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

Date of hearing and order: 10th April 2015.

+ W.P.(C) 3433/2015
N.K. TRIPATHI

..... Petitioner

Through: Mr. Narender Mukhi, Advocate

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through: Ms. Anjana Gosain, Mr. Arnab
Naskar, Advocates

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

10.04.2015

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KAILASH GAMBHIR, J. (ORAL)

C.M. Appl. No. 6137-6138/2015 (Exemptions)

Exemption allowed subject to just exceptions.

Application stands disposed of.

W.P. (C) No. 3433/2015

1. By this petition filed under Articles 226 and 227 of the Constitution of India, petitioner seeks to challenge the order dated 12.01.2015 passed by the learned Central Administrative Tribunal,

Principal Bench, New Delhi in T.A. No. 50/2013, whereby the learned Tribunal after placing reliance on the decision of *Ashok Mudgal vs. Govt. of NCT of Delhi & Ors* (W.P. (C) No. 12246/2009 decided on 14.07.2010) has taken a view that the petitioner is not entitled to the old pension scheme retrospectively with effect from the date when he joined DEDA in the year 1993.

2. Mr. Narender Mukhi, learned counsel for the petitioner submits that in terms of the order dated 9th August 2010, through which the petitioner was re-deployed in the service of Government of NCT of Delhi, it was stipulated that in terms of the applicable rules, the past services rendered by the surplus employee prior to their re-deployment shall not be counted towards their seniority on the post to which the employee is re-deployed under the Government of NCT of Delhi but in the other service all such employees were to be treated as appointed on transfer. Learned counsel for the petitioner submits that the petitioner has not been claiming seniority on his post but he was certainly entitled to be given the benefit of the old pension scheme taking into account his past services in DEDA with effect from 1993. Counsel also submits that this aspect of (other service matters) has not been considered by this court in

Ashok Mudgal (supra) case and therefore, this issue requires examination by this court. Counsel also submits that this petitioner was dismissed from service in the year 1998 and was directed to be reinstated in service by the order passed by the High Court in the year 2009 and therefore in the case of the petitioner, he was not in a position to take legal remedies during the said period and requests that his case should be treated as a special case, as he was wrongly dismissed from service. Another contention raised by the learned counsel for the petitioner is that so far as the new pension scheme of 2004 is concerned, the same is applicable to the new recruits, post 2004 and not to those employees who were transferred from DEDA to Government of NCT of Delhi.

3. We have heard the contentions of learned counsel for the petitioner at considerable length and also heard the submissions of Ms. Anjana Gosain, learned counsel for the respondent.

4. The same issue was the subject matter for consideration before this court in *Ashok Mudgal's case (supra)* and indisputably Ashok Mudgal was one of the employees who was re-deployed with Government of NCT of Delhi after he was dismissed from service in DEDA. The Tribunal has placed reliance on the said judgment of this court in *Ashok*

Mudgal's case (supra) and declined the relief to the petitioner.

5. It is not in dispute that the petitioner was also employed in DEDA, which was an autonomous body and after the petitioner was declared surplus he was given the re-deployment with the Government of NCT of Delhi in the year 2009. The issue whether the petitioner was dismissed from service when deployed with DEDA and later reinstated by the order passed by this court is hardly of any consequence as his later reinstatement in service or even his being wrongly dismissed cannot make any distinction in so far as the aspect of applicability of the pension scheme is concerned. In the impugned judgement, the learned Tribunal has also referred to the CCS Deployment of Service Rules, 1990 and particularly, Rule 9, which clearly envisages that a re-deployed employee cannot be treated as appointed by transfer in new organisation from the date of initial date of appointment in the department where he earlier served. For better appreciation, para 7 and 8 of the impugned order wherein Rule 9 has been referred and discussed, is reproduced as under:-

“7. In CCS (Redeployment of Surplus Staff) Rules, 1990, it has been provided that the fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes and carrying over of lien/classification in

the new post to which he is appointed on redeployment under the rules should be regulated in accordance with the instructions issued from time to time by the Government of India. Rule 9 reads thus:-

“9. Fixation of pay and seniority, counting of previous service for various other purposes and carrying over of lien/classification. The fixation of seniority and pay of the surplus employee and counting of his previous service for various other purposes and carrying over of lien/classification in the new post to which he is appointed on redeployment under the rules shall be regulated in accordance with the instructions issued from time to time by the Government of India in this behalf.”

8. In paragraph 11 of the instructions referred to in Rule 9 above, the benefit of past service after redeployment/readjustment admissible to redeployed staff has been enumerated thus:-

“11.0 BENEFIT OF PAST SERVICE AFTER REDEPLOYMENT / READJUSTMENT AS THE CASE MAY BE

11.1 No change is contemplated in the present policy that the past service rendered prior to redeployment should not count towards seniority, in the new organization / new post which a surplus employee joins after he is redeployed. The same rule will also have to be applied in the case of those readjusted after redeployment.

11.2 As at present, the surplus employees will be treated to have been appointed by transfer in public interest in the matter of admissibility of Joining Time. Joining Time Pay and Transfer TA for moving to the new post located in a

Central Government Department.

11.3 A surplus employee who is permanent will enjoy protection of lien when redeployed / readjusted in a new organization.

11.4 In other service matters, they will be treated as appointed by transfer.

11.5 The surplus employees have the option to retain their existing classification if they are redeployed in posts carrying lower classification. This facility will continue to be extended.”

6. Even in the order dated 9th August, 2010, issued by the Government of NCT of Delhi by which the petitioner was re-deployed with the Government of NCT of Delhi, we find that in the said order nowhere has it been mentioned that the past services of the petitioner will be reckoned into for the purposes of grant of pension. Rather, the said order clearly states that the past service rendered by the employee required to be re-deployed shall not be counted towards seniority in the course of which redeployed in Government of NCT of Delhi.

7. Considering the fact that the petitioner is treated as appointed by transfer, after the new recruitment regarding pension scheme were promulgated, therefore the petitioner is entitled to new pension scheme and is not entitled for induction in the old pension scheme and GPF

scheme retrospectively.

8. In view of the aforesaid discussion, we find no merit in the present petition. Resultantly, the impugned order dated 12.01.2015 passed by the learned Tribunal is upheld and the writ petition filed by the petitioner is dismissed with no orders as to costs.

KAILASH GAMBHIR, J

I.S. MEHTA, J

APRIL 10, 2015

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