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

+ **W.P.(C) 4022/2016**

Date of decision: 9th May, 2016

DELHI TRANSPORT CORPORATION Petitioner
Through: Ms. Ruchira Gupta, Adv.

versus

RAM KISHAN Respondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL)

Delhi Transport Corporation by this writ petition impugns the order dated 5th February, 2016 passed by the Principal Bench of the Central Administrative Tribunal, New Delhi, whereby OA No.1970/2010 has been allowed with the direction that Ram Kishan would be entitled to pension under the DTC Pension Scheme. The petitioners have been directed to consider Ram Kishan's case for increased bonus in the light of the aforesaid directions. However, the Tribunal has rejected the prayer for grant of interest on arrears of

pension and increased bonus, if any.

2. Ram Kishan was appointed as a Driver in the petitioner-Corporation on 16th September, 1981. After about 27 years of service, Ram Kishan vide letter dated 9th January, 2008 had sought retirement on the ground of ill health. He had given three months' advance notice to the petitioner-Corporation. By letter dated 24th April, 2008, the respondent was informed as under:-

“The resignation tendered by Sh. Ram Kishan S/o Sh. Bhale Ram Driver B.No.9116, P.T. No.27201 vide his application dated 09.01.2008 by giving three months notice has been accepted w.e.f. 01.05.2008 under clause 9(c) of the DRTA (Conditions of Appointment & Services) Regulation 1952.

As per record he has opted DTC Pension scheme. His nominee is Smt. Santosh (wife) as per entry in his Service Book.”

However, pension was not paid to Ram Kishan. After about one year by letter dated 25th June, 2009, the petitioner informed Ram Kishan that he would not be entitled to pension as per Rule 26 of CCS (Pension) Rules, 1972 as he had resigned from service and his past service stands forfeited.

3. Faced with the aforesaid reversal and flustered, Ram Kishan filed OA No.1970/2010. This OA was initially allowed vide order dated 28th April,

2011, recording that Ram Kishan had requested for retirement and had never resigned. To ascertain the facts, the Tribunal had asked the petitioner to produce the original records, which were never produced. The Tribunal, therefore, directed that the letter dated 9th January, 2008 should be treated as a letter requesting for voluntary retirement and the case should be processed. The pension and other dues should be paid within six weeks. The petitioner thereafter filed Review Application No.278/2011 and for the first time brought on record the Pension Fund Regulations, 1995. It was submitted that Rules 48 and 48A of the CCS (Pension) Rules, 1972 relating to voluntary retirement were inapplicable. By order dated 4th May, 2012, the Review Application was allowed and the earlier order dated 28th April, 2011 was recalled and the OA No.1970/2010 was listed for fresh adjudication. The impugned order dated 5th February, 2016 reiterates the view taken in the earlier order dated 28th April, 2011, recording, inter alia, that the respondent had never resigned.

4. We have heard the learned counsel for the petitioner and perused the impugned order.

5. The facts narrated above show and establish that Ram Kishan had not resigned. He had never written a resignation letter. By letter dated 9th

January, 2008, Ram Kishan had sought early retirement on account of ill health and had given three months' advance notice. This letter cannot be treated as a resignation letter. In case, retirement or voluntary retirement was not permitted or permissible under the extant Rules, the said position and situation should have been informed or stated. Further, the order dated 24th August, 2008 observes and records that Ram Kishan had opted for pension scheme, thereby clearly reflecting that Ram Kishan would be entitled to pension. It is only after an year that by letter dated 25th June, 2009, the petitioner changed their stand and turn around claiming that Ram Kishan had resigned under Rule 26 of the CCS (Pension) Rules, 1972 and, therefore, had forfeited his past service and he would not be entitled to pension. The said position should have been so informed and told to Ram Kishan before treating the letter of retirement as a letter of resignation. This would have enabled Ram Kishan to make an informed choice. Apparently, both the petitioner and Ram Kishan were not aware that Rules 48 and 48A of the CCS (Pension) Rules, 1972 were not applicable. They had proceeded under a mistake of law. The petitioner had denied applicability of Rules 48 and 48A of the CCS (Pension) Rules, 1972 for the first time in the review application in the year 2011. As noticed earlier, in the letter dated 24th

April, 2008, the petitioner had stated that Ram Kishan had opted for pension. This would indicate that Ram Kishan would be paid pension as he had opted for the same.

6. Ram Kishan was appointed as a Driver in 1981 and had worked in the petitioner Corporation for about 27 years till April, 2008. In normal course, Ram Kishan would have retired on attaining the age of 55 years on 30th April, 2009. In case, the petitioner had not accepted the request for retirement by treating the same as resignation or had immediately informed that Ram Kishan that his past service would be forfeited and he would not be entitled to pension, Ram Kishan it is apparently conceivable would have continued to work till 30th April, 2009.

6. Looked from many a angle, we find that the stand and stance of the petitioner is unjust and inequitable. The writ petition has no merit and is accordingly dismissed.

SANJIV KHANNA, J.

NAJMI WAZIRI, J.

MAY 09, 2016/NA