

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.167/2015

Order Reserved on:16.11.2016

Pronounced on:23.12.2016

Hon'ble Mr. K.N. Shrivastava, Member (A)

Vinay Kumar Bedi,
Aged-54 years, (Retired),
S/o Sh. Raj Jawahar Bedi,
R/o 580, Niti Khand-I,
Indira Puram, Ghaziabad (UP).

-Applicant

(By Advocate: Mr. Yogesh Sharma)

VERSUS

1. Delhi Transport Corporation,
Through its Chairman,
Govt. of NCT of Delhi,
I.P. Estate, New Delhi.
2. The Manager (Accounts),
Accounts Department,
DTC Headquarter,
New Delhi-02.
3. The Depot Manager,
Delhi Transport Corporation,
Rajghat Depot, New Delhi.

-Respondents

(By Advocate: Mr. Manish Garg)

ORDER

Through the medium of this Original Application (OA),
filed under Section 19 of the Administrative Tribunals Act,
1985, the applicant has prayed for the following main reliefs:

(i) That the Hon'ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 23.09.2014 and 09.12.2014 (Annex. A/1 & A/2) declaring to the effect that the same are illegal, arbitrary and against the rules and the law of the land and consequently pass an order directing the respondents to treat the applicant as voluntary retired w.e.f. 31.03.2012 with all consequential benefits.

(ii) That the Hon'ble Tribunal may further graciously be pleased to pass an order directing the respondents to release the retirement benefits and other pending dues including service pension, leave encashment, holiday allowance, arrear of D.A., bonus, education allowance etc. of the applicant with interest @ 18% from due date.”

2. The brief facts of this case are as under.

2.1 The applicant joined the Delhi Transport Corporation (DTC)-Respondent Organization on 09.02.1985 as a Conductor. He resigned from the service on 23.09.2014. He had opted for the Pension Scheme of the DTC and the same was allowed by the DTC vide order dated 27.11.1992. He submitted a representation to the respondents for sanction of pension to him. As no decision was taken by the respondents on the said representation, the applicant approached this Tribunal in OA No.1964/2014, which was disposed of vide order dated 30.05.2014 with the following directions to the DTC:-

“6. We direct the respondents to dispose of the representation within a period of 8 weeks from the date of receipt of a copy of this order. They should also ensure that whatever retirement benefits, including pension, as admissible, to him shall be paid within a further period of 8 weeks from the disposal of the representation.”

2.2 Pursuant to the ibid directions of the Tribunal, the respondents vide impugned Annexure A-1 order dated 23.09.2014 rejected the claim of the applicant for sanction of pension; the operative part of which reads as under:-

“Since the applicant resigned from the service of the Corporation and as per Rule 26 of the CCS (Pension) Rules, resignation entail forfeiture of past services, as such he is not entitled for pensionary benefits. As far as gratuity is concerned, it is stated that the applicant is also not entitled for interest no delay in releasing his gratuity because the gratuity had been released to the applicant inadvertently and necessary steps are being taken to recover the same”.

2.3 Aggrieved by the impugned Annexure A-1 order, the applicant has filed the instant OA praying for the reliefs as indicated in Para-1 (supra).

3. Pursuance to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. The respondents in their reply have made the following important submissions:-

- i) The applicant had rendered more than 20 years of service in DTC and that the minimum requirement for grant of pension is 10 years only.
- ii) The applicant had opted for Pension Scheme and the same was allowed to him vide order dated 23.09.2014. The applicant resigned from service of DTC on 23.09.2014.

iii) As per Rule-26 of the CCS (Pension) Rules, the resignation entails forfeiture of past service and, therefore, the applicant is not entitled for pension.

iv) The applicant has not submitted the pension forms after completing all the formalities relating to his pension.

v) The applicant had attempted to convert his resignation into voluntary retirement, which is not permitted.

4. Arguments of the learned counsel of the parties were heard on 16.11.2016. Shri Yogesh Sharma, learned counsel for the applicant and Shri Manish Garg, learned counsel for the respondents argued the case.

5. Learned counsel of the applicant besides reiterating the points raised by the applicant in his OA and rejoinder, submitted that this Tribunal has adjudicated on identical case in OA No.858/2013-**Ram Kishan vs. DTC** vide order dated 29.10.2014. The applicant in the said OA and the present applicant are identically placed. The Tribunal vide order dated 29.10.2014 had ordered grant of pension to the applicant in the said OA. Since the case of the applicant is squarely covered by the said order of the Tribunal, the applicant is entitled for identical reliefs.

6. Learned counsel for the respondents on the other hand stressed on the Rule-26 of the CCS (Pension) Rules, 1972 and

submitted that the applicant had resigned from service and, therefore, under this Rule his past service gets forfeited and as such he would not be entitled to grant of pension.

7. I have given my thoughtful consideration to the arguments put forth by the learned counsel for the parties and have also perused pleadings and documents annexed thereto. Apparently the DTC does not have any Voluntary Retirement Scheme (VRS). The applicant due to his personal circumstances wanted to sever his employment with the DTC. As no VRS was available, he resigned from the service.

8. I have perused the order of this Tribunal in **Ram Kishan** (supra). The applicant in that case was a Driver in DTC and due to his family circumstances and medical conditions, he had made a request to the respondent which reads as under:-

“On account of my family circumstances and my own medical condition, it is not possible for me to continue my service with DTC. I, hereby, tender my resignation from service and it may be considered as my three months notice. You are requested to kindly accept my resignation from service of DTC in terms of regulation 9(c) of the DRTA (Conditions of Appointment & Service) Regulations, 1952 and you are also requested to kindly relax/waive of three months notice and relieve me immediately and pay me my post retirement dues to which I am entitled as per rules and as per my qualifying service.”

9. The Tribunal after considering the case in **Ram Kishan** (supra) made the following important observations while adjudicating the matter:-

“9. My above view finds support from the judgment of the Delhi High Court in Sudarshan Kumar (supra), wherein the petitioner joined the Corporation as Conductor in the year 1953 and was also promoted as Junior Clerk and then as Senior Clerk. However, in the year 1975 he was removed from service, which was set aside by the labour court. The said award of the labour court was challenged before the High Court in WP(C) No.387/1986, which was dismissed in limine on 20.02.1986. It further appears that the petitioner since became ill and further on account of prolonged litigation, resigned from service on medical grounds in April, 1986 by giving notice. However, on introduction of the pension scheme vide office order No.16 dated 27.11.1992, the petitioner Sudarshan Kumar opted for the pension scheme vide letter dated 02.09.1993, which was rejected on the ground that he had resigned from service on 31.03.1986, and, therefore, as per rule 26 of the CCS (Pension) Rules, 1972, he was not entitled for pensionary benefits. The Hon’ble High Court having taken note of the facts and the provisions of the pension rules and office order No.16 dated 27.11.1992, held that the term “retired w.e.f. 3/8/1981” found in clause 3 of the office order No.16 should include a person who resigned also w.e.f. 03.08.1981 after rendering qualifying years of service of 30 years, as stated in rule 48 of the CCS (Pension) Rules, 1972. It was further held that the phraseology used in clause 3 of the scheme should be understood in a liberal sense so as to extend the benefit to all those who rendered the qualifying service and there cannot be any artificial distinction between a person who retired and a person who resigned, and thus allowed the writ petition with the direction to the respondents to extend the pension scheme to the petitioner.”

10. Finally, the Tribunal allowed the OA directing the DTC to sanction pension to the applicant therein.

11. I am of the view that the present case is identical as that of **Ram Kishan** (supra). After all, after putting in more than 20 years of service in DTC and attaining the eligibility for pension, why would the applicant have taken any action to forego his pension. He is an optee of the DTC Pension Scheme. This fact is not in dispute.

12. Therefore, I allow this OA in terms of the order of this Tribunal in **Ram Kishan** (supra). The respondents are directed to grant the pension and associated retiral benefits to the applicant within a period of three months from the date of receipt of a certified copy of this order.

13. No order as to costs.

(K.N. Shrivastava)
Member (A)

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