

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ LPA No.279 of 2003

% Date of decision: 03.09.2008

SHRI NARENDRA KUMAR ...APPELLANT
Through: Mr. S.D. Singh with Mr. Rahul
Kumar Singh, Advocates.

Versus

DELHI TRANSPORT CORPORATION ...RESPONDENT
Through: Mr. Ataul Haque, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJAY KISHAN KAUL
HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. | To be referred to Reporter or not? | No |
| 3. | Whether the judgment should be
reported in the Digest? | No |

SANJAY KISHAN KAUL, J. (Oral)

1. The appellant was appointed to the post of Conductor by the respondent/DTC w.e.f. 8.1.1979 as per an appointment letter dated 25.1.1979. The appellant was employed with the respondent when an Office Order dated 27.11.1992 was issued by the respondent introducing a Pension Scheme in the DTC as applicable to Central Government employees. The Scheme was to be operated by the LIC and was to be effective from 3.8.1981. Insofar as the existing employees were concerned the option was given to them in terms of Clause 3 read with Clause 9 of the Scheme and the same read as under:

“3) All the existing employees including those retired w.e.f. 3.8.1991 onward would have the option to opt for the pension scheme for the employees contributory provident Fund as at present, within 30 days from the date of issue of this G.O. for the implementation of the pension scheme as approved by the Govt. of Delhi.

....
9) If any employees of D.T.C. who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditioned or ambiguous, he shall be deemed to have opted the pension scheme benefits.”

2. It is not in dispute that the appellant was, thus, covered under the aforesaid Scheme.

3. The respondent Corporation framed a Voluntary Retirement Scheme (for short 'VRS') for its employees vide Office Order dated 3.3.1993. Para 4 of the Office Order stipulated the entitlement of an employee opting for voluntary retirement and one of the benefits was of pension as per the Officer Order No.18 dated 27.11.1992. The relevant portion reads as under:

“4. An employee who taken voluntary retirement will be eligible to the following refunds/payments:-

....
g) Pensionary benefits as per office order No.18 dated 27.11.1992.”

4. It may be noted that the respondent also issued an Office Order dated 16.3.1993 in respect of VRS whereby though the Scheme initially covered the post of Conductor, it was sought to be applied to all the employees. Some further clarifications were also issued in respect of the VRS dated 29.3.1993 but they are not germane to the issue.

5. The appellant availed of the said retirement Scheme by filing an application dated 13.9.1995 and the respondent Corporation acceded to the request of the petitioner vide

order dated 30.9.1995. The petitioner was issued a cheque for Rs.1,06,214.92 and the same was accepted and appropriated by the petitioner.

6. The petitioner had a second thought and thus submitted an application for reinduction as a Conductor on 6.4.1998 but the request of the petitioner was rejected on 13.7.1998.
7. A second request was made by the petitioner on 13.4.2000 to the effect that he should be entitled to the pensionary benefits though he stood voluntary retired in view of a judgement of the Delhi High Court. The petitioner thereafter filed a writ petition, being WP (C) No.4064/1996 seeking a direction against the respondent to pay pension to the petitioner in accordance with its circulars.
8. The sum and substance of the plea raised by the petitioner was that the petitioner was entitled to the pensionary benefits as part of the VRS referred to aforesaid. The petition was, however, dismissed by the impugned order dated 18.2.2003 passed by the learned single Judge of this Court (as he then was).
9. The substratum of the impugned order is stated to be the factum of there being no pension scheme applicable to the petitioner when his request of voluntary retirement was accepted and that the said position was also indicated by a Memorandum dated 21.12.1994 which preceded the request of the petitioner. The learned judge noticed that the Memorandum dated 21.12.1994 clearly stipulated that in case of an employee who had gone on voluntary retirement under the scheme the said employee would not

be entitled to enjoy the pensionary benefits as he had retired under the voluntary retirement scheme. A reference was also made to the decision of the Supreme Court in Bank of India & Ors. Vs. O.P. Swarnkar Etc. 2002 (9) Scale 519 where it was held that in respect of those employees who have received the retirement benefits under the VRS without protest, such employees would stand retired on acceptance of their request for VRS.

10. Learned counsel for the appellant while assailing the impugned order has referred to the judgement of another learned single Judge of this Court in WP (C) No.4064/1996 decided on 19.9.1997.
11. The writ petition had been dismissed without calling for a counter affidavit and thus, in the present Letters Patent Appeal a counter affidavit was directed to be filed by the respondent to the averment contained in the writ petition. The counter affidavit was not found on record though rejoinder was found on record. A copy of the counter affidavit has been handed over to us in Court.
12. The plea raised by the respondent for non-grant of pensionary benefits is stated to be the fact that the petitioner retired under the VRS on 30.9.1995 and that the circular dated 23.12.1994 had come into being prior to his retirement in terms whereof the pensionary benefits were not to be granted to persons who accepted the VRS after the said date. The complete defence of the respondent Corporation, thus, rests on this circular of 23.12.1994. The circular reads as under:

“DELHI TRANSPORT CORPORATION
(A GOVT OF INDIA UNDERTAKING)
I.P. ESTATE: NEW DELHI

No.Admnl-5(41/94

Dated: 23.12.94

Sub.: Voluntary Retirement of employees of Delhi
Transport Corporation.

It has been decided to consider the request of the
employee falling in the categories mentioned
hereunder:-

1. GENERAL ADMINISTRATION

1. Sr. Clerk
2. Jr. Clerk
3. T.T.C.

2. TRAFFIC STAFF.

- 1) Drivers
- 2) Conductors
- 3) Traffic Inspector
- 4) Asstt. Traffic Inspector

3. CASH SECTION STAFF

1. Asstt. Cashier

Stenographer

4. REPAIR & MAINT.

1. Auto Mech.
 - i) Grade II
 - ii) Grade II
2. Bench Fitter
 - i) Grade I
 - ii) Grade III

5. MISC. STAFF.

1. S.O. (C)
2. S.O. (E)
3. Draughtman (C)
4. Security Inspector
5. Asstt. Security Inspector
6. Dressor
7. Telephone Operator
8. Monitor
9. Jr. Telephone Operator
10. Labour Welfare Inspector
11. Jr. Labour Welfare Inspector
12. Librarian
13. Hindi Translator-cum-Asstt.

3. Tyre Trade
 - I) Grade II
 - II) Grade III
4. Auto Electrician
 - I) Grade I
 - II) Grade II
 - III) Grade III
5. Black Smith
 - I) Grade II
 - II) Grade III
6. Tin Smith
 - I) Grade II
7. Painter
 - I) Grade II

8. Machinist
 - I) Grade I
 - II) Grade II

9. Welder
 - I) Grade I
 - II) Grade II
 - III) Grade III

6. CLASS-IV STAFF

1. Daftry, DMO, Bank Messenger
2. Peon
3. 4. Head Groundsman

10. Cushion Maker
 - i) Grade I
11. Sweeper Cleaner.

Even though disciplinary cases are pending against them, such employees may give their option in the prescribed proforma through proper channel latest by 10th January, 1995. The option forms may be obtained from the Depot/Unit Authorities by the willing employees.

The Unit Officers concerned will forward the prescribed Voluntary retirement calculation proforma including service book to the Labour Officer immediately and not later than 12.1.95 positively. The VRS proforma received after 12.1.95 will not be entertained. The Unit Officers will ensure that on the top right hand corner of the C.R. Calculation proforma it will be mentioned in Red Ink that a disciplinary cases is pending against the employee.

It is also notified for information of all such employees who opt for VRS they would not be entitled to join pension scheme if they are allotted retirement under VRS other salient features of the proposed VRS will remain the same as announced earlier vide this office circular dated 3.3.1993.

This issued with the approval of the Competent Authority.

Sd/-
(A.K. SHARMA)
Dy. Chief General manager (IR)

All Heads of Department
All Unit Officer
All Notice Board of the Units.

c.c. to: Sr. Manager (Admn) & Incharge C.M.D.'s Sectt. For
favour of information of CMD."

13. Learned counsel for the respondent emphasized that the aforesaid circular clearly stated that such employees who opted for VRS would not be entitled to join the pension scheme. However, learned counsel for the appellant sought to explain the circular by emphasizing that all that had been stated was that when the request of the employee falling in the categories mentioned in the circular was examined "even though disciplinary cases are pending against them", such employees would give option in the prescribed proforma. Thus, the VRS was sought to be extended even to personnel against whom disciplinary cases were pending. It is in such cases that if the VRS was accepted the pensionary benefits were not available.

14. The question which, thus, arises for consideration is whether the circular dated 23.12.1994 applied to all the applicants under the VRS or only to such of the applicants under the VRS who were facing disciplinary proceedings.
15. On reading of the aforesaid circular it is obvious that the same applies only to such cases where disciplinary proceedings are pending. The circular begins with "It has been decided to consider the request of the employee falling in the categories mentioned hereunder" whereafter the categories are mentioned in the circular and then the sentence is completed with "even though disciplinary cases are pending against them". Thus, what was decided was to consider the request of the employees in the categories mentioned in the circular even though disciplinary cases are pending against them. However, on consideration of such cases and their acceptance they were not entitled to join the pension scheme. The circular, thus, had no application to the other applicants against whom no disciplinary proceedings were pending.
16. It is not in dispute that the VRS incorporated a clause giving the funds and payments to be made to an eligible person in para 4 of the Office Order dated 3.3.1993. Pensionary benefits as per Office Order No.18 dated 27.11.1992 were mentioned in sub-para (g) of para 4. Thus, pensionary benefit was one of the benefits extendable to the persons seeking VRS. The letter dated 23.12.1994 only sought to extend the benefits of the scheme to persons against whom disciplinary proceedings are pending but excluded the

aforesaid benefits of pension. This would have no application to the applicant as he was undisputedly not a person facing disciplinary proceedings.

17. The learned single Judge did not have the benefit of the counter affidavit or the circular dated 23.12.1994 being filed. This is the reason why a reference has been made possibly incorrectly to a circular dated 21.12.1994. In any case the defence of the respondent is clearly available in the counter affidavit filed in the appeal proceedings.
18. The result of the aforesaid is that the impugned order dated 18.2.2003 is set aside and the appeal is allowed. The appellant is held entitled to the pensionary benefits and the necessary action be taken by the respondent for payment of the past dues within a period of three (3) months from today.
19. The parties to bear their own costs.

SANJAY KISHAN KAUL, J.

SEPTEMBER 03, 2008
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MOOL CHAND GARG, J.