary post. Accordingly, Petitioner could not have turned its back and denied the benefit of 55%. The Tribunal was of the view that pension was to be fixed at Rs. 1544/- per month.

7. We do not find any jurisdictional error in the impugned order of the Tribunal. At the time of retirement Sh. M.C. Gupta was working as Guard (Goods). As per Rule 901 of IREM, running allowance is paid to the staff performing running duties. As per this rule "Running Duties" mean duties directly connected with the movement of trains and performed by running staff while employed on moving trains or engines including shunting engines. Therefore, Sh. M.C. Gupta was entitled to running allowance while working on the post of Guard (Goods). Though Mr. M.C. Gupta was working on the post of Guard (Goods), but during intermittent period he had also worked as WLA (Sports). Vide order dated 9th March, 1988, Petitioner had specifically ordered that while working as a WLA (Sports) Sh. M.C. Gupta would continue to draw pay of his parent post with benefit of 30% for working against a stationary post with effect from 12th May, 1985. On 20th May, 1993, Sh. M.C. Gupta again joined as Guard (Goods) and became entitled to the running allowance. As per para 924 of IREM, running allowance has to be reckoned for the purpose of retirement benefits. Calculation given in OA have not been specifically denied in the reply filed by the Petitioner before the Tribunal. No error therein was pointed out before the Tribunal.

8. We are of the view that the Tribunal rightly accepted the contentions of the Respondent and has fixed the pension at Rs. 1544/-. We do not find any merit in this writ petition and same is dismissed.