

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

Judgment Reserved on: April 08, 2013
Judgment Pronounced on: April 18, 2013

+ **WP (C) 4510/2012**

JEET SINGH Petitioner
Represented by: Mr.Rakesh Kumar, Advocate.

versus

DELHI TRANSPORT CORPORATION Respondent
Represented by: Mr.J.S.Bhasin, Advocate with Ms.
Rashmi Priya, Advocate.

WP (C) 6764/2012

YASHPAL SINGH Petitioner
Represented by: Mr.J.P.Sengh, Sr.Advocate
instructed by Mr.Sumeet Batra,
and Ms.Ankita Gupta, Advocates.

versus

DELHI TRANSPORT CORPORATION Respondent
Represented by: Mr.Sumeet Pushkarna, Advocate.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRADEEP NANDRAJOG, J.

1. On the allegation of remaining on unauthorized leave, petitioner Jeet Singh was removed from service on July 06, 1992 and since an industrial dispute was pending between DTC and the Union of Employees working in DTC, an application was filed before the Industrial Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval, which was dismissed by the Industrial Tribunal

on October 16, 2000, leading to the said decision being challenged by DTC vide WP(C) 4162/2001. Jeet Singh filed WP(C) 4826/2001 praying that he should be reinstated in service with full back wages in view of the decision dated October 16, 2000, in his favour.

2. On September 10, 2009, writ petition filed by DTC was dismissed and the one filed by Jeet Singh was allowed requiring Jeet Singh to be reinstated in service with back wages to be paid.

3. In the interregnum, Jeet Singh attained the age of 55 years on April 09, 2002 and the age of 60 years five years later, on April 09, 2007.

4. Thus, as of September 10, 2009, the question of reinstating him in service as a Driver, a post held by him under DTC, did not arise because as per service rules framed by DTC, age of superannuation of Drivers is 55 years, but with a right to be further re-employed in service for 5 more years contingent upon being found to be medically fit at the age of 55 years; 56 years; 57 years; 58 years and 59 years.

5. Jeet Singh has been paid back wages till he attained the age of 55 years and the dispute remains whether he is entitled to be paid back wages for another 5 years till he attained the age of 60 years.

6. Vide impugned order dated March 15, 2012 the Tribunal has negated the claim of Jeet Singh.

7. As regards petitioner Yaspal Singh. He too was a Driver with DTC and was removed from service on June 21, 2000 when he was aged 52 years. He challenged the penalty imposed by raising an industrial dispute and succeeded when the Industrial Tribunal pronounced an Award in his favour on October 06, 2004, by when he was 56 years of age. The Award was challenged by DTC by an under WP(C) 1292/2005 which was dismissed on December 08, 2009.

8. He too has an issue pertaining to back wages to be paid to him

beyond the age of 55 years which he turned in the year 2003. He challenges the order dated February 14, 2012 passed by the Tribunal rejecting his claim.

9. Shri J.P.Sengh learned senior counsel appearing for Yashpal Singh vehemently urged that for the wrong act of the Management, Yashpal Singh cannot be deprived the benefit of serving till the age of 60 years. Learned senior counsel urged that DTC ought to have been vigilant in preserving the evidence pertaining to Yashpal Singh being medically fit by examining him when he attained the age of 55 years notwithstanding issue being pending in this Court pertaining to the Award dated October 06, 2004. Similar argument was advanced by Shri Rakesh Kumar, Advocate who appeared for petitioner Jeet Singh.

10. Undisputedly, the applicable Service Rules framed by DTC require Drivers to superannuate when they attain the age of 55 years. Further right to serve upto the age of 60 years is contingent upon the incumbent being found medically fit each year on attaining the age of 55 years and onwards till the age of 60 years.

11. In legal parlance this would translate to : Drivers under DTC have a vested right to serve till the age of 55 years subject to disciplinary action being taken against them and have a contingent right to serve till the age of 60 years. The condition constituting the contingency being : Found to be medically fit at the age of 55 years, 56 years, and so on till the age of 60 years.

12. Violation of a vested right would have different consequences vis-à-vis violation of a contingent right. Consequences of violating a vested right are reasonably foreseeable; and in the context of a right to serve till a fixed term, it would be reasonably foreseeable that ensuing damages would be the wages which would have been earned by the employee,

subject to the law pertaining to mitigation of damages by the employee. But, the consequence of violation of a contingent right in the form of damages would be in the realm of uncertainty and speculation, for the reason what would have happened when the contingency envisaged came into being would not be known.

13. One would have no idea as to what would be the medical condition of the two petitioners when they turned 55 years of age. Their right to further serve was contingent upon being found medically fit. If they were found to be medically unfit, that would have been the end of their service.

14. Though not strictly applicable, but a principle of law which emerges from the decision of the Supreme Court reported as AIR 1992 SC 1020 Baikuntha Nath Das & Anr. vs. Chief Medical Officer, Baripada & Anr. can be applied with analogy.

15. The issue before the Supreme Court was whether uncommunicated adverse entries in the ACR of a Civil Servant could be considered by Screen Committees while considering premature retirement under FR 56 (j). There were two conflicting judgments of the Supreme Court, one holding the view that considering adverse uncommunicated entries amounted to a situation akin to condemning a person without hearing and thereby affecting his right. The other took the view that it did not. In Baikuntha Nath Das case (supra) the Supreme Court held that since a right of a Civil Servant was to serve for a minimum period by which pension was earned and thereafter the right to serve was contingent upon the person being not opined to be dead wood, taking into account uncommunicated adverse entries in the ACR could not be said to be violative of the right of the Civil Servant.

16. To our mind the aforementioned decision guides us in the destination which we have to reach. The guidance is that issues pertaining to vested

and contingent rights in service jurisprudence have to be applied by recognizing the difference between a vested right and a contingent right.

17. Pertaining to Yashpal Singh, we may record that on March 26, 2008 upon a medical examination he was found unfit, a decision which he questions with reference to his driving licence being renewed by the Transport Department on March 24, 2008 based upon a Doctor's opinion that he was fit. But we do not go into this issue for the reason Yashpal Singh attained the age of 55 years in the year 2003 and by the year 2008 he was 60 years of age.

18. We hold that the petitioners would be entitled to back wages only till they attained the age of 55 years because their vested right was to serve till they attained the age of 55 years. To serve beyond 55 years the right was a contingent right upon being found medically fit.

19. The writ petitions are accordingly dismissed but without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(PRATIBHA RANI)
JUDGE

APRIL 18, 2013
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