Nk Sharma Vs. Bses and ors

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Court : Delhi

Decided On : Sep-27-2013

Judge : Valmiki J. Mehta

Appellant : Nk Sharma

Respondent : Bses and ors

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + W.P.(C) No.4806/2011 % SEPTEMBER27 2013 NK SHARMA Through ..... Petitioner Ms. Kittu Bajaj, Advocate versus BSES AND ORS Through ..... Respondents Mr. Sandeep Sethi, Sr. Advocate with Mr. Anupam Varma and Mr. Nikhil Sharma, Advs. for BSES/R-1 Mr. Sumeet Pushkarna, Adv. for R-3 along with Mr. P. Narayan, Manager, Pension Trust AND + W.P.(C) 5840/2011 RAVINDER KALER Through ..... Petitioner Ms. Kittu Bajaj, Advocate versus BSES AND ORS Through W.P. (C) No.4806/2011 and connected matters ..... Respondents Mr. Anupam Varma and Mr. Nikhil Sharma, Advs. for BSES/R-1 Mr. Sunil Kumar Jha for Mr. H.S. Sachdeva, Adv. for R-2 Mr. Sumeet Pushkarna, Adv. for R-3 along with Mr. P. Narayan, Manager, Pension Trust Page 1 of 20 AND + W.P.(C) 6505/2011 SANDEEP KUMAR MITTAL ..... Petitioner Through Ms. Kittu Bajaj, Advocate versus BSES RAJDHANI POWER LTD AND ORS ..... Respondents Through Mr. Anupam Varma and Mr. Nikhil Sharma, Advs. for BSES/R-1 Mr. Sumeet Pushkarna, Adv. for R-3 along with Mr. P. Narayan, Manager, Pension Trust AND + W.P.(C) 6997/2011 JOGINDER SINGH ..... Petitioner Through Ms. Kittu Bajaj, Advocate versus BSES

RAJDHANI POWER LTD AND ANR ..... Respondents Through Mr. Sandeep Sethi, Sr. Advocate with Mr. Anupam Varma and Mr. Nikhil Sharma, Advs. for BSES/R-1 Mr. Sumeet Pushkarna, Adv. for R-3 along with Mr. P. Narayan, Manager, Pension Trust AND + W.P.(C) 5556/2011 SMT. RAM WATI ..... Petitioner Through Ms. Kittu Bajaj, Advocate versus BSES AND ORS ..... Respondents Through Mr. Anupam Varma and Mr. Nikhil Sharma, Advs. for BSES/R-1 Mr. Sumeet Pushkarna, Adv. for R-3 along with Mr. P. Narayan, Manager, Pension Trust Mr. Manish Kumar Vikky for Mr. Rajiv Nanda, ASC for GNCTD/R-2 CORAM: HONBLE MR. JUSTICE VALMIKI J.MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) Writ Petition (C) Nos. 4806/2011 and 6505/2011 1. The issue to be decided in the present two writ petitions is the entitlement of the petitioners for grant of pension/pensionary benefits on taking voluntary retirement (for short, VRS) by the petitioners.

2. The issue argued is as to whether the petitioners would be entitled to benefits of Rule 48-B as it existed in the CCS Pension Rules on the date of VRS of the petitioners on 30.12.2003. Rule 48-B was omitted with effect from 21.12.2012. As per provision of Rule 48-B, if a person completes 15 years of service, then, five years of service are added as a bonus for entitling a person to complete 20 years of service for grant of pensionary benefits.

3. I have had an occasion to examine this aspect in the case of Smt. Pawan Vohra vs. The Chairman, DVB Pension Trust and Another in Writ Petition (C) No.1680/2012 decided on 17th May, 2013. In the said judgment, I relied upon the judgment of the Division Bench in the case of Retd. Major A.S. Dahiya E.C. No.59676 Vs. Union of India and Ors. 2003 (108) DLT740to hold that to determine qualifying service, an employee who has completed 15 years in service will be entitled to add five years of service in terms of Rule 48-B. Relevant paras of the judgment in Pawan Vohras case (supra) which would apply to the present case are para nos. 1, 2, 3 and 5 and the same read as under:

1. This writ petition is filed by the petitioner-Smt. Pawan Vohra, an employee of erstwhile Delhi Vidyut Board (DVB) and thereafter of the successor M/s. BSES

Rajdhani Power Limited/respondent No.2/DISCOM. Petitioner took voluntary retirement in terms of Special Voluntary Retirement Scheme (SVRS), 2003 introduced by the respondent No.2.

2. There are two issues which arise in this writ petition. First is whether the petitioner has the necessary qualifying service so as to get the pension in terms of Rule 48-A of the CCS (Pension) Rules, and which admittedly applies to the parties by virtue of the Tripartite Agreement entered into between the DVB, Government of NCT of Delhi and the DISCOM. The second issue is that if the petitioner is entitled to pension payment, which is the entity which will bear the liability i.e whether the DISCOM/respondent No.2 or the pension trust/respondent No.1.

3. Let me at the outset reproduce the relevant pension rules namely Rules 48-A, 48-B and 49. For the completion of narration I may state that though Rule 48-B as of date stands deleted, however, at the relevant point of time it was applicable. Therefore, vested rights which existed in favour of the petitioner by virtue of this applicable Rule 48-B, cannot be taken away by the subsequent deletion of said Rule 48-B. These aforesaid rules read as under:

48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service. Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is (i) (ii) (iii) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes, posted abroad in foreign based offices of the Ministries/Departments, on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule

(1) shall require acceptance by the Appointing Authority : Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) - Deleted (3A) (a) (b) A Government servant referred to in subrule

(1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor ; On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority : Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and [retirement gratuity]. of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who (a) (b) retires under Rule 29, or retires from Government service for being absorbed permanently in an autonomous body of a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement. EXPLANATION.-. For the purpose of this rule the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement. Rule 48-B. Addition to qualifying

service on voluntary retirement

(1) The qualifying service as on the date of intended retirement of the Government servant retiring under Rule 48(1)(a) or Rule 48-A of Clause (k) of Rule 56 of the Fundamental Rules of Clause (i) of Article 459 of the Civil Service Regulations, with or without permission shall be increased by the period not exceeding five years, subject to the condition that the total qualifying service rendered by the Government servant does not in any case exceed thirty-three years and it does not take him beyond the date of superannuation.

(2) The weightage of five years under sub-rule

(1) shall not be admissible in cases of those Government servants who are prematurely retired by the Government in the public interest under Rule 48(1) (b) or FR56j). Rule

49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying (b) (c) service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensvm.].; In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupee three hundred and seventyfive]. per mensem ; notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule

(2) of Rule

54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee, it shall be rounded off to the next higher rupee.

(5) &

(6) Deleted

5. Another reason for me to hold that 20 years of qualifying service stand completed is because of the provision of Rule 48-B. The provision of Rule 48-B has been interpreted by a Division Bench of this Court in the case of Retd. Major A.S. Dahiya E.C. No.59676 Vs. Union of India and Ors. 2003 (108) DLT740 The Division Bench has held in this judgment that for determining the qualifying service, benefit of Rule 48-B has to be given by adding of five years of service to the normal period of service. Accordingly, following the ratio in the case of A.S. Dahiya (supra) for this second additional reason also, I hold that the petitioner would have completed 20 years of qualifying service for being entitled to voluntary retirement in terms of Rule 48-A.

4. In the present writ petitions, the petitioner in W.P. (C) No.4806/2011 was appointed on 01.12.1988 and the petitioner in W.P. (C) No.6505/2011 was appointed on 20.12.1988 respectively. Both the petitioners took voluntary retirement on 31.12.2003. The period of 15 years of service so far as the petitioner in W.P. (C) No.4806/2011 is concerned, the same gets completed on 30.11.2003; and so far as the petitioner in W.P. (C) No.6505/2011 on 19.12.2003. Since both the petitioners took VRS on 31.12.2003, therefore, the period of 15 years in respect of both the petitioners stood completed before on 30.11.2003 and 19.12.2003 in the meanwhile.

5. Applying the provision of Rule 48-B and the ratio of the judgment in Pawan Vohras case (supra), both the petitioners will get benefit of additional five years of service and therefore, the qualifying service of each of the petitioners will be taken as 15 years plus five years which comes to a total of 20 years of service.

6. I may state that qualifying service is defined under Rule 13 of CCS (Pension) Rules which is admittedly applicable in these cases and the same reads as under:

13. Commencement of qualifying service Subject to the provisions of these rules, qualifying service of a Government servant shall commence from the date he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity: Provided that officiating or temporary service is followed without interruption by substantive appointment in the same or another service or post: Provided further that - (a) in the case of a Government servant in a Group `D' service or post who held a lien or a suspended lien on a permanent pensionable post prior to the 17th April, 1950, service rendered before attaining the age of sixteen years shall not count for any purpose, and (b) in the case of a Government servant not covered by clause (a), service rendered before attaining the age of eighteen years shall not count, except for compensation gratuity. (c) the provisions of clause (b) shall not be applicable in the cases of counting of military service for civil pension under Rule 19 7. A bare reading of the aforesaid Rule 13 shows that even officiating or temporary service period has to be added for determining qualifying service.

8. Learned senior counsel for respondent No.1 sought to rely on sub-Rule (3) of Rule 14 to argue that the period of temporary service shall not be counted and therefore to examine this argument Rule 14 of CCS (Pension) Rules is reproduced hereunder in its entirety:

14. Conditions subject to which service qualifies (1) The service of a Government servant shall not qualify, unless his duties and pay are regulated by the Government, or under conditions determined by the Government. (2) For the purposes of sub-rule (1), the expression "Service" means service under the Government and paid by that Government from the Consolidated Fund of India or a Local Fund administered by that Government but does not include service in a

non-pensionable establishment unless such service is treated as qualifying service by that Government. (3) In the case of a Government servant belonging to a State Government, who is permanently transferred to a service or post to which these rules apply, the continuous service rendered under the State Government in an officiating or temporary capacity, if any, followed without interruption by substantive appointment, or the continuous service rendered under that Government in an officiating or temporary capacity, as the case may be, shall qualify : Provided that nothing contained in this sub-rule shall apply to any such Government servant who is appointed otherwise than by deputation to a service or post to which these rules apply.

9. I really fail to understand as to how at all sub-Rule (3) of Rule 14 in any manner has an application to determine qualifying service because the same only talks of a situation where an employee of a State Government joins Central Government and whereupon CCS (Pension) Rules become applicable. Surely, this provision in no way applies to determine the qualifying service under Rule 13.

10. Learned senior counsel for respondent No.1 further sought to argue that there is a difference between the eligibility and qualifying service. It is argued that first a person must become eligible by completing 20 years of service and only thereafter, qualifying service can be taken to determine the pension. I am unable to accept this argument which is without any substance whatsoever because eligibility and qualifying service are effectively the same because pension is paid as per qualifying service which is determined as per Rule 13. Nowhere in the pension rules, it is provided that eligibility must first take place by completing 20 years of service and thereafter the qualifying service will be determined for calculating pension. In fact, Rule 13 provides exactly the opposite and states that qualifying service is to be determined as per the said provision and the period of temporary service is added to determine the total qualifying service and which qualifying service will entitle grant of pension. Also, if I agree with the argument urged by learned senior counsel for respondent No.1, the effect would be to wholly negate Rule 48-B, and as per which, a bonus period of five years is added to the period of service in order to determine the qualifying service. It only bears reiteration and repetition that pension is paid as per qualifying service, and that

nothing can be added to Rule 13 and nothing can be subtracted from Rule 13 for deciding the qualifying service for determining the pension.

11. Learned senior counsel for respondent No.1 in support of his arguments sought to then place reliance upon the judgment of the Supreme Court in Union of India and Ors. vs. Rakesh Kumar (2001) 4 SCC309and its para nos. 14 to 16 and 21 which read as under:On behalf of respondents, heavy reliance is placed on Rule 49 which reads thus:

14.

"9. Amount of Pension. (1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service. (2) (a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem; (b) In case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirtythree years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than Rupees three hundred and seventy-five per mensem. (c) Notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub rule (2) of Rule 54. (3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service. (4) * * *."

15. Aforesaid procedure under Rule 49, is for calculating and quantifying the amount of pension which a government servant is entitled to if he retires on superannuation or if he retires or is retired after completion of 30 or 33 years of service or voluntarily retires after completing 20 of qualifying service and provides:(a) If the qualifying service is less than 10 years, the government servant

would not be entitled to get pension but he entitled to receive the amount of service gratuity. (b) If he completed qualifying service of not less than 33 years, the amount of pension is to be calculated at 50% of the average emoluments subject to the maximum provided therein. (c) In case of government servant retiring before completing qualifying service of 33 years, but after completing qualifying service of 10 years, he would get pension which would be proportionate to the amount of pension admissible under clause (a). (d) The minimum amount of pension shall not be less than Rs.375/per month. (e) Invalid pension also shall not be less than the amount of family pension admissible under sub-rule (2) of rule 54.

16. On the basis of Rule 49, it has been contended that qualifying service for getting pension would be ten years. In our view, this submission is without any basis. Qualifying service is defined under Rule 3(q) to mean service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules. Rule 13 provides that qualifying service by a government servant commences from the date from which he takes charge of the post to which he is first appointed either substantively or in an officiating or temporary capacity. This rule nowhere provides that qualifying service for getting pension is 10 years. On the contrary, there is specific provision that if a government servant retires before completing qualifying service of 10 years because of his attaining the age of compulsory retirement, he would not get pension but would get the amount of service gratuity calculated at the rate of half months emoluments for every completed six monthly period of qualifying service. In these appeals, we are not required to consider other conditions prescribed for qualifying service as it is admitted that respondent-members of the BSF have completed more than 10 years of qualifying service. Further clause 2(a) of Rule 49 specifically provides for grant of pension if a government servant retires after completing qualifying service of not less than 33 years. The amount of pension is to be calculated fifty per cent of average emoluments subject to maximum provided therein. Clause 2(b) upon which much reliance is placed indicates that in case of a government servant retiring in accordance with the provisions of the Rules before completing qualifying service of 33 years, but after completing qualifying service of ten years, the pensions hall be after completing qualifying service of ten years, the pension shall be proportionate to the amount of pension

admissible under clause (a) and in no case, the amount of pension shall be less than Rs.375/- per months. This would only mean that in case where government servant retires on superannuation i.e. the age of compulsory retirement as per service conditions or in accordance with the CCS (Pension) Rules, after completing 10 years of qualifying service, he would get pension which is to be calculated and quantified as provided under clause (2) of Rule 49. This clause would cover cases of retirement under Rules 35 and 36 that is, voluntary retirement after 20 years of qualifying service, compulsory retirement after prescribed age and such other cases as provided under the Rules. However, this has nothing to do with the quitting of service after tendering resignation. It is also to be stated that Rule 26 of CCS (Pension) Rules specifically provides that resignation from a service or post entails forfeiture of past service unless resignation is submitted to take up, with proper permission, another appointment under the government where service qualifies. Hence, on the basis of Rule 49 member of BSF who has resigned from his post after completing more than 10 years of qualifying service but less than 20 years would not be eligible to get pensionary benefit. There is no other provision in the CCS (Pension) Rules giving such benefit to such government servants.

21. Learned counsel for the respondents submitted that on the basis of G.O., number of persons are granted pensionary benefits even though they have bot completed 20 years of service, and, therefore, at this stage, Court should not interfere and see that the pensionary benefits granted to the respondents are not disturbed and are released as early as possible. In our view, for grant of pension the members of a BSF are governed by CCS (Pension) Rules. CCS (Pension) Rules nowhere provide that a person who has resigned before completing 20 years of service as provided in Rule 48-A is entitled to pensionary benefits. Rule 19 of the BSF Rules also does not make any provision for grant of pensionary benefits. It only provides that if a member of the force who resins and to whom permission in writing is granted to resign then the authority granting such permission may reduce the pensionary benefits if he is eligible to get the pension. Therefore, by erroneous interpretation of the rules if pensionary benefits are granted to someone it would not mean that the said mistake should be perpetuated by direction of the Court. It would be unjustifiable to submit that by

appropriate (SIC), the Court should direct something which is contrary to the statutory rules. In such cases, there is no question of application of Article 14 of the Constitution. No person can claim any right on the basis of decision which is de hors the statutory rules nor there can be any estoppel. Further, in such cases there cannot be any consideration on the ground of hardship. If rules are not providing for grant of pensionary benefits it is for the authority to decide and frame appropriate rules but Court cannot direct payment of pension on the ground of so-called hardship likely to be caused to a person who has resigned without completing qualifying service for getting pensionary benefits. As a normal rule, pensionary benefits are granted to a government servant who is required to retire on his attaining the age of compulsory retirement expect in those cases where there are special provisions.

12. Once again, I really fail to understand as to how at all the aforesaid paras in the above mentioned case in any manner helps in interpretation of qualifying service as per Rule 13. The Supreme Court in the case of Rakesh Kumar (supra) was concerned with appeals filed by the Union of India wherein the issue was that members of BSF had resigned after serving 10 years or more but less than 20 years without bonus were entitled to or not to pension/pensionary benefits. Therefore, the issue in Rakesh Kumars case (supra) has no connection even remotely to the issue which is called for determination in the present cases as to what should be the qualifying service.

13. Learned senior counsel for respondent No.1 also sought to argue that so far as petitioner in Writ Petition (C) No.6505/2011 is concerned, he had rendered only 13 years of qualifying service and it is so stated in the document filed at page 17 of the writ petition. This document is a statement of full and final payment stated to have been issued to the petitioner by the respondent No.1 wherein it is stated that respondent No.1 had taken 13 years of service for determining the VRS benefits to be made to the petitioner. Surely, any statement prepared by the respondent No.1 cannot change the fact that petitioner in Writ Petition (C) No.6505/2011 was appointed on 20.12.1988 and therefore, by 19.12.2003, the period of 15 years stood completed for this petitioner to get the benefit of additional five years as per Rule 48-B. The date of voluntary retirement of both the petitioners is admittedly

31.12.2003 i.e later than 30.11.2003 and 19.12.2003, by which dates the period of 15 years had been completed.

14. I may note that in the counter-affidavit filed by respondent No.1, there is no denial of the fact that both the petitioners were initially appointed on 01.12.1988 and 20.12.1988 respectively.

15. Also, I do not find any strength in the argument urged on behalf of respondent No.1 that merely because the petitioner in para 8 of the writ petition has stated that petitioner has completed qualifying service of 13 years, the same will make any difference, and at best, this is only an incorrect statement of fact i.e a statement of fact erroneously made and the correct statement of fact is that the petitioner in Writ Petition (C) No.6505/2011 was employed for the first time on 20.12.1988 and he therefore completed 15 years as on 19.12.2013.

16. In view of the above, I find that the petitioners by virtue of Rule 48-B of the CCS Pension Rules will have benefit of additional five years of service as bonus period of service to be added to their 15 years of actual service that stood completed on 31.12.2003, and thus their total service period comes to 20 years. The petitioners, therefore, had qualifying service of 15 years plus 5 years i.e 20 years.

17. In view of the above, both the writ petitions are allowed with costs of ` 25,000/- to be paid to each of the petitioners. The petitioners are also entitled to grant of pension by the respondent No.1 w.e.f the date of voluntary retirement i.e 1st January, 2004. The arrears which are payable to the petitioners be paid along with interest @ 9% p.a. (simple) from the date the amounts become payable (but were not paid) and further at the same rate for a period of three months from today, which period of three months is granted to make payments to the petitioners. In case the payments are not made within three months then thereafter, the petitioners will be entitled to interest @ 12% p.a. (simple) from the date the amounts become payable till the date of payment.

18. In case any sum/amounts towards the amounts which are to be paid to the petitioners as per this judgment stands already paid to the petitioners, then for the

amount of such payments respondent No.1 shall be entitled to adjustment and only balance of the arrears would be paid by respondent No.1 to the petitioners.

19. Both the writ petitions are allowed in the above terms and disposed of. Writ Petition (C) Nos. 5840/2011, 6997/2011 and 5556/2011 20. It could not be disputed that the petitioners in the instant writ petitions have not completed 15 years of service with respondent No.1. If that be so, even if benefit of Rule 48-B is given, the petitioners will not be completing 20 years of service which is the necessary qualifying service period for grant of pension.

21. Accordingly, these writ petitions are dismissed leaving the parties to bear their own costs. VALMIKI J.

MEHTA, J.

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