

HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No.4759/03

Date of Decision: February 15, 2008

Wg CDR S.K. Goel (Retd.) Petitioner
Through: Petitioner-in-person

Versus

Union of India & Others Respondents
Through: Mr. Sanjay Katyal, Adv.

CORAM:

Hon'ble Mr. Justice Vikramajit Sen

Hon'ble Mr. Justice S.L. Bhayana

1. Whether reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the digest or not? Yes

S.L. BHAYANA, J.

The Petitioner was commissioned in the Indian Air Force on 16.01.1954. After 22 years of service, the Government sanctioned the Petitioner's deputation to Air-India, a Public Sector Undertaking for a period of one-year with effect from 16.02.1977. On the completion of the

period of deputation, the Government issued its approval for the permanent absorption of the Petitioner with effect from 16.02.1976. The Petitioner's premature retirement on permanent absorption was communicated to him vide Order dated 08.02.1977, and thereafter the Petitioner was also transferred to the Regular Air Force Reserve vide Order dated 18.05.1977.

2. The Petitioner, on retirement, was granted a pension of Rs. 745/- per month with effect from 16.02.1977. The Petitioner's pension was determined as per PCDA (P) Payment Authority No GI/M/XI/1042/03 dated 25.06.1977. Under this Scheme the pension was determined on pro-rata basis, for 23 years against 24 years of qualifying service required for full retiring pension of Rs.775/- per month, which would also be inclusive of the weightage element.

3. Vide Payment Authority Letter No.GI/39282/AF dated 02.09.1977, the pension of the Petitioner was amended to Rs.570 /-with effect from 16.02.77. The

Petitioner's pension was calculated on pro-rata basis. However, the pension was now subject to the deduction of the weightage element included in the standard rate of pension. The Petitioner's pension was subsequently restored to Rs.745/- as per Ministry of Defence letter No. 32(I)/77/D (Pen/Sers).

4. As per the Fourth Pay Commission Recommendations, the pension was to be calculated not on the basis of the monetary element of compensation but on the rank based weightage of additional years in qualifying service as per Government letter dated 30.10.1987. Further, the weightage element was not admissible in respect of those who retired pre-maturely to join a Public Sector Undertaking. However, as the Petitioner had retired before 1986, the weightage element was included in his pension as per PPO No.M/2166/81.

5. In accordance with Ministry of Defence letter dated 30.10.1987, issued as per the Recommendations of the Fourth Pay Commission, initially the reduction of

weightage from the pension was not applicable to pre-86 retirees absorbed in Public Sector Undertakings. This reduction of weightage was, however, made applicable to them vide letter dated 27.05.1998. Thus, the letter dated 30.10.1987 was also made applicable to pre-1986 retirees, which specifically mentioned that there would be no weightage for officers and personnel retiring pre-maturely for permanent absorption in a public sector undertaking.

6. Before the issuance of the Government letter dated 27.05.1998, the Recommendations of the Fifth Pay Commission were implemented in respect of all pre-96 retirees with effect from 01.01.96. In the Petitioner's case, the pension was further consolidated and revised at Rs.5141/ per month-. Consequently, Order dated 27.05.98 mandated that pension of all pre-86 retirees may be updated by notional fixation of pay by adopting the same formula as was adopted for serving Officers. Thereafter for the purpose of consolidation of pension as on 01.01.96, pre-86 retirees were to be treated like those who had retired on or after 01.01.86.

7. Thus, the Petitioner has prayed for the quashing of the extant pension as being unreasonable and defective on account of non-adherence to the Government directions. The Petitioner has further prayed for the determination of his pro-rata pension strictly in accordance with the relevant Government decisions and revision of his pension to Rs.7235/-per month. The Petitioner has also prayed for a Writ of Certiorari directing the Respondents to allow the weightage benefit to the Petitioner.

8. It has been contended by the Petitioner that his current pension is 1/3rd of his rightful entitlement. He further contended that his pension should be fixed in accordance with the Ministry of Defence letter dated 07.06.1999. The Petitioner has argued that his rightful entitlement can be determined only when it is decided whether pro-rata reduction is applicable as per extant rules on the date of his retirement or as per the prevailing rules.

9. Per contra, it has been argued by learned counsel for the Respondents that the first para of the Government letter dated 07.06.99 itself clearly illustrates that the existing provisions in the Rules governing qualifying service and minimum pension, shall continue to be operative. The minimum pension quoted in para 2.1(a) is Rs.1275/- per month, which came into effect after the Vth Pay Commission from 01.01.1996 and, therefore, the Rules governing qualifying service should be applicable as on 01.01.1996. It was further argued that the calculation was based on 33 years of qualifying service, which came into existence with effect from 01.01.1986 and is applicable till date and that the Petitioner has misguided the Government by misquoting letter-dated 17.12.98, which modifies para 5 of Government letter dated 27.10.97.

10. The Petitioner has further placed reliance on the case of ***Lt. Col B.R. Malhotra v. Union of India*** 1997 (6) AS (Del) 1049 wherein the Petitioner had retired prematurely for the immediate purpose of being absorbed

in BEL, a Public Sector Undertaking. On being denied that benefit of weightage, he had approached this Court and the Court granted him the benefit of weightage. As such, while granting pension, there cannot be any discrimination between the persons absorbed in Public Sector Undertakings and those who were not absorbed. Thus, the deduction on account of weightage element is bad in law and cannot be sustained.

11. Another contention, which has been urged by the Petitioner, is that an assurance was given by the Respondents that there would be no loss of benefits in the matter of pension if the Petitioner took pre-mature retirement and that denying the benefit of weightage, they had breached this assurance. Learned counsel for the Respondents has argued that the Petitioner had not been denied the benefit of pension. His pension has been calculated with reference to his actual qualifying services. The Respondents further argued that the Petitioner was denied the benefit of weightage.

12. The Petitioner in the present Writ Petition has also contended that the acts of the Respondents are illegal and arbitrary, as his employment in Air India cannot be considered as an absorption in a Public Sector Undertaking. It is further contended that Air India had refused to treat the Petitioner's induction as absorption, and that the same was conveyed to the Respondents vide his letter dated 03.11.1977. Learned counsel for the Respondents in response to the above contention has submitted that the Petitioner has distorted the contents of the letter at Annexure-8 dated 03.11.1997, and that the Respondents has not altered the status of the Petitioner.

13. The Petitioner has submitted before this Court that retirement after the completion of 20 years but before completing the service required for full-pension is called "Pre-mature retirement" and pro-rata pension for all such pre-mature retirees should be the same. The Petitioner further argued that though he was absorbed in a Public Sector Undertaking, he was drawing pro-rata pension at par with the other pre-mature retirees and thus, the

CCDA(P) by disallowing the weightage at this point of time, has disrupted the existing parity. The Respondents have argued that the term pro-rata pension is used to denote the pension admissible to those who have pre-maturely retired from the armed forces for permanent absorption in a Public Sector Undertaking or autonomous body. Those retiring pre-maturely for personal reasons are granted retiring pension whereas those invalided out of service are entitled to invalid pension. Learned counsel of the Respondents has also argued that Ministry of Defence letter dated 10.04.78 has divided the retirees into two categories and this discrimination was rectified by the Fourth Pay Commission vide Government letter dated 30.10.87.

14. Before parting with this case, we may refer to the judgment of the Supreme Court in ***D.S. Nakara v. Union of India*** (1983) 1 SCC 305, where the Court has held as under :

“(i) that pension is neither a bounty nor a matter of grace depending upon the sweet will of the

employer and that it creates a vested right subject to 1972 Rules which are statutory in character because they are enacted in exercise of powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution;

(ii) that the pension is not an ex-gratia payment but it is a payment for the past service rendered;

(ii) it is a social welfare measure rendering socio-economic justice to those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. And that pensioners form a class as a whole and cannot be micro classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension. And further held that whenever classification is held to be impermissible and the measure can be retained by removing the unconstitutional portion of the classification, by striking down words of limitation, the resultant effect may be enlarging the class. In such a situation, the court can strike down the words of limitation in an enactment. And that is what is called "reading down" the measure."

15. The Petitioner has contended that the Respondents at the time of his pre-mature retirement were assured that there would be no loss of benefits in the matter of pension if the Petitioner took pre-mature retirement and thus denying the benefit of weightage had

breached this assurance. This statement is factually incorrect. The Respondents framed a scheme, which enabled certain categories of Officers to take pre-mature retirement, so as to join Air India. The Petitioner voluntarily took pre-mature retirement from the Armed Forces for the purpose of joining Air India and the Government sanctioned the pre-mature retirement at that time. This was neither a case of compulsory retirement in public interest nor a case of directing employees to retire prematurely in public interest. The benefit of weightage is denied only to those who retire prematurely for the immediate purpose of joining Public Sector Undertakings/autonomous bodies. The Supreme Court in the case of ***Union of India v A.S. Gangoli*** (2007) 6 SCC 196, spelt the reason for the denial of the weightage element to those retired prematurely for immediate absorption in Public Sector Undertakings and has held as under:-

“First, they will have the benefit of joining immediately and continuing in service in a public sector undertaking or autonomous body,

without losing their pensionary benefits. The other retirees including those retiring prematurely on personal grounds did not have the benefit or such immediate assured alternative employment, with pensionary benefits for the defence service intact. Secondly, they got the benefit of 100% commutation and a lesser minimum period of qualifying service which the other retirees did not get.”

16. It is thus seen that it is not the pensionary benefits which have been denied to the Petitioner, but it is the benefit of weightage. Consequently, the denial of the weightage element to the Petitioner has in no manner deprived the Petitioner of his rightful entitlement.

17. The facts of ***Lt. Col.B.R. Malhotra***’s case (*supra*) are entirely different from the case in hand, thus, the same is of no benefit to the Petitioner as the Petitioner therein had suffered a gunshot wound in both his knees while in army service and was later sent on deputation with BEL. Subsequently, he was absorbed in BEL, a public sector undertaking in public interest. He was accordingly held entitled to disability pension even after having been absorbed in a Public Sector Undertaking, as his

injuries/disability were attributable to service. That apart, a certain weightage element was sought to be deducted from the standard rate of pension on the ground that he had been permanently absorbed in a public sector undertaking. However, this Court found that there was in fact no weightage element in his case, and there was no rule or regulation applicable to him, which would permit the deduction of any weightage element. Hence, the said decision has no relevance to the present case.

18. The contention of the Petitioner that his induction in Air India cannot be treated as absorption in public undertaking, is also without any substance. The Rules applicable to those being absorbed in Public Sector Undertakings/ autonomous bodies are applicable to those who had joined Air India and the Petitioner is not an exception to this general rule.

19. It has also been contended by the Petitioner that his rightful entitlement can be determined only when it is decided that whether pro-rata reduction be under the

Rules applicable on the date of retirement or as per the prevailing Rules. The Rules applicable for the calculation of the pro-rata pension of the Petitioner are clarified *vide* Para 5 of the Government letter dated 27.05.98 (Annexure -7) which are as follows:

“In accordance with the Government instructions issued from time to time, retiring pension of all pre-1986 Commissioned Officers was based on the standard rate of retiring pension and standard service period for the rank held by the officer on his retirement provided it was held on active list for a minimum period of 10 months (except in case of Generals). Whereas, with effect from 1.1.86 the pension of Armed Forces Commissioned Officers is based on the average reckonable emoluments drawn by them during the last ten months immediately preceding the date of retirement.

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Government has, inter alia accepted the recommendation of the Fifth Central Pay Commission to the effect that Pension of all the pre-1986 retirees may be updated by notional fixation of their pay as on 1.1.1986 by adopting the same formula as for the serving Armed Forces Officer and thereafter for the purpose of consolidation of their pension/family pension as on 01.01.1986, they may be treated alike those who have retired on or after 01.01.86.

Updation of Pension of Service Officers who retired before 01 Jan, 1986

Accordingly, pay of all those Armed Forces Officers who retired prior to 01.01.1986 and were in receipt of any type of pension mentioned in para 1.1 above as on 01.01.1986 will be fixed on notional basis in the revised scale of pay for the rank held by the Pensioner at the time of retirement introduced subsequent to retirement of Armed Forces Officer consequent upon promulgation of Revised Pay Rules on implementation of recommendations of successive Pay Commissions or Departmental Committee (Post War Pay Committee/Raghuramaiah Committee/ Kamath Committee) or award of Board of Arbitration or judgment of Court or due to general revision of pay scale for the post etc.

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For calculation of pension with reference to notional pay as on 01 Jan 1986 weightage as admissible *vide* par 5(b) of Ministry of Defenses letter No. 1/(5)/87/DPension/ Services) dt. 30 October, 1987 shall be added to actual qualifying service (including qualifying service, if any, already admitted and notified in the Army/Naval/Air Force list).

20. The provisions applicable to pre-86 retirees are contained in Government letter dated 27.05.98 which state that the pay of all Armed Force personnel shall be fixed on notional basis. The letter dated 27.05.98 further provides that for the purpose of calculation of pension with

reference to notional pay as on 01.01.86, the weightage will be applicable as per the Ministry of Defence letter dated 30.10.87, which has clearly provided that no weightage shall be given to Officers who retire voluntarily for permanent absorption in a Public Sector Undertaking. The relevant portion of the letter dated 30.10.97/Annexure-6 is reproduced below:

“Weightage for the purpose of calculation of pension of Commissioned Officers will be given below:-

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Notes: (1) There will be no weight age for officers and personnel below officer rank who retire prematurely for permanent absorption in public sector undertakings and autonomous bodies.”

21. In our view, as per rules applicable to the Petitioner, the denial of weightage to the Petitioner has not deprived him in any manner of his rightful entitlement. The dictum of the Supreme Court in ***Union of India v A.S. Gangoli*** (*supra*) is rightly applicable to the present case where the Court has held as under:

“It is thus seen that the officers who took premature retirement for the purpose of immediate employment in PSUs/autonomous bodies received several specific benefits, including assured immediate re-employment and extended service. The persons who retire in the usual course and those who prematurely retire for personal reasons, were not entitled to those special benefits. Therefore, the persons who retired prematurely for immediate purpose of joining PSUs., clearly formed a distinct and separate class. In view of the special benefits extended to them, if note (1) to Regulation 5 excluded them from the benefit of weightage which was given to the other retirees, it is not discrimination. The High Court completely overlooked these aspects and its decision cannot therefore be sustained”

22. In view of the above and applying the ratio of the Supreme Court’s decision in ***Union of India v A.S. Gangoli*** (*supra*), the Writ Petition is liable to be dismissed.

23. Writ Petition along with the pending applications is dismissed.

24. No costs.

S.L. BHAYANA, J.

FEBRUARY 15, 2008

VIKRAMAJIT SEN, J.

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