

**Central Administrative Tribunal  
Principal Bench, New Delhi.**

**OA-1970/2010**

**Reserved on : 28.01.2016.**

**Pronounced on :05.02.2016.**

**Hon'ble Mr. V. Ajay Kumar, Member (J)**  
**Hon'ble Mr. Shekhar Agarwal, Member (A)**

Sh. Ram Kishan,  
S/o Sh. Bhale Ram,  
R/o Village Bamnoli,  
Tehsil Bahadurgarh,  
Distt. Jhajjar, Haryana.

..... Applicant

(through Sh. L.R. Khatana, Advocate)  
Versus

Delhi Transport Corporation  
Through its Chairman  
DTC Headquarters,  
Indraprastha DTC Depot,  
New Delhi.

..... Respondent

(through Sh. Ajesh Luthra, Advocate)

**O R D E R**

**Mr. Shekhar Agarwal, Member (A)**

The applicant joined as a driver in Delhi Transport Corporation (DTC) on 16.09.1981. On 09.01.2008, he submitted an application to his Depot Manager (page-13 of the paper-book) in which he stated that he was not keeping well and was unable to continue driving in view of the same. He, therefore, submitted that he wanted to retire and was giving this application three months in advance. He prayed that he be retired at an early date. On 24.04.2008, the respondents issued a letter to him (page-15 of the paper-book) by which the applicant was informed that his application had been accepted w.e.f. 01.05.2008 under Clause-9(c) of the DRTA (Conditions of Appointment & Services) Regulation, 1952. It was also mentioned in that letter that as per

record the applicant had opted for DTC Pension Scheme in which his nominee was his wife as per entry in his service-book. Further, he was directed to deposit all the DTC articles in his possession before being relieved. The applicant was relieved from his duties w.e.f. 01.05.2008 and he was paid gratuity amount of Rs. 71,240/-. On 21.04.2009, he made an application to the respondents seeking release of pension and increased bonus. However, this was rejected by the respondents vide impugned order dated 25.06.2009 by which he was informed that as per Rule-26 of CCS (Pension) Rules and O.M. dated 21.02.1995 he was not entitled to DTC pension as after acceptance of his resignation by the competent authority his past services stood forfeited. Hence, he has filed this O.A. before us seeking the following relief:-

“(A) That this Hon'ble Tribunal may be pleased to declare the impugned action of the respondent of treating his request for voluntary retirement as resignation and to deny the pension and other retiral benefits to the applicant as illegal, arbitrary, discriminatory, unjust, unreasonable and improper and quash and set aside the impugned order dated 25.06.2009 passed vide letter no. NLD/I/c settlmt/09/2383 and direct the respondent to treat the applicant as have voluntarily retired and to grant him pension and increased bonus as per the recommendation of Sixth Pay Commission with 12% interest thereon.

(B) Pass such other order(s) or direction(s) as may be deemed fit and proper in the facts and circumstances of the case.”

2. In their reply, the respondents have submitted that the contentions raised by the applicant were misconceived. As per Rule-26 of the CCS (Pension) Rules, the applicant was not entitled to pensionary benefits as his past services have been forfeited on acceptance of his resignation. During the course of the arguments, learned counsel for the respondents filed another compilation on 27.01.2016, which has been taken on record. In that the respondents have made available a copy of DTC Pension Fund Regulations, 1995. According to the aforesaid Regulation, Regulation-2(iv)(a) reads as follows:-

“Central Civil Service (Pension) Rules, 1972 as amended from time to time excluding the Provisions for voluntary retirement under rule-48 & 48-A.”

Learned counsel for the respondents on the basis of the aforesaid Regulation has taken additional plea that in the Pension Scheme adopted by DTC, Rule-48 & 48(a) of CCS (Pension) Rules, 1972 were excluded. Thus, there was no provision for voluntary retirement under the DTC Pension Scheme.

3. We have heard both sides and have perused the material on record. It is not disputed that the applicant had joined DTC in 1981 and had served them for 27 years. On 27.11.1992 when DTC introduced Pension Scheme for its employees, the applicant opted for the same. The contention of the applicant is that he had submitted an application seeking retirement and, therefore, the respondents should not have treated the same as resignation and forfeited his past services making him ineligible for pension. The respondents, on the other hand, argued that since Rule-48 and 48(a) of the CCS (Pension) Rules had been excluded from the Pension Scheme by DTC, there was no provision for voluntary retirement in DTC. Hence, the applicant's application has been treated as resignation and he has been relieved from the DTC services w.e.f. 01.05.2008. We also notice from the file that this O.A. had earlier been allowed by us vide order dated 28.04.2011. However, subsequently the respondents sought review of the aforesaid order on the ground that Rules-48 and 48(a) of CCS (Pension) Rules had not been adopted by the DTC in their Pension Scheme. This ground was accepted and RA was allowed and OA was restored to its original number.

3.1 Thus, we have to now decide whether the respondents were right in claiming that Rules 48 and 48(a) of the Pension Rules are not part of their Pension Scheme and consequently there is no provision for voluntary retirement. From the compilation made available by the learned counsel for the

respondents, it is evident that the Pension Scheme was introduced in DTC only through Executive Instructions dated 27.11.1992. It also appears from their various communications particularly one dated 21.02.1995 (page-22 of the paper-book) that DTC had been following CCS (Pension) Rules, 1972. However, they also formulated DTC Pension Fund Regulations in 1995 (page-35 of the paper-book). Learned counsel for the respondents fairly admitted that these Regulations had never been notified. He also could not produce any documents to show whether any Instructions were issued by DTC circulating these Pension Fund Regulations to its employees. Thus, these Regulations have largely remained on the files of the DTC only. Under such circumstances, it was not possible for employees of DTC to be aware of these Regulations, least of all semi literate employees like the applicant herein. Thus, it is evident that DTC have applied such provisions to decide the case of the applicant, which were never notified nor even circulated to the employees. In our opinion, this was grossly unfair and unjust.

3.2 Further, we find from the application submitted by the applicant on 09.01.2008 that he had sought retirement from DTC and had not submitted his resignation. Even if the contention of DTC that there was no provision for voluntary retirement in the DTC Pension Scheme is accepted, in all fairness to the employee, the respondents should have informed him that there was no provision of retirement and given him an opportunity to reconsider his decision, if he so desired. There was no justification in converting his request of retirement to resignation suo moto and dealing with his case accordingly, particularly, considering the fact mentioned above that DTC employees were unaware of the Pension Fund Regulations, 1995, which the DTC were invoking to decide the case of the applicant. Also as per DoP&T O.M. No.28034/4/94-Estt.(A) dated

31.05.1994 resignation has to be clear and unconditional. This cannot be said to be the case herein. Since the applicant had sought retirement, by no stretch of imagination can it be held that he had unconditionally agreed to forfeiture of 27 years of his service, which resignation entails.

3.3 Learned counsel for the applicant relied on the judgment of Hon'ble High Court of Delhi in Writ Petition (C) No. 4871/2010 **(Shanti Devi Vs. DTC)** dated 15.10.2012. On going through the facts of this case, we find that the petitioner's husband Dilbagh Singh, who was employed as Driver with DTC had submitted an application for being relieved from the duties by DTC on the ground of sickness. He had also prayed that since he had opted for pension, he should be given pensionary benefits. The respondents in that case had taken the plea that the application submitted by the petitioner was for resignation and accordingly it was dealt under Rule-26 of CCS (Pension) Rules, 1972. Consequently, the petitioner's husband was found to be not entitled to pension. The whole controversy revolved around the fact whether the application submitted by the petitioner's husband was to be treated as resignation or as an application for voluntary retirement. Hon'ble High Court of Delhi had under those circumstances come to the conclusion that the petitioner's husband's case should be treated as one for voluntary retirement under Rule-48(a) of CCS (Pension) Rules. The Writ Petition was accordingly allowed. However, we find in this case the respondent DTC had not taken the plea that Rule-48(a) of CCS(Pension) Rules had been excluded while formulating the DTC Pension Scheme. Since this additional plea has been taken in the instant case, this judgment relied upon by the applicant cannot be straight away applied herein and benefit of the same extended to him. Moreover, in the instant case there is no dispute that the applicant had asked for retirement. However, the

respondents had suo moto treated that as resignation in view of not adopting Rules 48 and 48(a) of CCS (Pension) Rules.

3.4 Similarly, learned counsel for the applicant relied on the judgment of Single Bench of this Tribunal in OA-858/2013 (**Ram Kishan Vs. DTC**) dated 29.10.2014. Again, we find in this case also the controversy was whether the applicant's application for quitting service be treated as resignation or as an application for voluntary retirement. The Tribunal had concluded that the applicant's application has to be treated as one for voluntary retirement and had allowed the OA accordingly. However, in this case also the respondents had not urged that Rule-48(a) of the CCS Pension Rules was not part of their Pension Scheme. Hence, for the same reason as given above in **Shanti Devi's** case (supra) this judgment also cannot be of help to the applicant.

3.5 Next the applicant's counsel relied on the judgment of this Tribunal in TA-875/2009 (**Mukesh Vs. DTC**) dated 08.07.2009. However, respondents' counsel disputed that this judgment could be of any help to the applicant as it was delivered in the context of Voluntary Retirement Scheme introduced by the DTC on 03.03.1993 for a limited period as a one time measure. On going through the judgment, we find merit in the contention of the learned counsel for the respondents. Clearly, the aforesaid judgment was in the context of Voluntary Retirement Scheme circulated on 03.03.1993 and cannot be applied in the instant case. Similarly, the judgment of Hon'ble High Court of Delhi in LPA No. 33/1998 (**DTC Vs. Baidnath Bhargava & Ors.**) dated 16.03.2000 also cannot be of much help to the applicant as that has also been delivered in the context of the same Voluntary Retirement Scheme.

4. For the reasons stated above in paras 3, 3.1 & 3.2, we are of the opinion that this O.A. deserves to be allowed and the impugned order dated 25.06.2009 of the respondents deserves to be quashed. We order accordingly. During the course of the arguments, it was mentioned that the applicant had only few months of service left for superannuation when he was relieved. Considering the same, we direct the respondents to grant leave of the kind due/extra ordinary leave to the applicant for the period 01.05.2008 (the date on which he was relieved) till the date of his superannuation. Thereafter, the applicant may be paid pension as per his entitlement under the DTC Pension Scheme. The respondents may also consider the applicant's case for increased bonus in the light of the aforesaid. Considering the facts and circumstances of the case, we are not inclined to allow any interest on the arrears of pension and increased bonus, if any. The respondents shall grant the above benefits to the applicant within a period of eight weeks from the date of receipt of a certified copy of this order. No costs.

**(Shekhar Agarwal)**  
**Member (A)**

**(V. Ajay Kumar)**  
**Member (J)**

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