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Uoi and Others Vs. Sep Ram Chandra

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Court : Armed forces Tribunal AFT Principal Bench New Delhi

Decided On : Jan-30-2014

Judge : Prakash Tatia, Chairperson &Amp;amp; the Honourable Mr. L.T. Gen. S.K. Singh, Member

Appeal No. : RA 52 of 2013 with MA 560 of 2013 in OA 185 of 2009

Appellant : Uoi and Others

Respondent : Sep Ram Chandra

Judgement :

1. Heard learned counsel for parties. This Review application has been filed for seeking review of the final order of the Tribunal dated 12.04.2010 passed in OA 185/2009 Sep Ram Chandra Vs UOI and Ors. By this order dated 12.04.2012 the petitioner was allowed disability pension and it was further ordered that petitioner since suffered disability to the extent of 20% therefore, his case may be considered by the Resurvey Medical Board to find out that said disability is for life or not. If it is found that disability is for life then the petitioner is entitled to benefit of rounding up of the benefit in view of the circular of the Government of India being No. 1(2)/97/D(Pen-C) dated 31.01.2001 and his benefit may be increased from 20% disability pension to 50% disability pension.

2. After the final order of the Tribunal dated 12.04.2010 Resurvey Medical Board was constituted and said Board examined the petitioner and declared petitioners

said disability œfor life?. The respondents have not objected with respect to the allowing of the disability pension to the petitioner but respondents are seeking the review of the final order of the Tribunal dated 12.04.2010 for rounding of benefit and seriously questions the relief granted to the petitioner of rounding of the benefit of disability to 50% from 20% under circular 31.01.2001.

3. Before proceeding further it will be appropriate to mention here that Tribunals final order dated 12.04.2010 was not implemented and the petitioner approached this Tribunal by filing an execution petition on 29.01.2013 being MA 45/2013. In said MA 45 of 2013 the learned counsel for respondents UOI on 05.07.2013 submitted that an application for grant of Leave for filing an Appeal before the Honble Supreme Court has been submitted before the Tribunal on 31.05.2013. Both, the execution petition MA 45/2013 and the application for grant of Leave to Appeal MA 321/2013 were taken together and by order dated 05.07.2013 the Application for Leave to Appeal MA 321/2013 filed by the UOI was dismissed by the Tribunal. Today, learned counsel for UOI submits that he is not aware whether after dismissal of application for grant of Leave to Appeal before Honble Supreme Court by this Tribunal vide order dated 05.07.2013, whether any Special Leave to Appeal has been preferred before the Honble Supreme Court or not.

4. Be it as it may be, now the UOI has submitted this review application on 05.10.2013 which became delayed by 1,240 days by the time of filing of this review application.

5. The Review Application could have been dismissed on the ground of inordinate delay but before that we would like to mention the facts as well as the arguments advanced by the learned counsel for parties which in our opinion is essential in the facts of this case.

6. Learned counsel for UOI Mr Ankur Chhibber, assisted by Col Arun Sharma submitted, that pensionary benefits are given as per the policy of the Government applicable to the services which policy changes time to time and gives benefit which are available to employees as the decision gives the benefit. It is for the Government to take a decision to whom and to them what benefit be given. By Government of India order dated 31.01.2001 in Para 7.2 the benefit of rounding off

of disability pension has been given to certain class of persons, i.e., who have been invalidated out from service on medical ground and it is decided that when the disability is 20% it will be rounded off to 50%, if it is between 50% and 75% it will be rounded off to 75%, if it is between 75% and 100% it will be rounded off to 100%. It is submitted that œinvalided out? means shortening of the length of service of persons and which reduces ones service period and such shortening of length of service is forced upon such medically disabled employee by the order of the Government. For discharge from service on medical ground, the process for œinvaliding out? is required to be done through œInvaliding Medical Board? and has no application to employees who are released from service through Release Medical Board. The petitioner admittedly discharged from service on his own request like seeking voluntary retirement. However, he was in low medical category but he has not been invalided out of service through Invaliding Medical Board resulting into the shortening of his service on medical ground by order of the Government and therefore, he is not covered under para 7.2 of the Government of India order dated 31.01.2001.

7. Learned counsel for the UOI drew our attention to the various judgments. First is, the judgment of the Honble Delhi High Court, delivered in Ex Nk Narikar Vs UOI and Ors dated 31.08.2006 wherein, said Ex Nk Narikar was released from service in low medical category and was allowed 20% disability pension and who was not given higher rate of pension under Government of India order dated 01.01.1996. Honble Delhi High Court vide judgment dated 31.08.2006 directed UOI to enhance disability of said Ex Nk Narikar. The judgment of Honble Delhi High Court was challenged before Honble Supreme Court by filing Civil Appeal no. 8433-8434 of 2009. The Honble Supreme Court in said appeal in order dated 24.05.2012 considered the earlier case of the Honble Supreme Court delivered in the case of PK Kapur Vs UOI(2007) 9SCC 425 and reversed the judgment of Honble Delhi High Court and held, that for such benefit of rounding off of pension, one is required to be invalided out of service reducing his term of tenure. Learned counsel for the petitioner drew our attention to the reasons and the ratio of PK Kapurs case also and submitted that, in PK Kapurs case, which is dated 01.02.2007, rendered prior to the final order of the Tribunal dated 12.04.2010, view has been taken that cutting short of service of a personnel with low medical

category is essential condition for rounding off of pensionary benefits under Government of India order dated 31.01.2001.

8. Learned counsel for UOI, Mr Ankur Chhibber then drew our attention to the earlier decision of the Principal Bench of the Tribunal given in OA 737 of 2010 Sqn Ldr JS Punia Vs UOI dated 07.07.2011. In said case also the employee sought the voluntary discharge from service and that case also it has been held, that said petitioner Sqn Ldr JS Punia is not entitled to any invalidment pension. Decision of the Tribunal in JS Punia case was challenged before the Honble Division Bench of the Delhi High Court in writ petition WP -*(C) 5749 of 2011 which was dismissed by the Honble Delhi High Court vide judgment dated 12.12.2013. The Honble Delhi High Court also relied upon the PK Kapurs case and upheld the judgment given by the Tribunal in case of JS Punia. In view of the above reasons, along with the Government of India order dated 31.01.2001, learned counsel for UOI submitted that, the order of the Tribunal dated 12.04.2010 deserves to be reviewed and the relief granted to the petitioner of rounding off may be set aside.

9. Learned counsel for petitioner of OA, Mr SR Kalkal, respondent in the review application vehemently submitted that, the Government of India itself as well as various authorities dealing with the subject have issued various orders/communications which includes the communication issued by the Government of India through Under Secretary dated 11.04.2002, the consequential communication dated 27.05.2002 sent by the Dy Controller of Defence Accounts (P) [Dy CDA(P)], the Government of Indias decision dated 19.01.2010 wherein various issues of pensions of armed forces pensioners were considered consequent upon receipt of the report of the Committee set up which was headed by the Cabinet Secretary. Learned counsel for petitioner of OA respondent in the review application then drew our attention to the decision of the Government of India dated 29.02.2012 wherein the issue of extending of benefit of broad banding to pre 1996 invalided out persons cases issue was considered. In para 9 of the said decision it has been mentioned deemed invalidation shall apply to cases of pre-96 era also. In para 9 it is also specifically mentioned that :-

These instructrions apply to deemed invalidation cases of pre-96 also. The deemed invalided cases being referred to are those permanent LMC person(aggravated and/or attributable cases only) who are discharged from service due to sheltered appointment being withdrawn/unwilling to accept alternate employment or having been retained in service are discharged before completion of their term of engagement.

In support of this, learned counsel for respondent petitioner submitted that this clearly covers even those persons who are not willing to accept alternate employment. Meaning thereby, such person had some more period to serve but he is unwilling to accept the alternate employment, then also such person will be deemed to œhave been invalided out from service? for grant of benefit of rounding off of the pension. The petitioner sought voluntary retirement and if he would not have accepted the alternate appointment, in view of the clause 9 of Government of Indias decision dated 29.02.2012 which is already in existence in rules, the petitioner was entitled to the rounding off of the pension. It is submitted the words œdischarge before completion of their term of engagement? used in above para specifically covers the cases of œunwilling to accept alternate employment?. Therefore, even in case of shortening of length of service at choice of an employee in low medical category also entitles him of the above benefit.

10. Learned counsel for the respondent then submitted that Honble Supreme Court in the case of KJS Bhuttar Vs UOI and Anr, vide judgment dated 31.03.2011 reported in 2011(11) SCC 429 granted the benefit of rounding off of pension even when he was not invalided out of service but was released from service upon completion of Short Service Commission of only 10 years and retired from service and was released in low medical category. The Government of India by communication dated 05.01.2014 issued instructions that till KJS Bhuttars case is decided by the Honble Supreme Court, the issue may not be contested by the government counsels in the Courts and they may seek adjournments. KJS Bhuttars decision has been given by the Honble Supreme Court on 31.03.2011 and against that a Review Petition (C) 2688/2013 was filed before the Honble Supreme Court which was dismissed recently on 21.01.2014 not only on the ground of delay but on merits also.

11. Learned counsel for respondent submitted that, in the case of PK Kapur (supra), Honble Supreme Court considered the Office Memorandum of the Government of India dated 03.02.2000 which pertains to the benefits to the civil servants and is not in relation to the service in Armed Forces. Learned Counsel for respondent submitted that in view of the Governments own decision and own policy the petitioners review petition had no legs to stand. He also submitted that if, there is conflict in view expressed in various decisions referred above then also it was duty of the respective parties to draw attention of the Honble Supreme Court about the earlier decisions and it is more the responsibility of the UOI as it was the common party in all the cases. It is also submitted there are judgments and the governments orders/decisions which are in respondents favour and if two views are possible then also review cannot be entertained.

12. Learned counsel for UOI, Mr Ankur Chhibber, submitted that the judgment of PK Kapur was rendered in earlier point of time and was binding upon the Tribunal when Tribunal passed the final order dated 12.04.2010 in OA 185/2009 and the recent judgment is delivered by Honble Supreme Court in the case of Ex Nk Narikar by which the Honble Supreme Court by reasoned order set aside the judgment of the Honble Delhi High Court after taking view that PK Kapurs case covers the issue and shortening of service is essential therefore, in view of the above reasons the review petition deserves to be allowed.

13. We have considered the submissions of learned counsel for parties.

14. We are of considered opinion that scope of the review is not to sit as appellate court over the judgment sought to be reviewed rendered either by the same Bench or Coordinate Bench. The bare perusal of the final order of the Tribunal and from the grounds raised in review petition and from much more grounds during arguments, it will reveal that the review petitioner is trying to become wise after the final order dated 12.04.2010. The arguments have been advanced indicate, that after getting the order as back as 12.04.2010 and after its implementation in part, to challenge the Tribunals order, an application for grant of Leave to Appeal before Honble Supreme Court was filed and that was rejected long back on 05.01.2013. It is not known whether UOI preferred any application for Leave to Appeal before the

Honble Supreme Court after rejection of prayer by the Tribunal. Be it as it may be the review application has been filed with the delay of 1240 days. No cause has been shown for condonation of delay. The review application could have been dismissed only on the ground of inordinate unexplained delay but we are of the view that facts and judgments referred above with Government of Indias order/decisions and communication may be taken note of so that in appropriate way matter may be considered by appropriate court but not in review jurisdiction by the Tribunal. Not only this the arguments which have been advanced before us and the judgments referred above were not brought to the notice of the Bench of the Tribunal which passed decision in the OA vide final order dated 12.04.2010. The judgments are in support of both parties and view can be taken in either way. The bench of the Tribunal in petitioners OA 185/2009 has considered the order of the Government of India dated 29.02.2012 issued on the basis of recommendations of VI Pay Commission and considered the case of Mahavir Singh Narwal and thereafter, passed the impugned order. Now when application for leave to appeal has been rejected by the Tribunal the petitioner UOI is virtually seeking the review of the order on the basis of the entire new grounds raising new pleas which include the plea of the respondents that the petitioner has not been released by the Invaliding Medical Board which according to UOI is pre-condition for grant of invaliding pension and admittedly we have found such plea was not even taken not only before Tribunal but when the matters were decided by different courts including Honble Supreme Court. The various circulars referred above before us except which are considered in the case of PK Kapurs case, or in the case of KJS Bhuttar were not brought to the notice of the Honble Supreme Court.

15. We can take help of principles, which permit review, under order 47 of CPC which is applicable to the Armed Forces Tribunal by virtue of clause (f) of Sub Sec (4) of Sec 14 of the Armed Forces Tribunal. Some of the well accepted principles are that, the review court should not sit as appellate court over a judgment or order sought to be reviewed, review should be allowed only in case when there is mistake apparent on the face of the record and when serious questions of laws are raised which cannot be decided without deep going into and thrashing out the law points or where two views are possible, the review court should not upset the

judgment/order. Here in present case, new points sought to be raised which were not raised when OA 185/2009 was decided. Seriously debatable questions of laws have been raised and view can be taken in either way. Therefore, we are of considered opinion neither case for condonation of delay is made out nor it is a fit case to interfere in impugned order. Hence the RA is dismissed.

16. We would like to appreciate the efforts of both the counsels, Mr Ankur Chhibber and Mr SR Kalkal for their preparation, presentation and assisting us.

17. Learned counsel for UOI sought Leave to Appeal against this order. We are of considered opinion that in view of the involvement of important questions of law of public importance, we hereby grant Leave to Appeal before the Honble Supreme Court is granted.

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