SUPREME COURT OF INDIA

Union of India

Vs.

A.S. Gangoli

(Tarun Chatterjee and R V Raveendran JJ.)

26.04.2007

JUDGMENT

R. V. RAVEENDRAN, J.

1. This appeal by special leave is directed against the judgment dated 14.3.2001 passed by the Bombay High Court in W.P. No.2973 of 1989.

2. Respondents 1 to 10 were commissioned into Indian Air Force (IAF for short) during 1963 to 1967. By the year 1987, they had put in more than 20 years of service and had reached the rank of either Group Captain or Wing Commander.

3. The Government of India, by Circulars dated 17.3.1986 and 19.2.1987 of the Defence Ministry, read with O.M. dated 6.3.1985 of Finance Ministry permitted pro-rata pensionary benefits to officers of defence services on their immediate absorption in Central Public Enterprises. As there was a surplus of officers in the middle seniority level, IAF came up with schemes from time to time enabling officers to take premature retirement voluntarily and join public sector undertakings ('PSUs' for short) and autonomous bodies, without losing the pensionary benefit relating to the IAF service.

One such scheme notified on 1.4.1986 invited the officers in the age group of 40 to 47 years to retire voluntarily and join M/s. Vayudoot Ltd.- a public sector undertaking. Several IAF officers including Respondents 1 to 10 applied for premature retirement from IAF under the said scheme in order to join Vayudoot Ltd. By order dated 6.5.1987, the Air Headquarters accepted the proposal for permanent absorption of respondents in Vayudoot Ltd. and also conveyed the Government's approval for premature retirement of the respondents from the Indian Air Force in public interest with effect from 18.5.1987. The respondents accordingly left IAF and joined Vayudoot Ltd.

By order dated 13.7.1987, the Ministry of Defence sanctioned pensionary benefits to respondents in terms of Ministry's Circular dated 19.2.1987.

4. The Government of India issued a Circular dated 30.10.1987 in regard to the implementation of the Government decisions on the recommendations of the Fourth Central Pay Commission relating to pensionary benefits for Armed Forces Officers/personnel retiring or dying in harness on or after 1.1.1986. The said circular modified the rules and regulations concerning pensionary benefits of Commissioned Officers and personnel below officer rank, to the extent indicated therein. Clause 5 of the said circular defined "qualifying service" reckonable for pension and Death-cum-Retirement gratuity as follows :

(i) the actual qualifying service rendered by the officer plus a specified weightage, for purposes of pension (the weightage being 9 years in the case of Pilot Officers and Flight Lieutenants, 8 years for Squadron Leaders, 7 years for Wing Commanders and Group Captains, 5 years for Air Commodores, and 3 years for Air Vice Marshals and Air Marshals).

(ii) the actual qualifying service rendered by the officer plus a weightage of 5 years for purposes of Death-cum-Retirement Gratuity.

The grant of above weightage was subject to the condition that total qualifying service including weightage shall not exceed 33 years. Notes (1) and (3) to clause 5 of the circular dated 30.10.1987 relevant for our purpose are extracted below:

"(1) There will be no weightage for officers and personnel below officer rank who retire prematurely for permanent absorption in PSUs and autonomous bodies.

xxxxxx (3) The above weightage shall not be reckoned for determining the minimum qualifying service specified for admissibility of Retiring/service Pension i.e. 20 years for service officers (15 years for late entrants), 15 years for personnel below officer rank and 20 years for NCs(E)."

In view of Note (1) to clause 5, the pension and retirement gratuity of the respondents were settled by treating the actual service rendered by them, as the 'qualifying service', without addition of any weightage.

5. The respondents were aggrieved by the non-addition of weightage to their qualifying service, for purposes of pension and gratuity. According to them, when the scheme was introduced, they were assured that there would be no loss of pensionary benefits. They contended that Note (1) to clause 5 of the Circular dated 30.10.1987 which denied them the benefit of weightage amounted to a 'denial' of pensionary benefits and was also discriminatory.

They, therefore, filed W.P. No.2973 of 1989 in the Bombay High Court for quashing Note (1) to clause 5 of the circular dated 30.10.1987 as being violative of Article 14. They also sought a direction to the appellant to extend them the weightage of seven years for computing their pension and weightage of five years for computing their retirement gratuity, re-calculate their pensionary benefits, and pay the arrears.

6. The writ petition was resisted by the appellant. It contended that the respondents did not suffer any loss of pensionary benefits, as pension and retirement gratuity were calculated with reference to the actual qualifying service rendered by the respondents as per Rules. It was further contended that the Government's decision (in pursuance of the Fourth Pay Commission recommendations) to provide weightage in calculating the qualifying service to the retirees and exclusion of the class of retirees described in Note (1) to Clause 5, from such benefit was a matter of policy, arrived at after taking note of relevant factors. It was submitted that exclusion under Note (1) was not discriminatory as those officers who retired prematurely for being permanently absorbed in PSUs/autonomous bodies constituted a 'well- defined class' who had been provided several benefits, distinct and different from regular retirees. It was submitted that the classification was based on an intelligible differentia, which had a rational nexus with the object sought to be achieved.

7. The writ petition was allowed by judgment dated 14.3.2001. The High Court declared Note (1) appended to clause 5 of the Government Circular dated 30.10.1987 as illegal and inoperative and issued a consequential direction to the appellant to grant a weightage of 7 years for computing

pension and weightage of 5 years for computing the retirement gratuity of the respondents and pay them the difference. The decision of the High Court was based on the following reasoning :

(i) There was no rationale for carving out a separate category in respect of the group of officers and personnel who retired prematurely for being permanently absorbed in PSUs and autonomous bodies and denying them weightage. The classification of retirees -- one class consisting of officers/personnel who were permitted to retire prematurely for personal reasons, and another class consisting of officers/personnel who were permitted to retire prematurely for joining PSUs/autonomous bodies - was neither justifiable nor reasonable. The mere fact that different periods of qualifying service were prescribed for the two sets of retirees, was not sufficient to treat them differently.

(ii) When officers and personnel who sought premature retirement for personal reasons, were treated as normal retirees and extended the benefit of weightage, there was no reason why the officers and personnel whose premature retirement was accepted in public interest (for immediately joining PSUs), should be denied the benefit of weightage.

The said judgment is challenged by Union of India. The appellant contends that the High Court failed to take note of the relevant factors while considering whether there was a reasonable classification and whether there was hostile discrimination.

8. On the contentions urged, the question that arises for our consideration is whether denial of benefit of weightage (for pensionary benefits) to officers and personnel, who retired prematurely for permanent absorption in PSUs/autonomous bodies, is violative of Article 14.

9. According to the Respondents, the object of providing a weightage (that is addition of a certain number of years to the qualifying service) for purpose of pension and gratuity of defence personnel was to compensate them for the comparatively younger superannuation age, and for the hazardous and risky nature of defence service. It is stated that the Squadron Leaders retire at the age of 48 years, Wing Commanders at the age of 50 years and Group Captains at the age of 52 years as against the normal retirement age of 58/60 years. As the age of retirement increased as one rose in hierarchy of defence service, the weightage correspondingly decreased.

As noticed above, the weightage for pension was 9 years for Pilot Officers, 7 years for Group Captains, 5 years for Air Commodores and 3 years for Air Marshals. The respondents contend that having regard to the object underlying service weightage, any classification, among retiring defence personnel, with the intention of excluding a particular section of them from the benefit of service weightage, was violative of Article 14.

10. The appellant does not seriously dispute that the weightage given under clause 5 of the circular dated 30.10.1987 has some nexus with the early age of retirement in the defence services. But the Appellant submits that the very logic behind Respondents' contention would defeat their claim.

It is pointed out that if the reason for grant of weightage is the early age of retirement resulting in a lesser service period, then the benefit of weightage should rightly be denied when alternative civilian service is made available thereby removing the disadvantage of shorter defence service. It is contended that note (1) to clause 5 excludes the benefit of weightage only to those who prematurely retire from defence service, for the immediate purpose of permanent absorption in a PSU/autonomous body, where the age of retirement is much higher. It is, therefore, contended that

the classification has a valid and direct nexus with the object sought to be achieved.

11. There is considerable force in the submission of the appellant.

Varying periods of weightage are added to the qualifying service of defence service officers to compensate for, or offset the disadvantage of early age of superannuation in defence service. The weightage of 7 years for a Group Captain is because he normally retires from Air Force Service at a comparatively early age of 52 years. If a Group Captain is permitted to prematurely retire so that he can be permanently absorbed immediately in a public sector undertaking where the retiring age is 58 or 60, the need to provide weightage disappears. Further, special provisions were made for such retirees under the circulars dated 17.3.1986 and 19.2.1987. They directed that premature retirement, to take up employment under PSUs, with the permission of the Government, will not entail forfeiture of service or retirement benefits. In such cases, the officer is deemed to have retired from the date of premature retirement and eligible to receive the retirement benefits, enumerated in those circulars. Therefore, the decision not to extend the benefit of weightage to those who retired prematurely for immediate permanent absorption in a PSU or autonomous body is a matter of policy of the government supported by logical reasons. So long as such policy is not manifestly arbitrary and does not violate any constitutional or statutory provision, it is not open to challenge.

12. We will now refer to the several benefits that were available to those who retired prematurely for joining public sector undertakings which were not available to other retirees. We have listed them in the following comparative table:

Premature retirees for joining PSUs/autonomous bodies Premature retirees for personal reasons and persons retiring on attaining the age of superannuation.

1. The minimum qualifying service for pension : 10 years (vide Circular dated 19.2.1987)

1. The minimum qualifying service for pension : 20 years (vide Regulation 25 of Air Force Pension Regulations).

2. The retirees entitled to 100% commutation of pension (vide the Vayudoot scheme and circular dated 19.2.1987).

2. The commutation permissible only in respect of a portion of pension not exceeding 43% (vide Air Force Instructions 4/S, para 13).

3. The retirees entitled to immediate employment without any 'lock-in' period.

(Vide Vayudoot scheme and order dated 6.5.1987).

3. The retiree (of the rank of Group Captain and above) could not accept commercial employment for a period of 2 years from the date of retirement (unless the retiree obtains the special permission of the President) - vide Regulation 18 of Air force Pension Regulations.

4. The retiree will have additional service till age of superannuation under PSU/ autonomous body.

4. The retiree's service comes to an end with effect from the date of retirement/premature retirement.

It is thus seen that the officers who took premature retirement for the purpose of immediate employment in PSUs/autonomous bodies received several specific benefits, including assured immediate re-employment and extended service. The persons who retire in the usual course and those who prematurely retire for personal reasons, were not entitled to those special benefits. Therefore, the persons who retired prematurely for immediate purpose of joining PSUs., clearly formed a distinct and separate class. In view of the special benefits extended to them, if note (1) to Regulation 5 excluded them from the benefit of weightage which was given to the other retirees, it is not discrimination. The High Court completely overlooked these aspects and its decision cannot therefore be sustained.

14. The Respondents contended that they had no choice but to prematurely retire, as they were 'directed' to take premature retirement in public interest and therefore, they have to be treated on par with other retirees. This is factually incorrect. The Appellant did not direct the Respondents to take premature retirement. It framed a scheme which enabled certain categories of officers to take premature retirement voluntarily, so that they can join Vayudoot Ltd., a public sector undertaking.

The scheme, as also the order dated 6.5.1987, clearly show that the respondents applied for premature retirement voluntarily for the purpose of joining Vayudoot and the Government granted approval for their premature retirement in public interest so that they could be absorbed in Vayudoot.

This is not a case of compulsory retirement in public interest nor a case of directing the employees to retire prematurely in public interest. The expression "in public interest" is used in the order dated 30.5.1987 with reference to the acceptance of the request for voluntary retirement. The permission to take up commercial employment linked to the acceptance of the request for premature retirement, unshackled the Respondents from the rigours of the Air Force Pension Regulation No. 18 which is extracted below:

"18. (a) An officer who is granted any pension, gratuity or other benefit in respect of his air force service or who is likely to receive any pension, gratuity or other benefit under these Regulations shall obtain the permission of the President before accepting an employment under a Government outside India at any time after his air force service has ceased. An officer of the rank of Group Captain or above whether held in substantive capacity or otherwise, who is granted a pension, gratuity, or other benefit in respect of his air force service or who is likely to receive any pension, gratuity or other benefit under these Regulations, shall also obtain such permission prior to acceptance of any commercial employment before the expiry of two years from the date his air force service ceases.

(b) An officer permitted by the President, before his air force service ceases, to take up a particular employment under a Government outside India, or commercial employment, shall not, however, be required to obtain subsequent permission for his continuance in that employment.

(c) No service or disability pension or other recurring benefits shall be payable to any officer who accepts an employment in contravention of the provisions of this regulation, in respect of any period for which he is so employment or for such a longer period as the President may direct.

Gratuity where due, but not already paid, shall also be liable to be forfeited in part or in full as the President may, at his discretion, decide.

It is, therefore, clear that but for the prior permission, the voluntary premature retirement would have entailed the denial of pensionary benefit in the manner and to the extent mentioned in clause (c) of Regulation 18.

15. Another contention urged by the respondents is that there was an assurance by the appellant that there would be no loss of benefits in the matter of pension and gratuity if they took premature retirement and that assurance was breached by denying the benefit of weightage. But the respondents have not been denied the benefit of pension or gratuity. Their pension and retirement gratuity have been calculated with reference to their actual qualifying service and they have been given those benefits. What has been denied to them is not pension benefits, but the benefit of weightage which was given to retirees under clause 5 of the Circular dated 30.10.1987.

The benefit of weightage is denied only to those who retired prematurely for the immediate purpose of joining PSUs/autonomous bodies. We have already referred to the reasons for such denial. First, they will have the benefit of joining immediately and continuing in service in a public sector undertaking or autonomous body, without losing their pensionary benefits.

The other retirees including those retiring prematurely on personal grounds did not have the benefit or such immediate assured alternative employment, with pensionary benefits for the defence service intact. Secondly, they got the benefit of 100% commutation and a lesser minimum period of qualifying service which the other retirees did not get.

16. It was next contended that certain retirees (Wing Commander H.M.

Majumdar and Others) who took premature retirement on personal grounds, were subsequently permitted to take up commercial employment even before the expiry of two years, and as a result, they got the benefit of service weightage as also the benefits of a commercial employment. It is, therefore, contended that there is no justification for denying the respondents the benefit of weightage. But, it should be noted that the cases referred to are of officers who took premature retirement on personal grounds and not for the purpose of joining the service of any PSU. Consequently, note (1) to clause 5 of Circular dated 30.10.1987 did not apply to them and therefore, they were given the benefit of service weightage. They were all of the rank of Wing Commander and were not subject to the two years bar on commercial employment imposed under Air Force Pension Regulation No. 18. The fact that after retiring on personal grounds, they searched and secured employment in some PSU/autonomous bodies is a fortuitous circumstance.

Many who retired on personal grounds, have not secured any employment elsewhere, let alone with PSUs. Therefore, the cases of those who retired on personal grounds (but subsequently secured employment), cannot be compared with respondents who prematurely retired for the immediate assured employment in a PSU/autonomous body.

17. It was contended that one Lt. Col. B. R. Malhotra was permitted to retire prematurely for the immediate purpose of being absorbed in a PSU (Bharat Electronics Ltd - 'BEL' for short); that he was also denied the benefit of weightage, and approached the Delhi High Court in CWP No. 184 of 1997 and the High Court granted the benefit of weightage by its judgment dated 12.11.1997 [reported in Lt. Col. B. R. Malhotra vs. Union of India - 71 (1998) Delhi Law Times 498]; that the appellant did not challenge the said decision, but gave effect to it; and that having done so, the Appellant is required to give such relief to Respondents also in view of the doctrine of constructive res judicata. An identical contention claiming relief based on a direction in the case of another

retiree, was negatived by this Court in Col.

B. J. Akkara (Retd.) vs. Government of India - 2006 (11) SCC 709, following the earlier decision in State of Maharashtra vs. Digambar - 1995 (4) SCC 683. This Court held :

"A particular judgment of the High Court may not be challenged by the State where the financial repercussions are negligible or where the appeal is barred by limitation. It may also not be challenged due to negligence or oversight of the dealing officers or on account of wrong legal advice, or on account of the non-comprehension of the seriousness or magnitude of the issue involved. However, when similar matters subsequently crop up and the magnitude of the financial implications is realized, the State is not prevented or barred from challenging the subsequent decisions or resisting subsequent writ petitions, even though judgment in a case involving similar issue was allowed to reach finality in the case of others. Of course, the position would be viewed differently, if petitioners plead and prove that the State had adopted a 'pick and choose' method only to exclude petitioners on account of malafides or ulterior motives."

That apart, the facts of the case of Lt. Col. B. R. Malhotra were different. He was working on deputation with BEL. He retired from the Army on 12.5.1985. He got absorbed in BEL and was given post facto sanction by the President on 10.7.1985. Certain 'weightage element' was sought to be deducted from the standard rate of pension on the ground that he had been permanently absorbed in a PSU. The High Court found that there was in fact no weightage element in his case and there was also no rule or regulation applicable to him, which enabled Union of India to deduct any 'weightage element'. The said decision is, therefore, of no relevance.

18. Respondents placed reliance on the decision of this Court in Union of India v. Lt. Col. P.S. Bhargava [1997 (2) SCC 28] wherein while considering Regulation 16 of Army Regulations (which is in pari materia with Regulation 16 of the Air Force Pension Regulations), this Court held that once an Army Officer has to his credit the minimum period of qualifying service, he earns a right to get pension and such right can be taken away only if his service is not satisfactory (vide Regulation 3) or where he is cashired or dismissed or removed from service (under Regulation 16). This Court further held that cases of voluntary resignations of officers, who have to their credit the minimum period of qualifying service, did not fall under the categories who can be denied pension and, therefore, such officers, who voluntarily resign, cannot automatically be deprived of their terminal benefits. The said decision deals with the right to pension and is of no assistance to the respondents, as we are not concerned with any denial of pension or pensionary benefits. The case on hand relates to denial of service weightage to a specific class of retirees. So long as the exclusion is for reasons which are valid and reasonable and there is no discrimination, the respondents can have no grievance.

19. We, therefore, allow this appeal, set aside the order of the High Court and consequently, the writ petition of the respondents stands dismissed.