

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 21754 of 2012 (O&M)

Date of decision: 18.02.2015

P.S. Saini

.. Petitioner

versus

Uttar Haryana Bijli Vitran Nigam Limited and others

.. Respondents

Coram: Hon'ble Mr. Justice Rajesh Bindal

Present: Mr. J. K. Goel, Advocate, for the petitioner.

Mr. K.S. Malik, Advocate for the respondents.

Rajesh Bindal, J.

The petitioner, who retired as Superintendent from Uttar Haryana Bijli Vitran Nigam Limited (hereinafter referred to as 'Nigam') on 30.04.2009 after attaining the age of superannuation, has filed the present petition challenging the communication dated 12.08.2009 (Annexure P1) vide which his pay was sought to be refixed and a sum of ₹ 80,874/- was sought to be recovered from death-cum-retirement gratuity payable to the petitioner.

Learned counsel for the petitioner submitted that in terms of the instructions issued by the Nigam on 19.08.1987, regarding selection grade, the petitioner had exercised option on 01.05.1988. In terms thereof, his pay was fixed which he had drawn till the date of his retirement. However, without there being any reason or affording any opportunity of hearing to the petitioner, after his retirement, his pay was sought to be refixed and the amount allegedly excess paid was recovered from the death-cum-retirement gratuity. Learned counsel, while referring to Circular No. 65 dated 22.01.1991, annexed by the respondents with the reply, submitted that in clarification sought by various offices on the issue of exercise of options, it was clarified that employees may be permitted to re-exercise their option

within three months from the date of issue of these instructions, but petitioner had already exercised his option on 01.05.1988. The same could not be termed to be delayed if seen in terms of the instructions dated 19.08.1987 read with clarification dated 22.01.1991 and as such his pay and consequently the pension could not be reduced.

Learned counsel for the respondents submitted that in terms of the instructions issued on 19.08.1987, the option could be exercised within a period of three months and once exercised the same was final. As the petitioner exercised the option on 01.05.1988, which was beyond three months, the same could not be considered. The error was noticed at the time of retirement of the petitioner and the same was corrected. As a consequence thereof, the pay of the petitioner was refixed.

Heard learned counsel for the parties and perused the paper book.

The petitioner herein retired from service on 30.04.2009 after attaining the age of superannuation as Superintendent. Thereafter he was intimated that on account of delayed submission of option for selection grade admissible to the petitioner, in terms of the instructions dated 19.08.1987, pay of the petitioner was wrongly fixed at that time and as a consequence, the same was refixed and a sum of ₹ 80,874/- allegedly excess paid during the period from 01.01.1986 till 30.06.2009, was sought to be recovered from the death-cum-retirement gratuity. Thereafter for effecting such recovery, notice was issued to the petitioner. In terms of the instructions issued on 19.08.1987 regarding the selection grade, the employees were given time to exercise the option within three months from the date of issue of the letter. The petitioner submitted the option on 01.05.1988. Considering the period prescribed in the instructions, the same was late. However respondents have placed on record circular No.65 dated 22.01.1991 (Annexure R1) clarifying the issue raised by the various offices. The clarification issued is extracted below:-

The date of Selection Grade is an event, as such, if an employee, who chooses to opt the revised scale from the date from which he has been granted the Selection Grade in the pre-revised scale falling between 01.01.1986 to 19.08.1987, his pay may be fixed in accordance with the provisions contained in

para 6 of Bd's O/O No. 384/F dated 19.08.1987 i.e. after adding the benefit of 20% and such employee may be permitted to re-exercise his option within three months from the date of issue of these instructions.

A perusal of the aforesaid clarification shows that the employees were permitted to re-exercise their option within three months from the date of issue of these instructions, which would be from 22.01.1991, as the words used in the clarification are that the employees may be permitted to re-exercise their option. Admittedly in the present case, the petitioner had submitted his option on 01.05.1988, of course, much prior to the issuance of circular dated 22.01.1991, the same cannot be said to be delayed, thus dis-entitling the petitioner to the benefit available in terms of the instructions dated 19.08.1987.

A perusal of the impugned communication dated 12.08.2009 shows that the pay of the petitioner was refixed only on the ground that the option exercised by him was beyond 30.11.1987. It was stated in the reply that the petitioner had exercised the option on 01.05.1988 which was much prior to the period as extended vide circular No.65 dated 22.01.1991. Hence, the stand of the respondents that the option exercised by the petitioner was delayed is incorrect.

The communication dated 12.08.2009 refixing the pay and recovery from the retiral benefits of the petitioner are set aside. The amount already recovered from the death-cum-retirement gratuity of the petitioner be paid to him and the pension, if requires revision in view of quashing of communication Annexure P1, be also done.

Writ petition is disposed of accordingly.

18.02.2015
kv

(Rajesh Bindal)
Judge

(Refer to reporter)