(2017) 02 DEL CK 0376

In the Delhi High Court

Case No : 1701 of 2017

VIRENDRA KUMAR — APPELLANT

Vs

UNION OF INDIA AND ORS. — RESPONDENT

Date of Decision : 27-02-2017

Acts Referred:

Citation : (2017) 02 DEL CK 0376

Hon'ble Judges : Sanjiv Khanna, Chander Shekhar

Bench : DIVISION BENCH

Judgement

1. The petitioners herein are pensioners, who had retired on or before 30th June, 2005.

2. At the time of retirement, the petitioners were officers in the Department of Telecommunication, Government of India. However, pursuant to option exercised by them, they were treated as deemed absorbees in the Bhart Sanchar Nigam Ltd. (BSNL). There being difference between Central Dearness Allowance (CDA) pay scales and Industrial Dearness Allowance (IDA) pay scales applicable to the BSNL employees, on the basis of the recommendation of the Inter Ministerial Group approved by the Cabinet, the petitioners, who were in the pay-scale of Rs.22400-525- 24500, were given the IDA pay-scale of Rs.25000-650-30200 (E9A).

3. A Pay Revision Committee (2nd PRC) was constituted by the Government of India. Pursuant to the recommendations of this Committee, the Office Memorandum No.2(7)/08-DEP(WC) dated 26th November, 2008 was issued by the Department of Public Enterprises for revision of pay of board level and below board level executives and Non Unionised Supervisors in Central Public Sector Enterprises with effect from 1st July, 2007. 10 replacement pay-scales were prescribed from E0 to E9. The highest level of pay-scale was Rs.62000-80000. There was no replacement pay-scale for E9A i.e. Rs.25000-650-30200 (E9A).

4. The petitioners, who had retired prior to 1st January, 2007, were granted

enhanced pension in terms of the Office Memorandum dated 15th March, 2011, issued by the Department of Telecommunication. The formula prescribed in the said OM as set out in paragraph 4.1 to 4.4 is as under:- "4.1 The pension/family pension of pre-2007 BSNL pensioners/family pensioners will be consolidated with effect from 1.1.2007 by addition together.

i. The existing pension/family pension, including commuted portion of pension, if any.

ii. Dearness Relief upto AICPI (IW) average index 126.33 (Base year 2001=100) i.e. @ 68.8% of Basic Pension/Basic family pension.

iii. Fitment weightage @ 30% of the sum of existing pension/family pension and Dearness Relief thereon.

The amount so arrived at will be regarded as consolidated pension/family pension with effect from 1.1.2007. 4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay scale corresponding to the pre-revised pay scale from which the BSNL pensioner had retired. 4.3 Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements. 4.4 The lower and upper ceiling on pension/family pension shall be Rs.3500/- and Rs.45000/- respectively. " The petitioners accept that they have been paid upgraded pension in terms of the aforesaid formula.

5. The grievance of the petitioner is that that the Office Memorandum dated 26th November, 2008, issued by the Department of Public Enterprises did not have a replacement pay-scale for E9A Grade in the scale of Rs.25000-650-30200. The petitioners submit that the BSNL had sent their recommendation to the Government of India stating that these employees should be given the pay scale of Rs.74000-2200-91600. The prayer in the Original Application made by the petitioners was that they should be given pension on the basis of their equivalent or fitment pay-scale of Rs.75000- 100000.

6. In our opinion, the Tribunal was justified and correct in dismissing the said Original Application. It is an accepted and admitted position that none of the serving employees have been given revised pay scale of Rs.75000-100000 or even Rs.74000-2200-91600. The existing employees were given replacement pay-scales between E0 to E9. The E9 scale of Rs.62000-80000 is the highest.

7. If we accept the case of the petitioners, they would be entitled to enhanced pension based on the scale higher than the scale being paid to the existing officers holding the same post. There is no justification and ground to accept the said prayer.

8. Learned counsel for the petitioner submits that the Tribunal has not examined and considered the alternate prayer. The petitioner in the said Original Application had not prayed for the alternative relief. The said prayer was made in

MA No. 2557/2016, without challenging the vires of the Office Memorandum dated 2nd April, 2009 and Office Memorandum dated 15th March, 2011. In paragraph 8B of the said application, certain calculations were made.

9. This appears to be the reason and cause why the impugned order passed by the Tribunal does not deal with the said contention.

10. In these circumstances, we would dismiss the present writ petition with liberty to the petitioner to challenge vires of the relevant circulars if so advised and in accordance with law. There would be no order as to costs.