

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.3803/2015

New Delhi this the 21st day of November, 2017

HON'BLE MS. NITA CHOWDHURY, MEMBER (A)

Swaminath Prasad
S/o Late Shri Somai Prasad
Ex.Driver Badge No.4677
Lastly posted at Kalkaji Depot,
C/o DTC Workers Unity Centre
(Affiliated to AIICU)
37-E/1, Govind Puri, Kalkaji,
New Delhi-110019. .. Applicant

(By Advocates: Shri Anil Kumar)

Versus

Delhi Transport Corporation
Through its Chairman-cum-Managing
Director,
I.P. Estate, New Delhi. ...Respondents

ORDER (ORAL)

The applicant has filed this Original Application (OA) seeking the following reliefs:-

- “(i) To set aside/quash the order dated 20.08.2015 passed by the respondents-DTC.
- (ii) To direct the respondents to pay pension and also the arrears of pension from the date of retirement, i.e. November, 2003 till date since the applicant is entitled for pension.
- (iii) To call for the records of the applicant from the respondents-DTC to calculate the retiral benefits of the applicant properly and pay him the balance immediately.
- (iv) To direct the respondents-DTC to release the PF of the applicant immediately.
- (v) To pass any other or further order which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case and in the interest of justice”.

2. The facts, in brief, are that applicant, a driver in Delhi Transport Corporation (DTC) was dismissed by the respondents for minor route

deviation on 25.01.1989. Thereafter, he filed a case before the Ld. Labour Court. The said court passed an award on 25.09.1991 in favour of the applicant whereby he was directed to be reinstated with full back wages and continuity of service. Aggrieved by the said order, the DTC preferred an appeal before the Hon'ble High Court of Delhi and vide order dated 08.08.2007, the Hon'ble High Court was pleased to modify the award and thereby set aside the punishment of warning and remanded back the case to the respondents-DTC in order to pass an appropriate punishment and accordingly, he was imposed a penalty of curtailment of three increments with cumulative effect, irrespective of the fact that the applicant had retired in November, 2003 itself.

3. Applicant further submits that since he was denied the benefit of back wages by the respondents, he preferred an OA bearing No.710/2013 which was dismissed on 18.09.2013. Thereafter, he filed RA 172/2013 in the said OA, which too was dismissed on 23.10.2013. Aggrieved by the said order, he preferred an appeal bearing No.W.P. (C) 1200/2014 before the Hon'ble High Court of Delhi which was dismissed on 15.07.2014. The said order reads as under:-

"The petitioner is aggrieved by the impugned order of the tribunal dated 18.09.2013 ? which refused his claim for back wages, and the order dated 23.10.2013 passed in the review.

The petitioner had been dismissed from service ? an action of the respondents Delhi Transport Corporation, which was challenged before the Labour Court. The award of the Labour Court reduced the punishment to warning. The respondents writ petition succeeded, and this Court directed the management to reconsider the question of punishment and pass an appropriate order. This led to further penalty order. The respondents fresh order directed withholding of three increments.

During the course of hearing, it has transpired that at the stage when the respondents writ petition was pending, the present petitioner was the beneficiary of orders made from time to time under section 17B of the Industrial Disputes Act, 1947.

Keeping in mind this aspect and the circumstances of the case, this Court is of the opinion that there is no infirmity with the order of the Tribunal denying back wages; the Tribunal also followed the decision of the Supreme Court in J.K. Synthetics v. K.P. Aggarwal, (2007) 2 SCC 433.

Learned counsel for the petitioner had urged that the pay and terminal benefits fixation order is erroneous, since proper effect was not given to the orders of punishment which merely directed withholding of three increments with cumulative effect.

This Court notices that this aspect was not agitated before the Tribunal. Consequently, this grievance cannot be articulated in the present proceedings.

Learned counsel for the petitioner sought liberty to prefer a fresh application before the Tribunal in respect of such grievance.

Liberty granted; in case such an application is made, the same shall be dealt with in accordance with law.

Petition is dismissed, subject to the liberty in respect of pay and pension benefits”.

4. In view of liberty granted to the applicant, he filed OA No.4094/2014 which was disposed of on 19.11.2014 by directing the respondents to consider the legal notice dated 17.10.2014 issued on behalf of the applicant and to pass a reasoned and speaking order thereon, within a 60 days from the date of receipt of a copy of the order. They have finally passed the impugned order dated 20.08.2015, which reads as under:-

“Reference letter No. Leg. Sec/CAT-1168/15/842 dated 27.3.2015 on the subject cited above. In this connection, in pursuant of order Passed by Hon’ble CAT on 19.11.2014 the legal notice dated 17-10-2014 issued on behalf of the

applicant has been considered thoroughly and found that only following three issues have been raised by the legal notice dated 17-10-2014:

1. His PF be released immediately.

2. His pension should be commenced forthwith and also arrears of pension since the date of his retirement i.e. November, 2003 be cleared.

3. Some retiral benefit already given should be recalculated giving him benefit of continuity of service as the Hon'ble High Court had observed.

As regard issue No.1, it is found that his PF both share (Employee and Employer) have already been released after removal his services. Thereafter, his claim of back wages for the period from 25.1.89 to 30.11.2003 has been dismissed by the Tribunal vide order dated 18.9.2013 as the issue involved therein was found to be squarely covered by the judgment of Hon. Supreme Court in the case of JK Synthetic Ltd. Vs. K.P.Aggarwal & Anr. (Civil Appeal No.7657/04 decided on 1.2.07). The Review Application No.172/13 against the said order was also dismissed by the Tribunal vide order dated 23.10.13. Hence, no further PF was deducted from 25.1.89 to 30.11.2003 as no wages was given to the applicant Sh. Swaminath Parsad. Hence, no PF is due against the applicant.

Regarding issue No.2, it is found that at the time of his removal pension scheme was not implemented in this corporation and both the share of provident fund have been released in favour of applicant before the implementation of pension scheme, the applicant is not entitled for pension. It is also found that at the time of implementation of pension scheme, no any representation has been given by the applicant for pension when it has been published properly that any ex- employee who is willing to take pension be submitted his representation and deposit the amount of employer provident fund with 12% compound interest but neither the amount has been deposited by the applicant nor he has submitted any representation. Hence, the applicant is not entitled for pension and arrear from 30.11.2003.

In connection of issue No.3 **regarding some retiral benefit already given should be recalculated giving him benefit of continuity of service as the Hon'ble High Court had observed. In this connection, it is found that his fixation was calculated by giving him continuity of service and the same was vetted by the Accounts department. The difference of gratuity has been paid to him which is in order and applicant is not entitled for any benefit except gratuity which has been released to him. If applicant feel that the benefit already given to him is not adequate, he can submit his calculation to this office".**

5. Applicant has further submitted that in the aforesaid order, respondents have not indicated in clear terms what is due and what has been paid to him on account of arrears, pension, gratuity etc. The order appears to be sketchy and on this ground alone, OA deserves to be allowed.

6. The respondents have filed their reply and pleaded that the present OA is not maintainable as applicant is seeking to get the benefit of his wrong to which he is not entitled under law, as such no relief can be granted to him. They have further submitted that no interference is required as there is no illegality or infirmity or procedural irregularity in passing the impugned order.

7. Further, they have submitted that on 30.06.1988 a charge sheet was issued to the applicant and was given full opportunity to defend his case. As nothing was furnished by him, on 09.09.1988 on the basis of the findings of the enquiry and documents available on file, he was served with show cause notice whereby he was imposed the punishment of removal. Ultimately, he was removed from service on 20.01.1989. Thereafter, he raised the same issue before the Labour Court wherein the punishment of removal was found to be harsh and respondents were directed to reinstate him and a warning be issued and he be taken into service with continuity and back wages. The DTC challenged the same

before the Hon'ble High Court. On 13.09.1995, the Hon'ble High Court directed that 50% of the basic pay be paid to the workman (applicant herein) month to month along with arrears during the pendency of the writ petition. In compliance of the order of the Hon'ble High Court, the applicant was paid a sum of Rs.650/- monthly till 30.11.2003, the date on which he superannuated on reaching the age of 55 years. Thereafter, on 08.08.2007, Hon'ble High Court passed an order that the punishment of removal is too harsh and not commensurate with the gravity of offence. In compliance of the said order, he was awarded a punishment of stoppage of his three increments with cumulative effect. On 15.07.2014 applicant's appeal in the Hon'ble High Court was dismissed. Thereafter, he filed OA No.710/2013 which was dismissed. Later on, in view of the order passed by the Hon'ble High Court of Delhi he filed OA No.4094/2014 which was disposed of by directing the respondents to pass a speaking order.

8. Respondents further aver that retiral benefits has been released as per rules explained in the impugned order dated 20.08.2015. They have also submitted that PF has also been released. Further, they have submitted that Pension Scheme was not implemented in this Corporation at the time of removal of the applicant, and both the shares of PF have been released in favour of the workman (applicant). They have thus prayed that the OA be dismissed.

9. I have heard the learned counsel for the parties and gone through the pleadings.

10. The impugned order dated 20.08.2015 (Annexure A-1) is a very sketchy order where nothing is clear about the arrears, pension and other retiral dues to be paid to the applicant. The said order has been passed in a haphazard manner which is not expected from the respondents-DTC. They have done so just to show that action has been taken and compliance has been made with court orders. Further, they have also indicated in the said order that applicant's pension should be commenced forthwith and also arrears of pension since the date of his retirement, i.e., November, 2003 be cleared. No doubt, he has been given continuity of service but the same is not clear from which date. As regards pension scheme, respondents have submitted that as applicant had not exercised his option for pension hence he is not entitled to get the same. I may mention how he can exercise an option before 20.08.2015 when he was removed from service. In this case, respondents have treated the case of the applicant in a very high handed manner which should not have been done as he has won the case from the Hon'ble High Court of Delhi. Moreover, his request has been thrown contumaciously without giving any details of the payments which have been made. This appears to be a very sorry state of affairs on the part of the respondents-DTC in passing the impugned order in a hasty manner.

11. In view of above, the OA is allowed. I direct the respondents to calculate all the payments to be paid to the applicant including retiral dues, arrears and benefit of pension scheme to which he is entitled by giving break-up of each and every thing from November 2003 onwards. They should also indicate the employee and employer share which he has

to deposit after the order is passed so that he can deposit the amount to claim pensionary benefits. The aforesaid directions be complied with, within a period of 90 days from the date of receipt of a copy of this order.

No costs.

(NITA CHOWDHURY)
MEMBER (A)

Rakesh