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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision : 6th September, 2018

\+ W.P.(C) 11144/2015 & CM No.28945/2015

RAJINDER TIKU ..... Petitioner

Through: Mr. Rakesh Tiku, Sr. Adv. with Mr. Gaurav Kohli, Mr. Sandeep Kumar and Ms. Gayatri Misra, Advs.

versus

PRAGATI POWER CORPORATION LIMITED & ANR ..... Respondents

Through:

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR

% **JUDGMENT (ORAL)**

1. The petitioner seeks retiral benefits, as Executive Director (Technical) of Respondent No.1-Corporation, w.e.f. 1st May, 2011, as he superannuated on the said date.

2. The impugned communication, dated 14th May, 2015, instead, computes his retiral benefits from 1st May, 2010.

3. The facts are not in dispute.

4. The petitioner, who was working as General Manager (Technical) with Respondent No.1, was due to superannuate on 30th April, 2010. The Board of Directors of Respondent No.1, however, approved the case of the petitioner for re-designating as Executive

Director (Technical) and for extension of his service by one year w.e.f. 1st May, 2010. This was initially granted, *vide* Office Order dated 26th March, 2010, which read thus:

> "Indraprastha Power Generation Company Limited
> HR Branch
>
> No. DH(HR)H/2010/174 Dt.26.03.2010
>
> OFFICE ORDER
>
> The Board of Directors, IPGCL, vide item No.47.4.4 dated 26.03.2010, has accorded approval to the re-designation of Shri Rajinder Tiku, General Manager (Tech), as Executive Director (Technical) with immediate effect and extension of his service for a period of one year with effect from 01st May, 2010 beyond his normal superannuation age from IPGCL.
>
> (Pranab Kumar Ray)
> General Manager (HR)"
>
> (Emphasis supplied)

5. The above order, dated 26th March, 2010 was, however, amended by subsequent Office Order dated 5th May, 2010, which read thus:

" OFFICE ORDER

FOR	AS
Re-designation of Shri Rajinder Tiku, General Manager (Tech) as Executive Director (Technical) with immediate effect and extension of his service for a period of one year with effect from 01st May, 2010.	Re-designation of Shri Rajinder Tiku, General Manager (In-charge)-Projects & Civil as Executive Director (Technical) with immediate effect and extension of his period of service for a period of one year w.e.f. 1st May, 2010, beyond his normal superannuation age of 60

	years in the Company. He will continue to receive remuneration based on the pay-benefits and allowances drawn by his at the time of his normal superannuation date along with the due increment, during the extended period of service.

The other contents of the aforesaid office order shall remain, uncharged.

This issues with the approval of the competent authority.

(B.B. SHARMA)
DM(HR) I"

(Emphasis supplied)

6. It is clear, from a reading of two aforementioned office orders, dated 26th March, 2010 and 5th May, 2010, in juxtaposition, that the said orders expressly stipulated that (i) the petitioner was re-designated as Executive Director (Technical) with immediate effect, (ii) *the period of his service was extended for one year* w.e.f. 1st May, 2010 beyond his normal age of superannuation and (iii) *he would continue to receive remuneration based on pay benefits and allowances drawn by him at the time of his normal date of superannuation, along with due increments during his extended period of service*.

7. It is manifest, from the above office orders, that the petitioner's service was, by executive fiat, extended till 30th April, 2011, and that

he was given all remunerations which he would have drawn, had he superannuated, in due course, on 30th April 2011.

8. The grievance of the petitioner is that the Pension Payment Order which came to be issued, consequent on the petitioner's superannuation on 30th April, 2011, showed his date of retirement as 30th April, 2010, instead of 30th April, 2011, and computed his retiral benefits accordingly.

9. Accordingly, the petitioner's retiral benefits were also calculated on the basis of basic pay drawn by him on 30th April, 2010, rather than the basic pay drawn by him on 30th April, 2011, which, needless to say, was higher.

10. The petitioner represented to the respondents. However, the petitioner's representation stood rejected by the impugned communication, dated 14th May, 2015, issued by the Deputy Manager in the office of Respondent No.1, which read thus:

> "No. DM (HR)H/2015-16/38 Dt.14.05.2015
>
> Shri Rajinder Tiku
> Ex. Executive Director (Tech) IPGCL
> D-36, Pamposh Enclave,
> Greater Kailash-I,
> New Delhi.
>
> Sub: Fixation of Pension and Payment of Retiral Benefits.
>
> Sir,
> Please refer to your correspondence on the above cited subject, regarding Fixation of your pension. In this regard the reply is as under:-
>
> 1] Reference on the above subject, your case was sent to Department of Power, Govt. of NCT of Delhi for clarification

regard the date from which your retirement benefits became due i.e. 01.05.2010 or 01.05.2011.

2] In response, Dy. Secretary (Power), Department of Power, Govt. of NCT of Delhi has conveyed that the extension of service can be granted to certain categories of Govt. of Servant Only under FR 56 (d).

3] In the same letter Dy. Secretary (Power) further conveyed that the extension of your service seems to be against the policy of the Govt.

In view of the above it is to inform you that the decision of Pension Trust to release your pensionary benefits w.e.f. 01.05.2010 seems to be appropriate.

This is for favour of your kind information please.

Yours sincerely,

Sampan Padhi
Deputy Manager-V."

(Emphasis supplied)

11. In my view, the entire issue is a no brainer. Once the Office Order extending the service of the petitioner clearly stated that his service was extended for one year and that, during the said period, he would continue to receive remuneration based on pay benefits and allowances drawn by him at the time of his normal superannuation date, along with increments due for the months during the extended period of his service, there could be no question of treating his date of superannuation, for the purpose of pensionary benefits, as 30th April, 2010. The petitioner could either have retired on 30th April, 2010, or had his service extended till 30th April, 2011. This is no half-way house.

12. The reliance, by Respondent No.1, on FR-56 (d), is completely misplaced, as FR-56 (d) does not deal with retiral benefits at all, but prohibits grant of extension of service to a government servant beyond the age of sixty years.

13. It is too late in the day for the Respondents, today, to invoke the FR-56(d). Having, on their own will and volition, extended the petitioner's service till 30th April, 2011, and extracted work from him for the said extra period of one year the inevitable sequitur thereto has necessarily to follow.

14. For the above reasons, I am of the opinion that the decision of the respondents, to compute the retiral benefits of petitioner, by treating his date of retirement as 30th April, 2010, cannot sustain, either in law or on facts, and has, therefore, to be set aside.

15. The date of retirement of petitioner, therefore, shall be treated as 30th April, 2011. The petitioner shall therefore be treated as having worked till 30th April, 2011 and his retiral benefits shall stand computed from 1st May, 2011 instead of 1st May, 2010.

16. Needless to say, all his retiral benefits would be computed on the basis of the pay-scale being drawn by him at the time of his actual retirement on 30th April, 2011.

17. The writ petition is allowed in the above terms with no order as to costs.

18. Learned counsel for petitioner submits, at the Bar, that the implementation of this order has to be effected by the Delhi Vidyut Board Pension Trust.

19. Accordingly, let a copy of this judgment be served by the petitioner on the Delhi Vidyut Board Pension Trust to ensure compliance.

C.HARI SHANKAR, J

SEPTEMBER 06, 2018
bh/dsn