

THE HIGH COURT OF DELHI AT NEW DELHI

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+ **W.P.(C) 1616/2010**

Judgment delivered on: 26.07.2012

SHRI JASWANT SINGH

... Petitioner

versus

DELHI TRANSPORT CORPORATION

... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms Rashmi B. Singh

For the Respondent : Mr J.S. Bhasin

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SIDDHARTH MRIDUL

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 04.08.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in T.A. No. 834/2009.
2. The whole case revolves around the claim towards gratuity, CP fund, bonus for 2004-05 and bonus for 2005-06. According to the learned counsel for the respondent there are also amounts recoverable from the petitioner on account of the gratuity paid on pre mature retirement, the NRA loan availed, the compensation paid for the pre mature retirement and excess payment of pension to the petitioner.
3. This case has a chequered history in the sense that due to certain handicap

which the petitioner had incurred as a result of an accident, he was pre maturely retired under clause 10 of the DRTA (Conditions of Appointment and Service) Regulation, 1952. Being aggrieved by the pre mature retirement order dated 01.09.1992 which took effect from 01.02.1992, the petitioner filed a writ petition being W.P. (C) No. 1480/1993 before this court. By an order dated 30.10.96, this court while disposing of the said writ petition directed the respondent to work out the compensation amount and to pay the same to the petitioner. Being aggrieved by this the petitioner preferred a Special Leave Petition being SLP (Civil) 5734/1997 which was dismissed on 22.4.1998. At the time of dismissal a statement was made by the learned counsel for the respondent that the compensation was lying with them and that the petitioner may collect the same. However, the petitioner was yet aggrieved and thereafter he moved I.A. No. 3 in the said disposed of SLP petition which came to be disposed of by an order dated 22.07.2002 passed by the Supreme Court whereby the respondents were directed to empanel the petitioner in the post of TTC or conductor and adjust the compensation accordingly. Subsequently, the compensation which he had already received was adjusted accordingly. Later, by an order dated 13.11.2002, the petitioner was re-instated and he joined duty as a conductor on 21.11.2002. Thereafter he was promoted to the post of Assistant Ticket Inspector and he retired from that position on 31.05.2005.

4. We may also point out that prior to his retirement, the petitioner had filed another I.A. in the disposed of SLP and the same was numbered as I.A. No. 4 in the said SLP. In that I.A., the petitioner had, inter alia, prayed for back wages for the period 01.02.1992 to 21.11.2002, that is, the period beginning from the date of his pre-mature retirement and ending with the date on which he was reinstated. That I.A. was however rejected by the Supreme Court by an order dated 01.09.2003 but the Supreme Court also observed that it was open to the petitioner to work out his rights in an appropriate manner. It is pursuant to that, that the petitioner had filed another writ petition before this Court which got transferred to the Central Administrative Tribunal and was numbered as T.A. No. 834/ 2009 which has been disposed of the Tribunal by dismissing the same by virtue of the impugned order dated 04.08.2009. The Tribunal has rejected the claim of the petitioner with regard to back wages.

5. Insofar as the back wages are concerned, the learned counsel for the respondent submitted that 'The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 came into effect on 01.01.1996 and therefore section 47 of the said Act could take effect only from that date. In terms of Section 47 it is made clear that no establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service. Thus, had this act been in force prior to 1992, the petitioner could not

have been pre maturely retired. However, since this Act was not in force at that point of time, the petitioner's pre mature retirement would have to be upheld and, indeed, it has to be upheld because the matter has travelled up to the Supreme Court and the Supreme Court also did not interfere with the same but required the respondent to pay compensation therefor. However, with effect from 01.01.1996, the act having come into force, section 47 would naturally apply therefore as of 1996 the services of the petitioner could not have been pre-maturely terminated on account his acquiring his disability during the period of his service. Consequently, we feel that it would be appropriate, keeping in view the salutary provision of the said Act and the fact that the petitioner is a handicapped person and that the handicap was acquired during the tenure of his service, that he should be paid back wages but, with effect from 01.01.1996 till the date of his reinstatement i.e., 21.11.2002.

6. We also feel that the petitioner is entitled to interest on the gratuity amount which is due to him just as the respondent is entitled to interest on the gratuity amount which was paid on his pre mature retirement and was required to be refunded by the petitioner to the respondent. Similar is the case with interest on C.P fund as also on the bonus of 2004-05 and 2005-06.

7. In this way a sum of Rs. 4, 70,660/- is due from the respondent to the petitioner. The manner in which this is computed is as under:-

(I) **Amount payable by the respondent to the petitioner**

(a) Gratuity amount	₹ 92,840/-
Simple interest @ 9% per annum with effect from 18.05.2005 to till date (7 years) =	₹ 58,489/-

Total of (a) =	₹ 1,51,329

(b) C.P Fund	₹ 63,317/-
Simple interest @ 9% for 7 years =	₹ 39,889/-

Total (b) =	₹ 1,03,206/-

(c) Bonus for 2004-05	₹. 2500
Simple interest @ 9% for 7 years	₹ 1575/-

Total of (c) =	₹ 4075

(d) Bonus for the year 2005-06	₹ 416/-
Simple interest @ 9% for 6 years =	₹ 224/-

Total of (d) =	₹ 640

(e) Back wages with effect from 1.1.96 till 21.11.02 =	₹ 5,36,791/-

Total (a+b+c+d+e) =	₹ 7,96,041

(II) **Amount recoverable from the petitioner by the respondent on account of amounts**

drawn at the time of pre-mature retirement etc.

(i)	Gratuity	₹	31,195/-
	<u>Less re-paid on 30.09.90</u>	₹	15,383/-

		₹	15,812/-
	Simple interest @ 9% for 10 years =	₹	14,230/-

	Total (i) =	₹	30,042/-

(ii)	NRA Loan availed	₹	8,000/-
	Simple interest @ 9% for 27 years	₹	19,440/-

	Total of (ii) =	₹	27,440/-

(iii)	Compensation =	₹	62,172/-
	Simple interest @ 9% for 10 years =	₹	55,950/-

	Total of (iii) =	₹	1,18,122

(iv).	Excess payment of pension	₹	1,49,777/-

	Total	₹	3,25,381/-
	(i+ii+iii+&iv) =		

8. Thus the net amount payable by the respondent to the petitioner comes to ₹ 4,70,660/- (Rs. 7,96,041 – Rs. 3,25,381).

9. The petitioner is an old man and he has been fighting for his right for a long time and we feel that he should be awarded expenses for the same. Consequently, we are awarding litigation expenses and we round up the figure payable by the respondent to the petitioner to the figure of Rs. 5 lakhs. The petitioner who is present states that he has not been paid the full amount of pension since his retirement in 2005. This fact is, however, disputed by the learned counsel for the respondent. All the same, the learned counsel for the respondent fairly states that if there is any pension due with effect from 2005 the same shall be ascertained and paid to the petitioner. We direct that the above payments be made within a period of four weeks from today.

10. With these observations and directions the writ petition is disposed of.

BADAR DURREZ AHMED, J

SIDDHARTH MRIDUL, J

JULY 26, 2012

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