

**Central Administrative Tribunal
Principal Bench**

OA No.3859/2016

Order Reserved on: 29.11.2017.

Pronounced on: 15.12.2017.

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

Raghu Nandan Sharma,
(aged about 61 years)
S/o late Shri Jang Singh Sharma,
Conductor (Retd.) DTC (Group-C)
(Pay Token No.36178; B.No.16971),
R/o N-204, MMS Colony, Birring,
Jalandhar Cantt., (Punjab).

... Applicant

(By Advocate Shri L.R. Khatana)

Versus

1. Chairman,
Delhi Transport Corporation,
IP Estate, New Delhi-110001.
2. Depot Manager,
Nand Nagri Depot,
Delhi Transport Corporation,
Delhi-110093.
3. Manager,
Pension Cell,
Delhi Transport Corporation,
IP Estate, New Delhi-110001.

-Respondents

(By Advocate Mrs. Arati Mahajan Shedha & Shri Manoj Kumar)

O R D E R

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 relief:-

“ B) That the impugned inaction and resultant non-payment of the pension and other retirement dues be declared as illegal, arbitrary, mala fide in law and discriminatory and the respondents be directed to release the same forthwith and pay the amount of pension with arrears of pension calculated on the basis of subsequent revisions of the pension and pay the full gratuity and commuted pension with 12% interest thereon with effect from the date of applicant’s retirement. ”

2. The factual matrix of this case is as under:

2.1 The applicant joined the respondent-Delhi Transport Corporation (DTC) on 07.10.1982. While working as a Conductor on 29.10.1982, he was served with a charge-sheet with an allegation of selling tickets with less denomination after collecting full fare. Thereafter, disciplinary enquiry was started against the applicant. On the findings of the enquiry officer, the competent authority imposed the penalty of termination from service on the applicant on 25.10.1984. The applicant challenged the termination order before the Labour Court, Karkardooma, Delhi. The Labour Court vide Annexure A-1 Award dated 01.05.2009 held the termination of the applicant as illegal and issued the following directions:

“The management is directed to reinstate the workman into service by paying 40% back wages as detailed above. The same be complied within 30 days after publication of the award.

2.2 The Award order of the Labour Court was challenged by the DTC before the Hon’ble High Court of Delhi in W.P. (C) No.13146/2009. The DTC also filed CM No.7525/2010 in the said Writ Petition.

3. As per the averments made by the respondents in their reply, when the W.P. (C) was listed on 03.05.2010 before the Hon’ble High Court for deciding the CM No.7525/2010, the Hon’ble High Court passed the following order:-

“Petitioner is directed to deposit 40% of the back wages as per the award in the name of registrar general, Delhi High Court within two weeks from today who shall keep this amount in fixed deposit which shall be renewed from time to time. Upon deposit of the amount, operation of the award dated 1.5.2009 as far as it relates to the back wages shall remained stayed”.

3.1 The matter was taken up for further consideration by the Hon’ble High Court of Delhi on 03.06.2010. A submission was made on behalf of the DTC that it was prepared to reinstate the respondent (applicant herein) as per the Award dated 01.05.2009 subject to the outcome of the Writ Petition. Considering the submission, the Hon’ble High Court passed the following order disposing of CM No.7524/2010:-

“Learned counsel for the petitioner submits that the petitioner is prepared to reinstate the respondent w.e.f. 07.06.2010 as per the Award dated 01.05.2009 subject to the outcome of the present writ petition. The learned counsel for the respondent

has no objection for the same. Ordered accordingly. C.M. stands disposed of".

4. On completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 29.11.2017. Arguments of Shri L.R. Khatana, learned counsel for the applicant and that of Ms. Aarti Mahajan Shedha with Shri Manoj Kumar, learned counsel for the respondents were heard.

5. From the perusal of the pleadings, it is quite clear that in terms of the Award dated 01.05.2009 of the Labour Court, the respondent-DTC was obliged to reinstate the applicant in service with 40% back wages. The Hon'ble High Court of Delhi has not passed an interim order against the release of pension and other retiral dues of the applicant. There is no DE proceedings pending against the applicant either. As per Rule-9 of the CCS (Pension) Rules, 1972, the gratuity and pension can be withheld only if the Government servant is under the cloud of departmental proceedings in which if found guilty, the likely punishment awarded may be recovery of any pecuniary loss caused to the Government. As noticed hereinabove, the applicant is not facing any departmental proceedings. On the contrary, he has earned an Award in his favour from the Labour Court for his reinstatement with 40% back wages. Under these circumstances, I find that the action of the respondent-DTC not to sanction regular pension to the applicant and not to

release him the remaining 50% of his gratuity amount is absolutely illegal and arbitrary.

6. The Hon'ble Supreme Court in the case of **State of Jharkhand and Others vs. Jitendra Kumar Srivastava & Another**, [(2013) 12 SCC 210] has held as under:-

“It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long, continuous, faithful and un-blemished service. It is thus hard earned benefit which accrues to an employee and is in the nature of “property”. This right to property cannot be taken away without the due process of law as per the provisions of Article 300 A of the Constitution of India.

A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A of the Constitution. It follows that attempt of the appellant to take away a part of pension or gratuity or even leave encashment without any statutory provision and under the umbrage of administrative instruction cannot be countenanced.”

7. In view of the above, the OA is allowed. The respondents are directed to sanction regular pension and all consequential benefits to the applicant as per rules and also release the balance 50% of his gratuity. The applicant shall also be entitled for interest @8% on the delayed release of the gratuity. This shall be done within a period of three months from the date of receipt of a copy of this order. No costs.

(K.N. Srivastava)
Member (A)

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