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Court : Central Administrative Tribunal CAT Principal Bench New Delhi

Decided On : Sep-11-2013

Judge : The Honourable Mr. V.N. Gaur, Member (a)

Appeal No. : O.A. No. 318 of 2013 & M.A. No. 224 of 2013

Appellant : R.S. Jindal

Respondent : Delhi Development Authority Through Its Vice-chairman, Vikas Sadan (B-block)

Judgement :

1. The applicant has filed this O.A., with the following prayers:

(a) Direct the respondent to pay the following amounts of interest on the delayed payment of pension arrears, gratuity and leave encashment calculated @15% per annum simple interest:

A sum of Rs.10, 30,165 as interest on 16.12.1997 to 30.3.2010.

A sum of Rs.2,69,399 as interest on the amount of gratuity from 1.1.94 to 30.3.2010.

A sum of Rs.2,24,450 as interest on the amount of leave encashment from 1.1.1994 to 24.9.2010.

2. The applicant is a retired Chief Engineer of Delhi Development Authority (DDA) who started his career as Assistant Engineer (AE) (Civil) in the Municipal Corporation of Delhi (MCD) on 06.01.1961. He was promoted the post of Executive Engineer on 22.09.1967 and further promoted as Superintending Engineer (SE) on 05.09.1974. Applicant was transferred from MCD to DDA on 22.05.1975 on deputation on the post of SE (Civil). He was absorbed as SE (Civil) w.e.f. 26.05.1976 and declared to have been appointed as permanent SE (Civil) in DDA w.e.f. 04.09.1976. Applicant was promoted to the post of Additional Chief Engineer (Civil) on 10.09.1980 and was designated as Chief Engineer (Civil) on 02.04.1984. He was compulsorily retired from service with effect from 22.12.1985 under FR 56 (j).

3. A Division Bench of the Honble High Court of Delhi vide its judgment dated 15.12.1986 quashed and set aside the order of the respondent by which the applicant was compulsorily retired and directed that the applicant be treated in service with continuity of service and all consequential benefits. The respondent filed a SLP before the Honble Supreme Court against the order of the High Court of Delhi dated 15.12.1986. The Honble Supreme Court in its interim order dated 25.03.1987 ordered as follows:

Special Leave Granted. Preparation of record dispensed with Appeal will be heard on present papers with such additional papers as the parties may file within six weeks from today. There will be a stay on the condition that the respondent is paid full salary and allowances pending disposal of appeal.

4. The applicant continued to be paid full salary as ordered by the Honble Supreme Court. In the meantime, the applicant had been making representations for being assigned official duties. The opinion of a former Chief Justice of India was enclosed with the request pleading that the respondent may be posted and allowed work during the pendency of the appeal without prejudice to the rights and contentions of the DDA before the Honble Supreme Court. The stand taken by the applicant was that as he was being paid full salary and allowances it would be in

the interest of public authority that public fund is utilized to the best advantage and, therefore, his services should be utilized. It was also stated that no harm and loss would be caused to the DDA by taking work from the applicant. However, vide order dated 21.06.1989 the DDA assigned work to the applicant with the following condition:

The assignment will not prejudice the rights and contentions of the Delhi Development Authority in the appeal pending in the Honble Supreme Court.

The applicant attained the age of superannuation on 31.12.1993. The Honble Supreme Court on 08.09.1994 disposed of the Civil Appeal No.793/1987 with the following order:

After addressing the arguments for considerable time, Shri Salve, the learned senior counsel for the respondents seeks permission of the Court to withdraw the Civil Writ Petition No.168/86 in the light of the decision laid by this Court in Bakunthunath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr. (1992 (2) SCC 299) with liberty to approach the DDA to pass an appropriate order on his entitlement to the pension and requests to protect the salary he had received during the period he worked after reinstatement pursuant to the Judgement of the Delhi Court till he retired on attaining the age of superannuation. We find that the permission sought for and request made are reasonable. Accordingly the judgement of the High Court of Delhi dated December 15, 1986 is set aside. The respondent is permitted to withdraw the writ petition and it is accordingly dismissed as withdrawn. Since, the respondent was reinstated pursuant to the order of the Division Bench and he continued in service till he attained the age of superannuation by performing the duties of his office during that period, we direct that the salary paid to him during that period shall not be recovered. However, it would be open to the respondent to make application to the authorities for fixing his pension, it would be open to authorities to fix such pension according to rules.

The appeal is disposed of accordingly. No costs.

5. On 04.08.1995 the Honble Supreme Court dismissed the Review Petition filed by the applicant. Respondent vide order dated 29.08.1995 sanctioned pension to the applicant treating him as compulsorily retired on 23.12.1985 and without counting his service rendered in MCD prior to joining DDA. The respondent further issued an order regularizing the services of the applicant for the period from 23.12.1985 to 31.12.1993 as re-employment period which would not be considered for computing pension and other retiral benefits. Applicant filed another Writ Petition No.2330/1997 before the High Court of Delhi regarding the date from which he was entitled for pension and other pensionary benefits. The High Court of Delhi passed an interim order on 02.09.1997 directing the DDA to pay pension to the applicant by considering applicants past service rendered by him in the MCD. The respondents on 16.12.1997 paid arrears of pension by re-calculating pension, taking into account the service rendered by the applicant in MCD but the date of retirement was taken as 23.12.1985. The High Court of Delhi vide its order dated 17.12.2000 in Writ Petition (Civil) No.2330/1997 ordered (i) quashing of 07 number of charge-sheets issued to the applicant, (ii) quashed the order dated 15.12.1995, whereby the period from 23.12.1985 to 31.12.1993 was treated as re-employment and (iii) directed the DDA to pay pension and retiral benefits to the applicant from 31.12.1985 with interest @ 9% per annum on delayed payments. The DDA filed LPA No.702-03/2003 in the High Court of Delhi against the order dated 17.12.2000 of the learned single Judge. The LPA was disposed of by a Division Bench vide judgment dated 12.10.2007. The High Court of Delhi ordered as follows:

35. In view of the above, we allow the present Appeal and set aside the judgment dated 17th December, 2002. It is held that for the period 23rd December, 1985 till 31st December, 1993, the respondent will not be entitled to any pension/retirement benefits as during this period he has been paid full pay and allowances. For the period w.e.f. 1st January, 1994, the respondent will be entitled to pension and retirement benefits. It is apparent that DDA has already paid the said amount in terms of the order dated 8th September, 1994 passed by the Supreme Court and as per time fixed in the Order dated 4th August, 1995. The Appeal is accordingly allowed but in the facts and circumstances of the case there will be no order as to costs.

Applicant filed SLP No.5450-5453/2008 which was dismissed by the Honble Supreme Court on 14.03.2008. Following this the respondent withdrew all the charge-sheets vide office order dated 05.05.2008 and on 12.11.2009 passed another order stating that the period from 23.12.1985 to 31.12.1993 would be treated as qualifying service for calculation of pension and on 30.03.2009 and 24.09.2010 respondent paid a sum of Rs.11,84,175/- as arrears of pension, a sum of Rs.1,10,550 as gratuity and a sum of Rs.89,440/- by way of leave encashment. However, no interest on delayed payment was paid to the applicant. As the applicants request for payment of interest on the amounts paid in 2010, which according to the applicant, should have been paid on 1.1.1994/16.12.1997, as detailed in the prayers extracted above, remained unaddressed, he has filed this OA.

6. In his submissions the learned counsel for the applicant argued that in accordance with the Pension Rules applicant was entitled for his pension and other retiral benefits w.e.f. 1.1.1994 on the basis of his total service of 33 years and his basic salary of Rs.6300/- drawn by him on the date of retirement on 31.12.1993. It was alleged that the respondent withheld the payment and dragged the matter for years purely for malafide reasons. It is only after the applicant filed Writ Petition No.2330/1997 in the High Court of Delhi that the aforesaid entitlements of the applicant were admitted by the respondent and the payments were released on 30.03.2010 and 24.09.2010. Hence under the law established by the Honble Supreme Court the applicant is entitled to payment of interest on the delayed payment of his pension, gratuity etc. Learned counsel further argued that in their reply the respondent have failed to explain as to why the pension of the applicant as provided under Rule 61 (4) of the Pension Rules had not been finalized at least six months before the date of applicants retirement, i.e., 31.12.1993 and not paid on 01.01.1994. Respondent have also not given any reasons for not sanctioning even provisional pension on the basis of total length of service of 33 years. The learned counsel also questions the decision of the DDA vide order 29.08.1985 to pay pension only for the period served by the applicant in DDA on the ground that pro rata contribution has not been received by them from MCD for the period 06.01.1961 to 22.05.1975 when the applicant was working with the MCD. The contradiction in the stand of the DDA was clear from the submission

made before the Honble Supreme Court in Civil Appeal No.793/1987 where the DDA had clearly stated that:

his pension, leave account, gratuity etc., were also transferred from MCD to DDA and for all practical purpose, the respondent herein was treated as having joined the DDA from the date he joined MCD.

Despite this, in 1995 the DDA took a stand that they would pay pension only for the period served by the applicant with the DDA and not MCD. It was argued that the present Application exclusively pertains to the payment of interest on delayed payment of pension and other retiral benefits since 1994 and, therefore, the orders passed by the High Court of Delhi in Writ Petition (Civil) No.2300/1987 on 17.12.2002 and in LPA No.702-03/2003 on 12.10.2007 do not have any relevance. In support of his contentions the learned counsel relied on the following cases:

i) D.S. Nakara and Ors. V. Union of India and Ors., AIR 1983 SC 130.

ii) Delhi Transport Corporation v. K.K. Berry and Others, 2006 IXAD (DELHI) 778; and

7. Learned counsel for the respondent submits that the respondent have been complying with the orders passed by the Honble Supreme Court from time to time. It was submitted that all the dues on account of pension and other retiral benefits with reference to the date of retirement being 01.10.1994 had already been paid to the applicant. It was further submitted that the applicant had already agitated the same matter before the Division Bench of the High Court earlier, which was disposed of on 12.10.2007 without any order regarding payment of interest on delayed payment. The SLP filed by the applicant was also dismissed by the Honble Apex Court on 14.03.2008. Subsequently, in his representation dated 15.10.2008 and 17.11.2008 the applicant never prayed for interest on the dues that were going to be paid to him. The order adjusting the amount of pension already paid to the applicant on 23.12.1985 to 31.12.1993 as well as to treat the said period as qualifying service for pensionary benefits were issued vide order dated 12.11.2009 and the arrears were paid on 30.03.2010 and 24.09.2010. The applicant made his first representation with regard to payment of interest on

23.12.2011. The learned counsel vehemently argued that the present OA was barred by both res judicata and laches. In this context, learned counsel referred to the order of the High Court of Delhi dated 12.10.2007 and submitted that the High Court had considered the case of interest on delayed payment but the same was decided in favour of the DDA on the basis of principle of restitution under Section 144 CPC and attained finality with SLP against the order being dismissed on 14.03.2008. In the present case there was no ground for payment of interest as it was not a case of withholding of pension. Invoking the doctrine of res judicata/doctrine of estoppel the learned counsel sought rejection of the OA by relying on the decisions of the Honble Apex Court in Union of India v. Nanak Singh, AIR 1968 SC 1370 and Executive Engineer ZP Engg. Divn. and Anr. V. Digambara Rao etc. etc., Civil Appeal Nos.1164-66/2002.

8. I have considered the submissions of the learned counsel for the respondents with regard to res judicata and laches. It is observed that the interest on the amounts paid in 2010 was not the subject matter for consideration before the High Court of Delhi in Writ Petition No.2300/1997 and, therefore, the OA cannot be estopped on that account. Regarding laches, the applicant has filed MA No.224/2013. I also find that the applicant had filed OA-2304/2012, which was permitted to be withdrawn vide order dated 14.12.2012 with liberty to file fresh one, subject to just exceptions. Further, relying on the Honble Supreme Courts decision in S.K. Dua v. State of Haryana, 2008 (1) SCC (LandS) 563, as relied upon by the applicant, I allow the MA for condonation of delay.

9. In the context of the main prayer of the applicant, I have considered the submissions made in writing and during arguments by both the sides. Leaving out the chaff the picture that emerges is that the applicant was compulsorily retired from service with effect from 23.12.1985. Since this was not a normal retirement it was obvious that the respondents did not have sufficient time to work out the retiral benefits and pension to be paid ideally on the date of superannuation. From 23.12.1985 to 31.12.1993 the matter was sub-judice and his status whether he was compulsorily retired or he would remain in service was not clear following the order of the High Court of Delhi setting aside the order of compulsory retirement. The respondent filed SLP in the Honble Supreme Court, which granted interim

stay on the order of the High Court on 25.03.1987. Thus during this period again the status of the applicant whether he should be treated as a reinstated officer' or compulsorily retired remained uncertain. During the period 23.12.1985 to 31.12.1993 (till the date of his normal superannuation) the fact was that the applicant was getting paid as per the interim direction of the Honble Supreme Court on 25.03.1987 and would hardly be considered as an officer going to superannuate on 31.12.1993 for whom the respondent would be expected to work out pension and other retiral benefits six months in advance, as claimed by the applicant in his submissions. Subsequently, the order of the Honble Supreme Court on 08.09.1994 set aside the order of the High Court of Delhi that had quashed the order of compulsory retirement. By implication the status of the applicant again reverted to an officer who was compulsorily retired in 1985 but continued to be paid in the post of Chief Engineer because of the interim stay.

10. Again no pension could have been given to him unless his status during this period was finalized whether he was re-employed or not employed at all following the principle of restitution. The applicant himself has taken a stand that he had been compulsorily retired in 1985 and the period from 23.12.1985 to 31.12.1993 was a period of commercial employment and, therefore, he was entitled to both, remuneration as a re-employed person and pension as a retired employee. During this period it was at his persistent requests that the respondent had allowed him to discharge the duties of Chief Engineer from 21.06.2009 till the date of his superannuation with the undertaking that:

The assignment will not prejudice the rights and contentions of the Delhi Development Authority in the appeal pending in the Honble Supreme Court.

But for this decision of the DDA to allow him to work as Chief Engineer he possibly would be liable to refund the amounts paid during the period from 23.12.1985 to 31.12.1993. The Honble Supreme Court had set aside the order of the High Court of Delhi dated 15.12.1986 and allowed the applicant to withdraw his application, in the light of the decision of the Honble Supreme Court in *Baikunth Nath Das and Anr. Vs. Chief District Medical Officer, Baripada and Anr.*, (1992) 2 SCC 299.

11. The respondent passed an order on 15.12.1995 regularizing the period from 23.12.1985 to 31.12.1993 as re-employment, the issue of pension for the period the applicant served with MCD became the subject matter of another Writ Petition (C) No.2300/1997, where the High Court of Delhi passed an order on 17.12.2000 quashing the order dated 15.12.1995 regarding re-employment. By implication the status of the applicant during this period again became unclear with regard to his entitlement to pension and other retiral benefits for the period 1985-1993. The LPAs filed by the DDA were decided on 12.10.2007, which set aside the order passed by the Delhi High Court (Single Judge) on 17.12.2002 (except the part pertaining to quashing of the charge-sheet), wherein it was decided that the applicant will not be entitled to any pension/retiral benefits for the period from 23.12.1985 to 31.12.1993.

12. From the brief narration of the cases filed in the Court and the directions given between the years 1985-2008 it is amply clear that the status of the applicant with regard to his compulsory retirement as well as the period from 23.12.1985 to 31.12.1993 remained undecided for a long period. While the compulsory retirement issue got settled in 1994 following the decision of the Honble Supreme Court the second part remained uncertain till the year 2008. Therefore, there is no force in the argument on behalf of the applicant that the respondents failed in their duty in not finalizing his pension etc. within six months preceding the date of retirement and his dues were not paid on 31.12.1993.

13. From facts brought on record the picture that emerges is that applicant has tried to take full advantage of the situation by changing his stands from time to time and in the bargain he had ended up with getting an extension of service for 08 years, which no government servant would normally be getting. He had accepted the date of compulsory retirement in 1985 when he claimed commercial employment during the period from 23.12.1985 to 31.12.1993 and wanted payment of both salary and pension for that period. But for his insistence and the benevolence of the DDA by allowing him to work during the period of interim stay, he would have possibly been asked to refund the amount paid to him during that period. Following the decision of the High Court of Delhi in 2007 the respondents have issued the letter on 12.11.2009 again taking a benevolent stand by adjusting

the amount of pension paid during the period from 23.12.1985 to 31.12.1993 against the payment of pay and allowances for that period without charging any interest.

14. In another act of leniency the respondents have gone one step further and regularized this period as qualifying service for calculation of pension. As a result the applicant would be entitled to enhanced pension with effect from 01.01.1994 and in perpetuity. In a nutshell, considering the net effect of the judicial pronouncements with regard to his compulsory retirement, he should have retired on 23.12.1985 and got pension as per the pay received on that date for the rest of his life and he would not have to return the salary paid during 23.12.1985 to 31.12.1993. After passing through a maze of litigations he has come out effectively gaining 08 years of extension in service which qualifies for enhanced pension for whole life, enhancement of his entitlements like leave encashment, gratuity and pension to be calculated on the basis of 33 years of service and the pay as drawn by him on 31.12.1993. Therefore, there does not appear to be any ground invoking judicial sympathy either.

15. Considering the fact that series of litigations were not one sided and there was no clarity regarding his status between the period from 23.12.1985 to 31.12.1993, I do not find any justification for the applicants claim of interest on his pension and other retiral benefits with effect from 01.10.1994 and 16.12.1997 for different amounts.

16. Taking into account the entire conspectus of the case, I find the present OA bereft of merit, which is accordingly dismissed. No costs.

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