(2016) 03 DEL CK 0123

In the Delhi High Court

Case No : W.P.(C) No. 11652 of 2015.

Ved Parkash APPELLANT

Vs

Director General, Department of Post and Others RESPONDENT

Date of Decision : 30-03-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2016) 4 ADDelhi 505

Hon'ble Judges : Sanjiv Khanna;Najmi Waziri, JJ.

Bench : Division Bench

Advocate : Rekha Palli, Senior Advocate/Amicus Curiae with Garima Sachdeva in Person, for the Appellant; Ruchir Mishra and Mukesh Kumar Tiwari, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Sanjiv Khanna, J. (Oral) - Ved Prakash impugns the order dated 8.9.2015 whereby his OA No.3749/2014 has been dismissed.

2. The petitioner had joined service on 16.4.1965 at the post of Postal Assistant. He retired on 30.6.2005 from the post of Postal Superintendent (Service) Group ''B'' Post.

3. At the time of retirement, the petitioner was facing disciplinary proceedings, which were continued under Rule 9 of the Central Civil Service (Pension) Rules, 1972.

4. By order dated 14.3.2011, penalty of withholding of 10% of monthly pension for three years was imposed. This order has attained finality.

5. At the time of payment of retirement dues, an amount of about Rs.50, 000/- was deducted. The respondents claim that the petitioner''s pay was wrongly fixed on 18.12.1991 on ad hoc promotion as Higher Selection Grade-I (HSG-I), and then on 11.01.1992 on ad hoc promotion to PS Grade B cadre. The pay fixation

was contrary to Fundamental Rule 22(1). Secondly, the petitioner was drawing pay of Rs.9000/-, as PS Group B in the Office of the Post Master General, Dehradun but on his transfer to Ghaziabad on 31.7.1998, his pay was erroneously fixed at Rs.9, 500/-. There was no cause or justification why the pay was enhanced from Rs.9, 000/- to Rs.9, 500/-. At best, the petitioner was entitled to one increment of Rs.250/-, but the enhancement given was Rs.500/-.

6. The petitioner had earlier filed OA No.947/2013, as the respondents had failed to finalise his pension and release retirement benefits, though he had superannuated from service on 30.6.2005. During the pendency of the said OA, the respondents had issued commuted value of pension (''CVP'') order, gratuity and Pension Payment Order (''PPO''), but these were not accepted by the petitioner on the ground of wrong calculations. By the order dated 11.10.2013, the tribunal had directed that the petitioner should accept the terminal benefits as sanctioned, but these would not stand in his way of raising grievance against the amount paid. Interest @ 8% p.a. was granted on the gratuity amount for the period of delay. Thereupon, interest of Rs.47, 839/- was paid to the petitioner on 23.5.2014.

7. On the question of deductions made by the respondents, their order dated 24.9.2014, reads:

"2. You were promoted to HSG-I Cadre w.e.f. 18.12.1991 on purely temporary and ad hoc basis. Further there is no record available to confirm that you were regularised in HSG-I Cadre before your regular promotion to PS Group ''B'' with effect from 01.01.1994. At time of fixation of your pay in PS Group ''B'' Cadre on ad hoc basis, w.e.f 11.01.1992 and on regular promotion to PS Group ''B'' w.e.f. 01.01.1994, the pay has been fixed with reference to your substantive pay in ASPO''s cadre since the promotion in HSG-I Cadre was made purely on temporary and ad hoc basis.

3. It is further stated that the pensionary benefits were paid as per approval of Office of the General Manager (Finance) Delhi - 110 054 as per record available and recovery was made of Government dues against you.

4. As regard your contention in last para of the representation, it is stated that there is no such Rule 22(19) in FR and SR Part-I (Edition] 2004). At the time of fixation of pay in PS Group ''B'' Cadre on ad hoc basis w.e.f 11.01.1992 and regular promotion in PS Group ''B'' w.e.f 01.01.1994 (i.e.same cadre), the pay was fixed w.r.t. your subsistence pay in ASPO''s cadre and not in HSG-I cadre as the promotion in HSG-I cadre was made on purely temporary and ad hoc basis."

(emphasis supplied)

8. With regard to recovery of arrears on account of wrong fixation of salary at Rs. 9,500/-, instead of Rs. 9,250/-, the respondents had filed an additional affidavit dated 1.9.2016 before the High Court, relying upon the Memo dated 30.6.1998 issued by the PGMO, Dehradun, wherein the petitioner''s pay on

1.1.1998 has been shown as Rs.9, 000/-. Thus, it is claimed that the pay of the petitioner, on his transfer to Ghaziabad on 31.7.1998, was wrongly fixed at Rs.9, 500/-.

9. On this aspect, learned counsel for the petitioner has drawn our attention to the order dated 11.10.2013, partly allowing OA No.947/2013 filed by the petitioner. The said order specifically refers to the computation made by the petitioner of gross pay of Rs.9,000/- as on 1.1.1996, and consequently his pay in the year 1998 was rightly fixed at Rs.9,500/-. Further, there was uncertainty and confusion in the latest inter-departmental communications exchanged between the Senior Post Master, Ashok Vihar Post Office, Delhi and Assistant Director (Postal Circle) Office, Meghdoot Bhawan, Delhi. Accordingly, in the order dated 11.10.2013, the Tribunal had recorded that the department was still in the process of reconciling certain issues as the reduced pension mentioned in the CVP and the PPO did not match.

10. We have noted the said contention as we find that the onus was on the respondents to show and establish that the pay of the petitioner was wrongly fixed at Rs.9,500/-, on transfer to the Ghaziabad Circle on 31.7.1998. Instead, the respondents have merely relied upon the details received from the Pay Bill Register of Post Master General, Dehradun. The computation and calculations made by the Deputy Superintendent of Post Office (''DSPO''), Ghaziabad, where the petitioner had joined on 31.7.1998, have not been filed. These details were not verified and examined. On the basis of the aforesaid averments and documents, the respondents cannot claim and state that the Office of the DSPO, Ghaziabad had wrongly fixed the petitioner''s pay at Rs.9,500/-, instead of Rs.9,250/-. The case set-up by the respondents on the said aspect is rather vague and ambiguous.

11. Similarly, the case of wrong fixation of salary on 18.12.1991 and 11.1.1992 is problematic and perplexing. The respondents profess that the petitioner, had continued to hold the substantive post in the ASPO cadre as the promotions to the post of HSG-I on 18.12.1991 and then as PS Grade B on 11.1.1992, were purely ad hoc. The respondents admit that they do not have the full papers and records on the two promotions, confirmation etc. They are not aware and conscious of the terms on which the petitioner was promoted to HGS-I cadre and then, within two months, to PS Group B, though it is stated that the said promotions were ad hoc. It will not be proper and appropriate to allow recovery on the basis of assumptions, when papers and details are not with the respondents. The Respondents have relied upon two communications, dated 27.4.98 and 21.5.98, written by the Office of the Director of Accounts (Postal), U.P. Circle, Lucknow asking the petitioner to state whether ad hoc promotion as HSG-I was regularised. It is not indicated what happened thereafter, and why and for what reason there was no follow up after the letter dated 21.5.98. Moreover these letters do not pertain to fixation of salary. It is not alleged or stated that excess payment had to be made to the petitioner. The respondents

unexpectedly raised a claim of over payment after two decades. It was impossible for the petitioner to make a factual challenge especially after he had demitted office in June 2005. The onus was certainly and squarely on the respondents to establish and show clearly and categorically that wrong payments or payments under mistake had been made. There cannot be any assumption that the pay scale then fixed was erroneous. On the other hand presumption would be that the pay was correctly fixed.

12. For the aforesaid, we would allow the present writ petition and set aside the order passed by the Tribunal. It is accordingly directed that the adjustments made on the two accounts by the respondents are contrary to law. The petitioner would be paid the entire amount within four weeks from the date a copy of this order is received by the respondents. The petitioner would also be paid interest @ 8% from the date this amount was withheld till payment is made. No order as to costs.

13. We appreciate the efforts by Ms. Rekha Palli, Senior Advocate, who has been appointed as amicus curiae and has assisted the Court.

