(2011) 10 DEL CK 0228

In the Delhi High Court

Case No : Writ Petition (C) No. 6705 of 2011

UOI and Others APPELLANT

Vs

Sh. B.D. Phulara RESPONDENT

Date of Decision : 10-10-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2011) 10 DEL CK 0228

Hon'ble Judges : Sudershan Kumar Misra, J;Anil Kumar, J

Bench : Division Bench

Advocate : Rajinder Nishchal, for the Appellant; Jyoti Singh with Ms. Saahila Lamba and Mr. Amandeep Joshi Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Anil Kumar, J.—The petitioners, Union of India through the Secretary, Ministry of Home Affairs and Ors., have challenged the order dated 18th April, 2011 passed by the Central Administrative Tribunal, Principal Bench in OA No.1882/2009 titled as "Sh.B.D.Phulara v. UOI and Ors." allowing the original application of the respondent and setting aside the show cause notice dated 6th March, 2009 and order dated 26th March, 2009 whereby the pay of the petitioner was stepped down from the pay which had been fixed as per the order dated 27th June, 2001. The Tribunal upheld the order dated 27th June, 2001 and granted all the consequential benefits accrued to the respondent on account of setting aside the order dated 26th March, 2009.

2. Relevant facts to comprehend the disputes between the parties are that the respondent was appointed to the post of LDC through direct recruitment on 17th February, 1969 and he was posted at 2nd Signal Bn., CRPF, in Rampur (UP). The respondent was thereafter transferred to different places and promoted in the cadre to the post of UDC on 16th June, 1975 pursuant to the departmental examination conducted in the year 1974. On being promoted as UDC, the

respondent was transferred from 1 Signal Bn., to 3 Signal Bn., CRPF.

3. The respondent also became entitled for promotion to the post of Inspector (Ministerial) in the cadre. As per rules applicable at the relevant time, the respondent was required to exercise an option for fixation of his pay in terms of OM dated 26th September, 1981 within 30 days from the date of promotion.

4. The respondent was promoted by order dated 24th May, 1988 and therefore, in terms of OM dated 26th September, 1981 he had time to exercise his option till 24th June, 1988.

5. The petitioners, however, without waiting for the option exercised by the respondent in terms of OM dated 26th September, 1981, fixed his pay on 16th June, 1988 as per FR 22 (c). Thereafter, the respondent was again promoted to the post of Subedar Major/Office Superintendent (SM/OS) on 31st October, 1994 and was transferred to the Internal Audit Party (IAP) 5, Allahabad on 12th May, 1995.

6. While the respondent was posted at Allahabad, he came across the service book of his junior, namely, Sh. K. Ramakrishnan who had exercised his option within 30 days and consequently was drawing more pay than the respondent. When the respondent came to know about this fact, he made a representation to step up his pay as he had been deprived from exercising his option within the stipulated 30 days from 24th May, 1988 and instead his pay was fixed on 16th June, 1988. Thus, depriving him of the pay which was equivalent to the pay being drawn by his junior, Sh. K. Ramakrishnan.

7. The representation made by the respondent was accepted on 27th June, 2001 and an order was passed holding that the respondent was liable for increment of pay and antedating the same from 1st May, 1989 to 1st January, 1989 in order to bring his pay at par with the pay of his junior i.e., Sh. K. Ramakrishnan.

8. Almost after 8 years, the respondent received a show cause notice stipulating that his pay could not be stepped up as it was not inconsonance with the instructions issued vide General Letter I.II-4/84-Adm-III dated 21st September, 1984. Therefore, it was proposed that the pay of the respondent ought to be stepped down in the rank of Inspector (M). The respondent replied to the show cause notice by his representation dated 19th March, 2009 contending categorically that the said letter was regarding the anomaly under FR 22 (c) and not in respect of FR 27 under which provision his pay had been stepped up by the Competent Authority. He also submitted that in his case initially his pay was straightaway fixed about 8 days before the completion of the stipulated 30 days period within which he could exercise his option and that the proposed action in the show cause notice has been taken after a lapse of 7 years at a stage when his retirement is due on 31st March 2009, solely with the purpose of harassing him.

9. According to the respondent, despite his representation dated 19th March,

2009, the petitioners passed the order dated 26th March, 2009, arbitrarily withdrawing the increments which were antedated in favor of the respondent by order dated 27th June, 2001 resulting in the stepping down of the pay of the respondent and adversely affecting his interest at the fag end of his career. Thereafter, the respondent had superannuated on 31st March, 2009. Aggrieved by the order dated 26th March, 2009, the respondent approached the Tribunal and filed an original application u/s 19 of the Administrative Tribunal''s Act, 1985 bearing OA No. 1882/1009.

10. The respondent challenged the show cause notice dated 6th March, 2009 and the subsequent order dated 26th March, 2009 contending, inter alia, that the petitioners had hurriedly and arbitrarily fixed the pay of the respondent in the rank of Inspector (M) on 16th June, 1988 in terms of the provision contained in FR 22(c) without giving the respondent an opportunity to exercise his option within thirty days; that inspite of the fact that the respondent had been subsequently granted a step up in his pay in order to bring him at par with the pay of his junior, Sh. Ramakrishnan, under FR 27 by the Competent Authority by order dated 27th June, 2001 and he was given all arrears due to him since 1st January, 1989, after a lapse of more than 8 years the benefit was withdrawn by placing reliance on OM dated 21st September 1984; that the petitioners were not entitled to rely on OM dated 21st September, 1984 as the petitioners had fixed the pay themselves without waiting for the respondent to exercise his option within the stipulated period of one month; and that the step down in the pay imposed on the respondent at the fag end of his career after the lapse of over 8 years has gravely prejudiced the respondent and he has suffered immense financial loss. The respondent also placed reliance on the judgment of the Supreme Court in the matter of Shyam Babu Verma and Others Vs. Union of India (UOI) and Others, holding that if a financial benefit has accrued to a Govt. Servant because of the mistakes made by the Govt., then the Govt. shall be precluded from recovering such benefits from the concerned Govt. servant. It was contended that in fact there was no mistake in case of stepping up the pay of the respondent by order dated 27th June, 2001 taking into consideration his option which he was entitled to make within thirty days.

11. The petitioners had filed their reply dated 24th November 2009 wherein they contented, inert alia, that in case the respondent was not satisfied with the pay fixed by the petitioners in terms of the provision contained in FR 22(c) when he was appointed as Inspector (M) then he ought to have made a representation within the stipulated period of one month, which was not done by the respondent; that while granting the step up by order dated 27th June, 2001 the instructions issued by letter dated 21st September, 1984 had been overlooked; that while dealing with another case and noticing the alleged mistake committed during stepping up of the pay of the respondent, the Dte. General CRPF, New Delhi had issued instructions for stepping down the pay of the respondent to the original stage that he had been drawing before being allowed the benefits of the step up; and that it is a trite law that if there has been a mistake in fixation of

pay, the same can be rectified even at a later stage.

12. The Tribunal carefully considered the pleas and contentions raised by both the parties and also perused the record placed before it. In the course of the submissions made by parties, the learned counsel for the petitioner fairly conceded that a mistake had been made while stepping down the pay of the respondent, which was recorded by the Tribunal in the impugned order as well. The Tribunal had noted in its order dated 18th April, 2011 as under:

It was urged that because of the option given by the person junior to him, the pay of the junior was fixed to be higher that the pay of the Applicant, whereas he was deprived of the opportunity to exercise his own option. The argument of the learned senior counsel is unexceptionable. The learned counsel for the Respondents fairly conceded that a mistake had been made, while stepping down his pay.

13. Therefore, in light of the facts of the case and the submissions made the Tribunal allowed the original application of the respondent and quashed the show cause notice dated 6th March, 2009 as well as the order dated 26th March, 2009 and further upheld the order dated 27th June, 2001 granting the step up in the pay of the respondent with all consequential benefits.

14. It is against this order of the Tribunal that the petitioners have invoked the writ jurisdiction of this Court. The counsel for the respondent is also present pursuant to the advance notice. The counsel for the parties contended that the record which was before the Tribunal has been filed with the writ petition and the writ petition be finally disposed off after hearing the parties.

15. The learned counsel for the petitioners has contended that the Tribunal erred in observing that the petitioners had conceded that a mistake had been made while stepping down the pay of the respondent, while in fact the petitioners had accepted that they had made a mistake in re-fixing the pay of the respondent so as to bring it at par with his junior, Sh. Ramakrishnan. The learned counsel further contended that the mistake was later rectified by the petitioners by stepping down the pay of the respondent and that it is settled law that any mistake on the administrative side could be rectified at any point of time subject to certain conditions. It was also submitted that the impugned order of the Tribunal if sustained, then it would establish a wrong precedent which would in turn lead to the opening of a Pandora''s Box in terms of frivolous litigation. The respondent on the other hand, has reiterated his stand made before the Tribunal.

16. This Court has considered the pleas and contentions made by both the parties and perused in detail the record placed before the Tribunal. This is not disputed that on respondent getting promoted to the post of Inspector (M), he was entitled to exercise his option for fixation of his pay as per OM dated 26th September 1981 and that the option could be exercised within a period of 30 days. Therefore, the respondent had time to exercise his option till 24th June, 1988. This is also not disputed by the petitioners that instead of waiting for the

respondent to exercise his option within the stipulated period, the petitioners straightaway fixed his pay as per FR 22 (c) on 16th June, 1988. In fact the petitioners have gone a step further and contended that their act of fixing the pay of the respondent without waiting for him to exercise his option is justified, since he did not represent against it. The relevant ground raised in the reply of the petitioners before the Tribunal is as follows:

5.2 That the pay of the applicant was fixed without waiting for his option or otherwise. But in case the petitioner was not satisfied with the pay fixation, in terms of provision contained in FR-22(c), done on his promotion as Inspector he could have represented or submitted the option within one month

17. However, this is not disputed that as soon as the respondent realized that his pay is less than his junior Sh. Ramakrishnan, on account of not obtaining his option within the time permitted, he had made his representation. The representation of the respondent was accepted and the order dated 27th June, 2001 was passed stepping up the pay of the respondent and rectifying the mistake committed by the petitioners in fixing the pay before the expiry of thirty days period. By order dated 27th June 2001 the pay of the respondent was stepped up to bring him at par with the pay of his junior and that the necessary order was issued under FR 27. The learned counsel for the petitioners is unable to show any rule or provision under which the respondent had to make the representation in 30 days after his pay was fixed on 15th June, 1988 before expiry of the period of thirty days for the respondent to exercise his option.

18. According to the petitioners, it was subsequently noticed that while stepping up the pay of the respondent, the instructions issued in the Dte General''s letter No I.II-4/84-Adm-II dated 21st September, 1984 were overlooked. Letter dated 21st September, 1984 clarified that the benefits of stepping up of pay is not available in those cases where different options for fixation of pay on promotion have been exercised by the Govt. Servants. The said instructions, however, will not be relevant for the respondent as his pay was fixed prior to expiry of time for exercising option by the respondent and the respondent had not exercised different options for fixation of pay on promotion. The difference of pay of a senior person vis a vis his junior due to senior employee not allowed to exercise his option cannot be equated with exercising different options by the employee and thus on the instructions in letter dated 21st September, 1984, the respondent could not be denied higher pay which the respondent would have been entitled on exercising his option. According to said instruction, the Govt. employees were also expected to exercise their option individually. However, in the present matter this option was not allowed to be exercised by the respondent and the plea of the petitioners is not that the respondent exercised his option with other employees. Had the respondent been allowed to exercise his option within the specified period of one month as per the OM dated 26th September, 1981, then the pay being fixed by the petitioners would have been at par with the pay of his junior who was allowed to exercise his option. However, as the

petitioners had fixed the pay of the respondent straightaway without waiting for the respondent to exercise his option within the stipulated period of one month, the respondent cannot be held liable for the same. Therefore, the admitted mistake on the part of the petitioners cannot be a ground for withholding the benefits due to the respondent. In any case, after rectifying their mistake in 2001, the petitioners could not step down the pay of the respondent after eight years. Also, the action taken by the petitioners after the lapse of 8 years just before the respondent superannuated is reflective of penalizing the respondent for their own mistake. The Tribunal has noted the facts and circumstances and the admission of the part of the petitioners by their counsel and has allowed the original application of the respondent.

19. The learned counsel for the petitioners has conceded that had the respondent exercised his option within 30 days during which the respondent was entitled to exercise his option, then his pay would have been as was given to his junior. The counsel has also admitted that the pay of the junior of the respondent was not higher on account of any mistake committed in his case but because of the fact that the junior of the respondent had exercised his option whereas the respondent was deprived of his right to exercise his option on account of lapses on the part of the petitioners, imputable to them. The learned counsel has also admitted that had the respondent exercised his option, his pay would have been as was fixed by the petitioners in 2001 in order to rectify their mistake. In the circumstances, the respondent cannot be held liable for the omission on the part of the petitioners by fixing his pay before the expiry of the period available to the respondent in accordance with the rules and regulation. In any case, after rectifying the mistake in 2001, the petitioners were not entitled in law and in the facts and circumstances to step down the pay of the respondent just before his retirement. Thus, the order of the petitioners dated 26th March, 2009 could not be sustained and the Tribunal has not committed any illegality or irregularity in setting aside the same and allowing the original application of the respondent.

20. In the circumstances, the petitioners have failed to make out any such ground which would entail any inferences by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India against the order dated 18th April, 2011 passed by the Central Administrative Tribunal in OA No.1882/2001. The writ petition is without any merit, and it is dismissed. Considering the facts and circumstances, the petitioners shall also be liable to pay cost of Rs.10,000/- to the respondent. Cost be paid to the respondent within four weeks.

CM Nos. 13555/2011

In view of the orders passed in the main petition, this application does not survive and the same is disposed of as such.

Caveat No. 841/2011

Since the writ petition has been dismissed after hearing the counsel for the respondent, the caveat is discharged.

