

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4296/2014

Order Reserved on: 07.03.2017
Order pronounced on 09.03.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Jai Kumar Jain, 57 years
Ex. Cond., B.No.17498/37080
Flat No.257, Pocket 24
Sector-24, Rohini
Delhi-110086. Applicant

(By Advocate: Sh. J.S.Mann)

Versus

1. The Chairman Cum MD
Delhi Transport Corporation
Govt. of NCT of Delhi
I.P.Estate
New Delhi-110002.
2. The Depot Manager
Delhi Transport Corporation
Govt. of NCT of Delhi
Rohini Depot-1
Delhi – 110 085. Respondents

(By Advocate: Sh. Ajesh Luthra)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, a Conductor under the Respondent-Delhi Transport Corporation (in short, DTC), and who voluntarily retired

from service w.e.f. 30.04.1993, filed the OA seeking a direction to the Respondent-DTC for granting of pension from the date of his retirement with arrears and with interest.

2. On his selection, the applicant was directed to undergo two months training for the post of Retainer Crew Conductor (in short, RCC) at Training School, along with others vide Order dated 02.09.1982. On completion of the said training the applicant was offered the appointment as RCC vide Order dated 02.11.1982. Accordingly, he was appointed as RCC w.e.f. 06.11.1982, vide Order dated 05.11.1982. Thereafter, the applicant was brought on monthly rates of pay w.e.f. 06.05.1983 in the pay scale of Rs.260-400 vide Order dated 20.07.1983.

3. The respondent-DTC introduced Voluntary Retirement Scheme (in short, VRS), vide proceedings dated 03.03.1993. Since the applicant fulfilled the requisite conditions under the said Scheme, he applied for the same and accordingly he was allowed to retire voluntarily from service of the Respondent-DTC w.e.f. 30.04.1993, vide Order dated 29.04.1993.

4. When the applicant's representations, requesting to grant Pension, were rejected on the ground that the applicant had not rendered the qualifying service of 10 years, vide order dated 01.04.2008, and by way of various subsequent orders, the present OA has been filed.

5. Heard Shri J.S.Mann and Sh. J.C.Kunadia, the learned counsel for the applicant and Shri Ajesh Luthra, the learned counsel for the respondents, and perused the pleadings on record.

6. The learned counsel for the applicant submits that to make himself as eligible to be considered under the VRS Scheme, an employee must have completed 10 years of service in the respondent-Corporation or completed 40 years of age. Admittedly, though the applicant has not completed 40 years of age as on the relevant date, but as the applicant had completed the required 10 years of service, the respondents considered his case under the Scheme and accordingly allowed him to retire voluntarily from service. In the proforma for consideration of officers/employees for VRS, the respondents themselves mentioned that the applicant joined in the service on 06.11.1982 and that he completed 10 years 5 months 24 days, as on the date of his retirement under VRS Scheme, and accordingly paid the retirement benefits for each completed year of service as per the terms of the VRS Scheme. He was also paid the Gratuity for 10 years period. Hence, for granting pension, the respondents cannot say that the applicant has not rendered the qualifying service of 10 years.

7. The applicant further submits that his service w.e.f. 03.09.1982 to 05.11.1982, i.e., the period in which he has undergone the training for the post of RCC, and the period from 06.11.1982 to 05.05.1983, i.e., the period during which he worked as RCC on daily rate basis and

the period of 134 days during which the applicant availed the leave without pay, while he was in service, are also required to be counted for the purpose of calculation of qualifying service for granting of pension. These periods, in fact, have been counted by the respondents for calculation of the required service for consideration for voluntary retirement. If these periods are counted, the applicant's total qualifying service would be more than the required 10 years. As per the CCS (Pension) Rules, 1972, the applicant is entitled for counting of these periods as qualifying service for granting of pension.

8. The learned counsel for the applicant further submits that the respondents granted pension to certain employees though their service was less than 10 years but arbitrarily rejected to grant pension to the applicant though he completed more than 10 years service.

9. The learned counsel placed reliance on the following:

- a) **Delhi Transport Corporation v. Rajender Singh**, WP(C) No.2264/2012 dated 20.04.2012 of the Hon'ble High Court of Delhi.
- b) **DTC v. Balwan Singh & Others**, Civil Appeal No.7159/2014 dated 09.11.2016 of the Hon'ble Supreme Court of India.
- c) **Jai Pal Singh v. Delhi Transport Corporation & Others**, WP(C) No.3665/2013, dated 29.05.2013 of the Hon'ble High Court of Delhi.

d) Proceedings No.28/16/2004-P&PW(B) dated 03.06.2004 of the Ministry of Personnel and Public Grievances and Pensions.

10. Denying the submissions of the applicant, the learned counsel for the respondents, submits that the service rendered by the applicant while undergoing training and while working as RCC on daily rate basis, and also the period of leave without pay cannot be counted as qualifying service for the purpose of granting pension. The applicant was brought on monthly rate of pay as RCC w.e.f. 06.05.1983 and hence, the service from 06.05.1983 alone can be reckoned for the purpose of qualifying service for pension and accordingly, the applicant rendered 9 years 7 months and 10 days qualifying service only, after deducting the 134 days of leave without pay.

11. The learned counsel for the respondents mainly submits that the consideration of service for the purpose of voluntary retirement is as per the terms of the said Scheme and whereas the qualifying service for the purpose of pension is as per the statutory rules, i.e., the CCS (Pension) Rules, 1972, and hence, there cannot be any comparison between the two.

12. The respondents have not granted pension to any of its employees unless rendered the minimum qualifying service of 10 years. Even if the respondents granted pension to any of the employees who have not rendered the qualifying service of 10 years,

the same would be in violation of the rules and hence, the applicant cannot claim negative equality.

13. The learned counsel opposed the OA on the ground of delay and latches also. He submitted that the request of the applicant for pension was rejected in 2008 itself and his subsequent representations and rejections do not extend the period of limitation for the OA filed in 2012.

14. The learned counsel for the respondents placed reliance on the following:

- a) **DTC v. Lillu Ram**, Civil Appeal No.11440 of 2011 dated 14.12.2011 of the Hon'ble Supreme Court of India.
- b) **DTC v. Balwan Singh & Others**, Civil Appeal No.7159/2014 dated 09.11.2016 of the Hon'ble Supreme Court of India.
- c) **Delhi Transport Corporation v. Karan Singh**, WP(C) No.7662/2015 dated 15.03.2016 of the Hon'ble High Court of Delhi.
- d) **Udai Ram v. Delhi Transport Corporation** in TA No.1448/2009 dated 07.07.2010 of the CAT, PB, New Delhi.

15. In view of settled position of law with regard to limitation of the issue of fixing or not fixing or wrong fixing of pay scale or pension declared in **M. R. Gupta v. Union of India & Others**, (1995) 5 SCC 628 and the subsequent decisions in that line, by considering the same as continuous cause of action, we reject the submission of the respondents on the point of limitation.

16. In **Lillu Ram** (supra), the Hon'ble Apex Court, while considering the claim of an employee of DTC for pension, who also voluntarily retired under the same Scheme of VRS, and while holding that the consideration under VRS Scheme was governed by the terms and conditions of the said Scheme itself and that granting of pension was governed under the statutory rules, i.e., the CCS (Pension) Rules, 1972 and merely because the application for voluntary retirement was accepted, automatically, the employee would not become entitled for grant of pensionary benefits, held as under:

"21. When the matter was being heard, we had some doubt in our mind with regard to actual absence of the Respondent during the period of 10 years of service, rendered with the Appellant. Thus, to satisfy ourselves, we had asked the learned counsel for Appellant to produce before us the original Service Book of the Respondent. We have gone through the same ourselves and find that he had remained absent from duty without leave unauthorisedly for a total period of 486 days out of total 10 years of service with D.T.C. His service record further reflects that he was issued three warnings and one censure from time to time for remaining absent from duty unauthorisedly. But there was no improvement in the performance of the Respondent. If the aforesaid period of 486 days is deducted from the period of 10 years that he had worked with the Appellant then his actual working days would be reduced to 8 years 3 months and 17 days. If that be so, then as per the definition of 'qualifying service' under Clause 3(1)(q) of the Pension Rules, he has certainly not rendered service while on duty or otherwise for a period of 10 years to become entitled for pensionary benefits.

22. The minimum qualifying service which is required for earning pensionary benefits finds place in Rule 49 of the Pension Rules. For the sake of convenience, Rule 49 is reproduced hereinbelow :

"49. Amount of pension.- (1) In the case of a government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service.

(2) to (4). x x x x x N.A.
 (5) & (6) . x x x x x."

23. Thus, looking to the matter from all angles, we are of the considered opinion that even though Respondent had completed 10 years of service for being entitled to claim VRS but he had certainly not become entitled to claim pensionary benefits as he had not put in qualifying service of 10 years with the Appellant.

24. Conjoint reading of Rule 3(1)(q) and Rule 49 of the Pension Rules quoted hereinabove, make it abundantly clear that only those employees would become entitled to pensionary benefits, who had put in 10 years of qualifying service.

25. Looking to the facts of this case, where Respondent/employee had remained absent, without any sanction unauthorisedly for a long period of 486 days during the period of 10 years of service, he had put in with the Appellant, he would fall short of completing 10 years of qualifying service.

26. As mentioned hereinabove, there are two different things one with regard to grant of VRS and another with regard to entitlement for pensionary benefits. First one is governed under the VRS whereas the second one is governed under the Statutory Rules. Merely because his application for voluntary retirement was accepted, automatically, he would not become entitled for grant of pensionary benefits.

xx xx x xx

29. Thus, we are fortified in our view that Respondent was not entitled to pensionary benefits, even though he had become entitled for voluntary retirement only."

17. In **Balwan Singh** (supra), where the counting of the period of leave without pay for the purpose of calculation of qualifying service for pension was an issue, the Hon'ble Apex Court, after observing

".....In the impugned judgment of Delhi High Court rendered on 13th October, 2011 reliance has been placed upon several judgments of the High Court wherein a categorical view was taken that unless the employee is given a notice by entry into the service book or otherwise that he is guilty of unauthorised absence, the period of absence accepted as leave without pay cannot be treated as unauthorised absence and cannot be excluded from the qualifying service for want of notice to the employee directly or indirectly conveying that such period of absence will dis- entitle him to any benefits like pension etc. beyond the salary.

On behalf of the appellant reliance has been placed upon a judgment of this Court in the case of "DTC vs. Lillu Ram which was rendered on 14th December, 2011 passed in C.A. No. 11440 of 2011. Although the said judgment proceeds on the factual premise that the employee had been absent unauthorisedly for a long period of 486 days on the basis of service book produced before the Court and perused by it, according to learned counsel for the appellant, there was no specific entry in the service book of Lillu Ram that he was unauthorisedly absent, rather this Court treated 486 days of leave without pay to be unauthorised absence and held that

such days of absence will not be counted towards qualifying service. We were shown photo copy of service book of Lallu Ram in support of the aforesaid submission.

The judgment in the case of Lallu Ram (supra) rendered by a Division Bench does not show any consideration or reasons as to why when factually the employee had been sanctioned leave without pay, such period was treated by this Court to be a period of unauthorised absence. Even the relevant rules such as Rules 27 & 28 of the Central Civil Service (Pension) Rules, 1972 or F.R.17-A of the Fundamental Rules on which reliance has been placed by the respondents was not noticed or considered.

Prima facie, we are of the view that no adverse effect can be permitted upon the right of the employee to receive pension unless he was given notice by appropriate entry in the service book or through other notice that his absence will be treated as unauthorised absence and will not be counted towards qualifying service for pension. In absence of such notice, after the respondent-employee has taken voluntary retirement under VRS and that too on the ground that he has completed ten years of service, it may be unjust and very harsh to inflict him with such adverse consequences. No doubt in sub rule (2) of Rule 28 of the Pension Rules which relates to condonation of interruption of service, an opportunity of representation is required to be given to the employee before making entry in service book regarding forfeiture of past service only, but there appears to be some substance in the submission that Rules of Natural Justice may be attracted even in other similar situation where the entry is regarding unauthorised absence, if it is to have the effect of break in service adversely affecting the length of qualifying service for pension.

In our considered view, the judgment rendered by the Division Bench in case of Lillu Ram (supra) requires re-consideration by a larger Bench. For that purpose, the matter may be brought to the notice of the Hon'ble the Chief Justice of India."

(Emphasis added)

directed to list the matter for hearing.

18. In **Rajender Singh** (supra), while considering the issue that "whether the respondent is entitled to pension on the ground that he has 10 years of qualifying service in the backdrop of Rule 49(3) of CCS (Pension) Rules, 1972", the Hon'ble High Court of Delhi held that "on a plain reading of Rule 49(3), it is clear that while calculating the length of qualifying service, a fraction of a year equal to 3 months and above is to be treated as a completed '**one half-year**' and reckoned as qualifying service for that duration. The SLP No.30133/2012 filed

against the said order was dismissed, in the peculiar facts of the said case, while leaving the question of law open by order dated 26.04.2013.

19. The proceedings No.28/16/2004-P&PW(B) dated 03.06.2004 of the Ministry of Personnel and Public Grievances and Pensions, also provides for counting of the qualifying service of less than 10 years but more than 9 years 9 months rounding off to 10 years for the purpose of granting of pension.

20. In **Udai Ram** (supra), with regard to counting of the period as Retainer Crew Driver on daily wage basis, i.e., before bringing to monthly rate basis, this Tribunal held, as under:

"4. The main ground put forward on behalf of the applicant is that he is eligible as his qualifying service is to be taken as 10 years. But it is noticed that the appointment of the applicant on 04.06.1985 as Retainer Crew Driver was on daily wage basis which is not disputed. The learned counsel for the applicant is unable to point out any Rule or judgment which permits inclusion of daily wage engagement for such purpose in the DTC. He has referred the judgment in the case of Satyavir Singh (supra), particularly para-10 thereof, to show that the applicant would be so eligible because a reliance has been placed therein on the observations in the judgment of the Hon'ble High Court of Delhi in the case of Jagpal Singh Vs. DTC, 1997(70)DLT 435 to take the service as 10 years. But it could not be indicated there from that any law has been laid down to treat daily wage engagement as qualifying service for pension in DTC."

21. In **Karan Singh** (supra), the Hon'ble High Court of Delhi, held as under:

"8. Secondly, we notice that the respondent was appointed as a Retainer to Conductor vide order dated 24.05.1983 after he had qualified the written test on 13.05.1983. It is at this stage that the respondent was engaged as a regular employee by the petitioner – Corporation. Before this, the respondent had undergone a training in terms of the office memorandum dated 09.02.1983. This aspect was noticed by the Division Bench in their judgment dated 29.05.2013, while deciding the question as to whether the respondent had rendered qualifying service of ten years. It was held that the

respondent had rendered total qualifying service of 9 years, 5 months and 3 days and Rule 49(3) of CCS Pension Rules would not be applicable. The Division Bench had observed:

"The question which arises for our consideration "whether the respondent is entitled to count the period of 98 days of leave without pay for the purpose of qualifying service of 10 years, to be eligible for grant of pension?" Rule 21 of the CCS (Pension) Rules, 1972, stipulates leave during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. In other words, it is only such leave for which salary is payable shall count as qualifying service. In this case the W.P.(C) 9029/2011 6 of 8 leaves was without pay. Hence, the period of 98 days shall necessarily be excluded (sic) for the purpose of qualifying service of 10 years, the respondent's total qualifying service would come to 9 years, 1 month and 25 days (total service rendered is 9 years, 5 months and 3 days). Rule 49(3) of CCS Pension Rules, 1972 would not benefit the respondent for the reasons (1) the same is not applicable as the service is not above 3 months, (2) even if applicable the service would be 9 years, 6 months and 0 days. Further if the service of the respondent is reckoned from May 27, 1983 and the period of 98 days is excluded then also the total period of service put in by the respondent is 9 years, 7 months and 8 days. In that eventuality also the benefit of Rule 49 (3) would not be applicable to the respondent as the same is attracted when the period is equal to 3 months and above which shall be treated as completed one half year. In this case beyond a period of 6 months i.e. second half the respondent has not put in 3 months of minimum service to seek the benefit of Rule 49(3). "

9. In view of the aforesaid, we allow the present writ petition and set aside the impugned order dated 19.02.2015 and the directions given therein. O.A. No.43/2014 will be treated as dismissed. No order as to costs."

22. A conspectus of the above, indicates, that the applicant rendered two months service, i.e., from 02.09.1982 to 02.11.1982 while undergoing training and 6 months service, i.e. from 06.11.1982 to 05.05.1983 while working as RCC on daily rate pay and 9 years 11 months 24 days, i.e., from 06.05.1983 to 30.04.1993, i.e., from the date on which he was brought on monthly rate basis to the date of his voluntary retirement.

23. In view of the decision of this Tribunal in **Udai Ram** (supra), the period of service rendered by the applicant prior to the date on which he was brought on monthly rate basis as RCC, cannot be considered for counting of qualifying service for the purpose of granting pension.

24. Though the applicant submits that in reply to one of his RTI applications, the respondents mentioned that he has rendered 9 years 9 months 3 days service and that now by way of the counter stating that he rendered the total service of 9 years 7 months 10 days (after deducting the leave without pay) cannot be accepted but failed to show how he has rendered 9 years 9 months 3 days from 06.05.1983 to 30.04.1993.

25. As admitted by the learned counsel for the respondents that after deducting the period of 134 days of leave without pay, the applicant rendered a total qualifying service of 9 years 7 months 10 days. If the said period of 134 days of leave without pay is added, the total qualifying service would come to more than 9 years 11 months. In that event, in view of the decision in **Rajender Singh** (supra) and the Proceedings dated 03.06.2004, it should be treated that the applicant rendered the required qualifying service of 10 years for the purpose of pension as the same is more than 9 years 9 months.

26. In **Lillu Ram** (supra), the Hon'ble Apex Court, after examining his service book, found that he has remained absent from duty without leave unauthorizedly for a total period of 486 days out of 10 years of service with the DTC and that he was issued 3 warnings and 1 censure

from time to time for remaining absent for duty unauthorisedly, held that the said period could not be counted for the purpose of qualifying service.

27. In **Balwan Singh** (supra), while expressing its prima-facie view that no adverse effect can be permitted upon the right of the employee to receive the pension unless he has received notice for appropriate entry in the service book or through other notice that his absence will be treated as unauthorized absence and will not be counted towards qualifying service for pension, and doubting the view taken in **Lillu Ram** (supra), opined that the decision in **Lillu Ram** (supra), requires reconsideration by a Larger Bench.

28. It is not the case of the respondents that the applicant was given any notice by making an appropriate entry in his service book about the period of leave without pay or that any punishment was imposed on the applicant for the said reason. In the circumstances, and since the pension scheme is a beneficial legislation and in view of the specific view expressed by the Hon'ble Apex Court in **Balwan Singh** (supra), the period of leave without pay of the applicant deserves to be counted for the purpose of calculation of qualifying service for pension. Accordingly, the short fall of qualifying service would be less than three months and as per the decisions in **Rajender Singh** (supra) and the aforesaid proceedings dated 03.06.2004, the applicant should be treated to be rendered the required qualifying service of 10 years.

29. In the circumstances and for the aforesaid reasons, the OA is allowed and the respondents shall grant the pension to the applicant by treating that he has rendered the qualifying service of 10 years. However, the applicant is entitled for payment of arrears w.e.f. the date of filing of the OA and without interest. The aforesaid exercise shall be completed within 90 days from the date of receipt of a copy of this order. No costs.

(V. Ajay Kumar)
Member (J)

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