

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

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Judgment delivered on 01.06.2012

+ W.P.(C) 3634/2012

BALBIR SINGH AND ORS

..... Petitioner

versus

DELHI TRANSPORT CORPORATION THROUGH ITS CHAIRMAN
AND ORS

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Harinath Ram and Mr Vijay Sharma

For the Respondent : Ms Latika Chaudhary for R-1

Mr Ashok Singh for R-5

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

BADAR DURREZ AHMED, J. (ORAL)

1. This writ petition is directed against the order dated 20.04.2012, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 658/2012, whereby the petitioners' said Original Application had been dismissed. The main claim of the petitioner is with regard to the leave encashment amount and the same is being claimed on the basis of two Office Memoranda (OMs), issued by the Department of Personnel and Training (DoP&T) on 27.12.1980 and on

07.11.2006 respectively. It is an admitted position that those two OM's were in respect of the Central Government employees. It is also an admitted position that the Delhi Transport Corporation is an autonomous body and is not *ipso facto* governed by the rules and regulations which are applicable to Central Government employees.

2. Earlier, the petitioners had made a claim seeking benefit under the said two OM's by way of a writ petition. That was, however, transferred to the Tribunal and was re-numbered as T.A. No. 703/2009. The said TA was disposed of by an order dated 10.05.2010, wherein it was directed that the claim of the applicants for leave encashment should be re-considered in the light of the Regulations and OM of 1980 as well as the OM of 2006 and the final decision be taken by a speaking order to be passed within three months from the date of receipt of a copy of the order.

3. Pursuant to the said directions given by the Tribunal on 10.05.2010 in the said TA No. 703/2009, the speaking order was passed though after some delay on 03.03.2011 by the Manager (A) HQR, DTC, .I.P. Estate. The relevant portion of the said order is as follows:-

“It has been observed by the undersigned that the said OM of 1980 and the other OM's in this regard are not applicable to the employees of DTC working in the workshops of DTC. The said OM's as issued by the Govt. of India through Ministry of Home Affairs, Department of Personnel and AR are applicable only to the Ministries and Departments under the Govt. of India. The DTC is working under the Govt. of NCT of Delhi and is covered

by the Factories Act, 1948 and more specifically section 79 of the Act. The said OMs are a result of an Award given by the Board of Arbitration (JCM) in reference No. 3 of 1979 and the DTC was neither a party nor covered or bound by the said award dated 8.10.80.

The DTC is bound by the Act and till date there has been no amendment in the Act which is in consonance with the said Award as given by the Board of Arbitration in 1980. Whatever benefits are required to be extended as per Section 79 of the Act are being extended to all the employees in the DTC to whom the said Act is applicable.

It has been further observed and found by the undersigned that for the implementation of the said Award and subsequent OMs which were issued in relation to the same, the concurrence of the Ministry of Finance had been obtained and while in the present matter, there is no proposal of such nature from the Ministry of Finance, Govt. of India or otherwise.

It has been considered that the said provisions/benefits as stated in the OMs have not been extended to the Corporation and the authorities under the Act were free to take action against the DTC for the non-compliance of the said benefits, as it is clear that the said benefits have not been extended to the employees of DTC and the same is applicable only to the Industrial Employees of the Central Government and its Departments. From the aforesaid OMs it is also seen that the benefits as per the said OMs have been revised from time to time and applicable only to the Central Government & Departments and for which no amendment was made to the Factories Act thus, making it clear that the said benefits are not extended to the other organization including the DTC.

As per DRTA (Condition of Appointment and Services) Regulations, 1952, clause 14 (6)(c) is applicable in case

of employees working in DTC and which clearly stipulate that the provisions of Chapter VIII of the Act as amended from time to time shall be applicable.

It is not disputed that DTC being an autonomous statutory authority under DRTA (Delhi Road Transport Authority) Act, 1950 and the employees of the DTC including workshop staff are being governed by DRTA in which the specific service conditions and privileges of different kind of leave are being granted to them. The DTC is having three sets of category i.e. Traffic, Workshop & remaining staff not falling in these two categories are abided by the Rules & Regulations provided under the DRTA. The workshop staff is also getting that benefits provided in Factories Act, 1948, 1948. However, the OM dated 27.12.1980 as well as the OM dated 07.11.2006 of Govt. of India is in pursuance of award given by the Board of Arbitration and not the amendment of the Factories Act, 1948. The OM's dated 27.12.1980 to 07.11.2006 of DoPT, Government of India has been considered thoroughly by the undersigned and the same are not applicable to the Corporation and even otherwise also the Corporation is not bound to allow directions issued through various OM's by the Central Government.

Now, therefore, in view of the above mentioned facts and as per the statutory Rules and Regulations of DRTA, 1952 and also as per the relevant provisions of the Factories Act, 1948, the employees of DTC, including the applicants of the present case working in the workshops of the Corporation are not entitled to the benefits (Leave Encashment) in terms of OM's of 1980 and 2006 issued by DoP&T, Government of India.”

4. From the above, it is apparent that the OM dated 27.12.1980 as also the OM dated 07.11.2006 have been held to be inapplicable to the Delhi Transport Corporation as they had not been adopted by the said Corporation.

5. Being aggrieved by the said speaking order dated 03.03.2011, the petitioners filed the said OA No. 658/2012 which has been dismissed by virtue of the impugned order dated 20.04.2012. While doing so, the Tribunal observed as under:-

“The applicants’ counsel strongly relied upon the observations made by this Tribunal in its order dated 10.05.2010 in TA No.703 of 2009. Having given careful consideration, we find that these observations are in a passing reference and do not constitute the *ratio decidendi* of the case. It is relevant to note in this regard that the Tribunal merely directed the respondents to reconsider the matter in the light of the Regulations and OM of 1980 as well as OM of 2006 and take a final decision by a speaking order within the stipulated period. What decision is to be taken by the respondents in the facts and circumstances of the case is left to be decided by the respondents themselves. Had it been otherwise, it should have been open to the Tribunal to expressly say so by giving a definite finding coupled with necessary directions for implementing the said OMs.

Furthermore, the OMs issued by Ministry of Home/Department of Personnel and Training in respect of Central Government employees are not applicable on their own to autonomous bodies such as DTC. These have to be specifically adopted by DTC so far. These can be made applicable to its employees. The applicants have not shown that these OMs have either been adopted by DTC or are otherwise applicable to it. They have failed to discharge their onus in this regard. A reference in this regard has been made to para 5 of the Order dated 10.05.2010 in TA No.703/2009 wherein it has *inter alia* been observed that “once the OM of 1980 is applied to DTC, the benefit regarding leave encashment to applicants working in workshop cannot be denied.” There cannot be any dispute with this observation. But

the question is: had this OM been applied to DTC? The respondents' claim is that it has not been applied to DTC. It is now for the applicants to prove that the OM has been applied to DTC. They have not adduced in support of their claim that the OM has been applied to DTC. In the grounds taken in the application, particularly in clause (p) the applicants have stated that "the Respondent No.1 has failed to show as to why the OMs dated 27.12.1980 and 7.11.2006 are not applicable to the DTC and it has further failed to show as to when and how many OM has not been implemented." The applicants cannot have their case by default. It is for them to prove that the OMs in question are applicable to the DTC and they cannot pass this onus to the respondents. Furthermore, the applicants' contention that the DTC cannot have two sets of regulation for its employees is misconceived and factually incorrect for the comparison with the Central Government employees on the one hand and the DTC employees on the other. As a matter of fact, none of the employees of the DTC has been extended the benefits which are being claimed by the applicants herein.

In view of the above discussion, in our considered opinion, the applicants have not been able to make out a prima-facie case for the grant of relief(s) prayed for in the OA. Accordingly, finding no merit in the case, the OA is dismissed at the admission stage itself. No costs."

6. It is, therefore, clear that the petitioners are seeking benefit under the said OMs of 1980 and 2006. Those OMs were clearly in respect of Central Government employees. The respondent-DTC is an autonomous corporation. The employees of DTC are not Central Government employees. Since the said OMs of 1980 and 2006 do not *ipso facto* apply to the DTC inasmuch as the DTC is an autonomous body, they could yet be applied if the DTC had adopted the same.

However, in point of fact, the DTC had not adopted the said OMs. The learned counsel for the petitioner was unable to show any document, evidencing adoption of the said OMs by the DTC. As such the petitioner cannot take the benefit under the said OMs. The Tribunal has arrived at this very conclusion by virtue of the order dated 20.04.2012. Consequently, there is no merit in the writ petition and the same is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

JUNE 01, 2012

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