

28

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

C.P. No.52 of 1994
O.A. No. 2517 of 1990

New Delhi this the 3rd day of May, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.K. Singh, Member

1. Shri Kehar Singh
R/o Village Jamalpur,
District Gurgaon (Haryana).
2. Shri Kanwal Singh
R/o Mandhara District,
Rohtak (Haryana). ...Applicants

By Advocate Shri V.P. Sharma

Versus

Shri Ramesh Kumar
Under Secretary to the Government of India,
Min. of Human Resource Development,
Department of Youth Affairs and Sports,
New Delhi.

...Repsondents

By Advocate Shri Vijay Mehta

ORDER

Mr. Justice S.K. Dhaon, Vice-Chairman

The complaint is that the directions dated 19.12.1991 have been and are not being carried out by the respondents. The applicants on being discharged from the Army in the year 1945 were employed as National Discipline Scheme Inspectors on 1.11.1954. In December, 1974, both of them retired from service on attaining the age of superannuation. They were denied payment of pension on the ground that they were not permanent Government servants. They came to this Tribunal by means of OA No.2517 of 1990 which was disposed of on 19.12.1991.

2. In paragraph 14 of its judgment dated 19.12.1991, the Tribunal observed:-

" In the conspectus of the facts and circumstances and following the ratio in the aforesaid judgment in Anand Rao Shukul's case, the application is disposed of with the direction to the respondents 1 to 3 (Union of India) to pay pension and other retirement benefits to the applicants for the period of service rendered by them in the service of the Central Government, ignoring the fact that they were not confirmed in any post prior to their retirement. The necessary sanctions should be issued and the

pension and other retirement benefits should be released to them within a period of three months from the date of communication of this order. We also make it clear that the families of the applicants would be entitled to family pension in accordance with the provisions of the CCS(Pension) Rules, 1972".

3. The respondents have filed a reply. They have stated that they have paid pension to applicant No.1 in accordance with the O.M. No.38(16) dated 30.12.1980 issued by the Department of Personnel. As regards, the applicant No.2, they have stated that payment of pension could not be made to him as he failed to submit the necessary papers. However, it is averred that sanction of payment of provisional pension has been accorded even in the case of applicant No.2 and final pension shall be paid to him after complying with the necessary formalities.

4. It appears to be an admitted position that pension has been computed to be payable to applicant No.1 with effect from 30.12.1980. The applicants contend that by making the payment of pension with effect from 30.12.1980, the respondents have not fully complied with the directions given by this Tribunal. We are, therefore, called upon to discern the meaning and contents of paragraph 14 of the judgment aforementioned. We may note at once that in paragraph 5 of the aforesaid O.M. dated 30.12.1980, it is specifically recited that the provision of the said Office Memorandum should apply to those temporary Government servants who are in service on 30.12.1980. Learned counsel for the respondents has stated that after taking an overall view of the picture, the respondents took a decision that payment of pension should be made to even those temporary Government servants who have retired prior to that date. He has invited our attention to a judgment dated 4.8.92 given by a two - member Bench of this Tribunal in O.A. No.1007 of 1990. In that case, the Government servant concerned retired from service on attaining the age of superannuation on 29.02.1976. Relying upon an order of the Supreme Court in Writ Petition

(39)

No.1584 of 1986 (Bal Kishan Malik Vs. U.O.I.) dated 13.2.89, the Tribunal directed the respondents before it to release the proportionate pension, gratuity and other retirement benefits with effect from 30.12.1980 to the applicant before it. The Learned Members took note of the fact that on the said date, the Department of Personnel & Administrative Reforms issued their O.M. dated 30.12.1980.

5. Learned counsel for the applicants has vehemently contended that in paragraph 14 of its judgment, the Tribunal clearly directed to pay to the applicants with effect from their respective dates of retirement and not from 30.12.1980. As a corollary to this argument, he has contended that in the contempt proceedings we cannot review or alter the judgment already given by the Tribunal. His further contention is that while examining the prayer of the applicants for punishing the respondents for having committed a contempt of this Tribunal, we cannot go behind the judgment. The propositions advanced by the learned counsel are unexceptionable. However, we have still to decide as to whether the Tribunal really intended that pension should not be paid to the applicants from 30.12.1980 but from the year 1974 when they retired from service. At this stage, it may be noted that prior to the aforesaid O.M. dated 30.12.1980, the stand taken by the respondents was that under the relevant rules, as applicable to the Government servants who were similarly situate like the applicants, no pension was payable to them as they had not been made permanent in service.

6. In paragraph 10 of its judgment, the Tribunal observed:-

" As regards Central Government employees, Department of Personnel & AR had issued an OM dated 30.12.1980 according to which pensionary benefits would be admissible to temporary Govt. servant retiring on superannuation on completion of twenty years of service. By the subsequent OM dated 14.04.87, the benefits have been extended to persons who have completed ten years of service. However, these benefits would be admissible only to those temporary Government servants who were in service on 30.12.1980".

7. Learned counsel for the applicants has relied upon the contents of paragraph 11 of the judgment. In paragraph 11, the Learned Members relied upon a judgment of a Learned Single Judge of the Bombay High Court dated 24.01.85 in Anant Rao Shukul Vs. U.O.I. and Another (Writ Petition No.1181 of 1981). In that case, the petitioner before the Bombay High Court had joined Army as non-combant cleaner on 26.09.31. On 24.04.59, he got discharged from the Army as Assistant Foreman in Workshop. On 27.04.59, he was reemployed as a Supervisor in Station Workshop at Colaba as a civilian. On 01.07.62, he was made quasi-permanent in the post and he continued in that post till 25th September, 1971 when he retired from service. After retirement, he was not paid any pension. He, therefore, approached the High Court. The High Court considered the Liberalised Pension Rules, 1950, which were applicable to the petitioners before it. It considered Rule 7 of Section IV of the said Rules and held that the said Rule was even applicable to persons who were not being confirmed in service. Counsel urged that the said judgment of the Learned Single Judge of the Bombay High Court had been followed by a Division Bench in Letter Patent Appeal which in terms was upheld by the Supreme Court in SLP.

8. In paragraph 13 of the judgment, the Learned Members of the Tribunal took the view that the applicants before it were entitled to the benefit of the judgment of the Bombay High Court. It, therefore, repelled the plea of the Union of India (respondents) that the applicants before it were not entitled to pension, as they were not confirmed in any post.

9. From the said observations, it is sought to be contended by the learned counsel for the applicants that in paragraph 14, the Tribunal really intended to direct the respondents to pay to the applicants the pension from the date of their retirement. This, in our opinion, is not a correct reading of the judgment of the Tribunal.

We have already referred to paragraph 10 of the judgment wherein specific reference has been made to the O.M. dated 30.12.1980 which admittedly is applicable to the cases of the applicants. It should be presumed that the Learned Members while giving their directions in paragraph 14 acted in accordance with law and not in disregard of the O.M. dated 30.12.1980. Paragraph 10 and 14 should be read together for discerning the contents and meaning given in the latter paragraph. We find force in the submission of the learned counsel for the respondents that if paragraph 5 of the OM is strictly applied, the applicants may not be entitled to payment of any pension at all. However, we have no jurisdiction to take this view in the Contempt Petition.

10. We, therefore, conclude that the respondents are right in making payment of pension to the applicants with effect from 30.12.1980 and the question of their disobeying much less wilfully disobeying the directions of this Tribunal does not arise.

11. Learned counsel for the applicants urged that the respondents sought a review of the judgment dated 19.12.1991 and that application(RA) was dismissed. He, therefore, contends that the directions given in paragraph 14 were fortified by this Tribunal. We have seen the order dismissing the Review Application and we find that the only contention advanced in the application was that the Tribunal wrongly relied upon the judgment of the High Court as the Liberalised Pension Rules, 1950 were not applicable to the cases of the applicants. Learned counsel also urged that paragraph 5 of the O.M. dated 30.12.1980 does not apply to the case of the applicants, as they had retired long before 30.12.1980 and, therefore, it should be presumed

that the Tribunal did not place reliance upon the said O.M. while giving its directions. This argument, if analysed carefully, goes against the applicants. We have already stated that on a strict interpretation of the paragraph, no pension is payable to the applicants at all. However, the respondents, for reasons best known to them, have not taken this stand and they have taken a decision to give pension to the applicants with effect from 30.12.1980.

12. Now we come to the case of applicant No.2. Counsel for the parties are at variance on the question as to whether the applicant has submitted all the relevant papers for computation of his pension. However, during the course of the arguments, learned counsel for the respondents (Shri Vijay Mehta) gave an undertaking that in spite of the shortcomings in the papers submitted by applicant No.2, the respondents shall compute the final pension payable to him (applicant No.2) on their own. He has further given an undertaking that the payment shall be made to applicant No.2 within a period of one month from today. In view of this undertaking, no further order is necessary for ensuring the payment of pension to applicant No.2.

13. The contempt application is disposed of accordingly. The notice issued to the respondents is discharged. There shall be no order as to costs.


(B.K. SINGH)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN

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