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

Reserved on: 18th November, 2019
Pronounced on: 24th December, 2019

+ **W.P. (C) 5424/2017 and CM APPL. 22790/2017**

DELHI TRANSPORT CORPORATION AND ANR. Appellant
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Advocate.

versus

JAI KUMAR JAIN Respondents
Through: Mr. Lavkesh Sawhney with Mr. Hari
Kishan, Advocates.

+ **W.P. (C) 5649/2017**

JAI KUMAR JAIN Appellant
Through: Mr. Lavkesh Sawhney with Mr. Hari
Kishan, Advocates.

versus

THE CHAIRMAN-CUM-M.D., DELHI TRANSPORT CORPORATION &
ANR Respondents
Through: Mrs. Avnish Ahlawat, Standing
Counsel with Mr. Nitesh Kumar
Singh, Advocate.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

J U D G M E N T

Mr. Talwant Singh, J.

1. In W P (C) 5424/2017 the Petitioner Corporation has challenged the order dated 9th March, 2017 of Central Administrative Tribunal (CAT) passed in

OA No.4296/2014 by which CAT has ordered:

“29. In the circumstance and for the aforementioned reasons, the OA is allowed and the respondents shall grant the pension to the applicant by treating that he has rendered the qualifying service of 10 years. However, the applicant is entitled for payment of arrears w.e.f. the date of filing of the OA and without interest. The aforesaid exercise shall be completed within 90 days from the date of receipt of a copy of this order. No costs.”

2. On the other hand, by way of WP (C) 5649/2017, Mr. Jain has challenged the same order restricting his claim of arrears of pension from the date of filing of O.A instead of 01.05.1993, as claimed in O.A. For the sake of convenience, we will be referring to the first writ petition as lead petition.

3. In brief, the case of the Petitioner (DTC) is that the Respondent was selected as a Retainer Crew Conductor on 2nd September, 1982 and he was put on training for two months. He qualified the written test held on 19th October, 1982 and he was offered appointment to the post of Retainer Crew and accordingly appointed as such on 5th November, 1982 at the rate of Rs.17.70 per day. On 6th May, 1983 the Respondent was brought on monthly rates of pay and he was put on probation for a period of one year. On 27th November, 1992 a pension scheme was introduced by DTC and Respondent opted for this scheme. However, the same scheme could not materialise and ultimately it was introduced in November, 1995.

4. In the meantime, on 3rd March, 1993 a Voluntary Retirement Scheme (VRS) was introduced by the DTC. Employees, who had already put in ten years of service or had attained forty years of age, were eligible to apply.

Respondent sought voluntary retirement and accordingly he was granted the same with effect from 30th April, 1993. Total qualifying period of service rendered by Respondent was calculated as 9 years, 7 months and 10 days after deducting 134 days leave without pay. Accordingly, Respondent was paid the ex-gratia encashment, accumulative leave, notice salary and gratuity, etc on 12th October, 1993. The employee's share of Contributory Provident Fund (CPF) was released to the Respondent on 24th November, 1993. As he had not put in ten years qualifying service so, he was not entitled to pension. The employer's share of CPF was also released on 21st June, 1996.

5. After about nine years of availing the benefit of CPF and after about twelve years from the date of VRS, the Respondent submitted representations in 2005 and 2008 for grant of pension. These representations were rejected as the Respondent had not completed 20 years of service. However, in LPA No.33/1998 titled DTC vs. Baijnath Bhargava the Division Bench of this Court held that individuals who had put in 10 to 20 years of service were also entitled to pensionary benefits. Another representation was submitted on 8th September, 2008 by the Respondent for grant of pension, which was again rejected as his qualifying service was less than 10 years. So, as per pension rules, he was not entitled for pension. The Respondent again submitted repeated representations in 2011 to consider the Retainer Crew period in his regular service and the said representation was also rejected.

6. The Respondent filed a hopelessly time barred petition before the CAT in 2011 challenging orders dated 1st April, 2008 and 8th September, 2008 and

he claimed pensionary benefits. The Tribunal directed the Petitioner Corporation to decide the representation by passing a speaking order which was passed on 17th October, 2011 and the representation was rejected. Again, representations were made in the years 2012-2014 which were rejected.

7. Another hopelessly time barred petition being O.A.No. 4296/2014 was filed after 21 years before the CAT by the Respondent in 2014, which was allowed vide impugned order dated 9th March, 2017. Hence, the present writ petition has been filed on the grounds that the said order is perverse and totalling contrary to the law of the land. Notice was issued. Counter affidavit has been filed by the Respondent mentioning therein that he is entitled to rounding off of qualifying service as per Rule 49 of CCS (Pension Rules, 1972) as well as DOPT OM dated 3rd June, 2004. The Respondent's period of service as Retainer Crew from 2nd November, 1982 to 19th July, 1983, if added, then his qualifying period of service will exceed 10 years and this aspect was not considered. The Respondent had opted for the pensionary scheme but he was paid ex-gratia payment instead of grant of pension and he had never volunteered for CPF benefits which were dispersed to him in 1996 on the ground that the Respondent has not completed the qualifying service of 20 years.

8. We have heard the arguments of the parties and we have perused the record. There had been a number of judgments relied on by the either side. However, the entire controversy regarding the calculation of the period qualifying for grant of pension has been finally put to rest by the judgment of the Hon'ble Supreme Court in the matter of ***Delhi Transport Corporation***

vs. Balwant Singh & Ors. Civil Appeal No.7159 of 2014 decided on 26th February, 2019. The controversy before the Hon'ble Supreme Court was that the Respondents were ex- employees of DTC who had opted for VRS, however, they were not granted pension on account of exclusion of period when they remained absent without authorisation. After discussing the law prevailing as well as the decision of the Government of India and the relevant pension rules, the Hon'ble Supreme Court has reached to the conclusion that only the leaves taken during the service period for which leave salary is payable are to be counted and if an employee had availed leave for which no payment was made by the employer, the said period is to be excluded from the period for counting the admissibility of pension. Relevant portion of the judgment is reproduced here under:

“20. In our view, the only aspect which is required to be considered is the requirement of the specific rule of the Pension Rules, which provides for admissibility of pension. No one, including the respondents can be permitted to plead that they would be unaware of the Pension Rules, which have a statutory force and whose benefit they seek to avail. In fact, the VRS itself, more specifically clause (g), makes these very Rules applicable. Rule 21 is quite clear in its terms, i.e., “all leave during service for which leave salary is payable” would count. The corollary is that if an employee is not paid leave, that period has to be excluded from the period to be counted for admissibility of pension. Rule 2(1)(Q), while defining “qualifying service” provides for service rendered while on duty “or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules.” Thus, the period of leave for which salary is payable would be taken into account for determining the pensionable service, while the period for which leave salary is not payable would be excluded. The Rule is crystal clear and does not brook any two interpretations. It is a well settled principle of interpretation that when the words of a statute are clear and unambiguous, there cannot be a recourse to any principle of

interpretation other than the rule of literal construction.

21. The endeavour to refer to Rules 27 & 28 of the Pension Rules is of no avail, as those are dealing with the effect of interruption in service which may result in forfeiture of past service. In the present case, there has been no forfeiture of past service.

22. Insofar as the Government decision dated 28.2.1976 is concerned, that elucidates the requirement of a prompt entry into the service record, but this certainly cannot supersede the Rule. The position would be no different for SR 200, SR 202 and the other Government of India Order dated 24.6.1966. It is trite to say that as per Kelsen's Hierarchy of Legal Norms, the Grundnorm, being the Constitution of India, the applicable hierarchy would be as under:

- 1) The Constitution of India.
- 2) Statutory Law, which may be either Parliamentary Law or Law made by the State Legislature.
- 3) Delegated legislation which may be in the form of rules, regulations etc. made under the Act.
- 4) Administrative instructions which may be in the form of GOs, Circulars etc.

23. In the given facts of the present case, we will have to take note of an important aspect, i.e., the respondents were not governed by these Rules, but by the Employees Contributory Provident Fund Scheme. The Pension Scheme was sought to be introduced only couple of months before the VRS, and that too was not implemented till 1995. Not only that, it was not implemented through the LIC but ultimately by the appellant-Corporation itself, much later in 1995. Thus, the occasion for making any entries for this leave period in the service record, in terms of the Rules did not even arise at the stage when the VRS was applied. There may have been some significance to these aspects if the Pension Rules were already applicable over a

period of time and entries had not been made, though, even there, it would not be in supersession of the plain language of the Rule.

24. We have, thus, no hesitation in coming to the conclusion that to avail of the benefit of Pension Rules, an employee must qualify in terms of the Rules. In the present case, the respondents unfortunately do not do so, as the period which is sought to be excluded from their qualifying service is one where they have admittedly not been paid leave salary. The qualifying period for the VRS would have to be governed by that Scheme and cannot *ipso facto* be imported into the entitlement of pension, contrary to the plain wordings of the Pension Rules. We see no conflict in this, apart from the fact that the Pension Rules came into force actually much later, though the intention was announced just before the VRS. The respondents were governed prior to that by the Employees Contributory Provident Fund Scheme.

25. We may, however, notice here that while the result may be the same as in **Lillu Ram's** case, our reasoning is slightly different from that view.

26. We, thus, allow the appeal and set aside the impugned order, leaving the parties to bear with their own costs.

27. However, to avoid any grave hardship, if any payments have been made to the respondents, especially in view of the interim order dated 23.7.2014, the applicant-Corporation will not claim any refund of such amount already paid.”

9. Admittedly, in the present case, the qualifying service of the Respondent for consideration of payment of pension is less than 10 years as he was appointed at monthly rates of pay with effect from 6th May, 1983 and his date of VRS is 30th April, 1993. So, total service of the Applicant is 9 years, 11 months and 24 days, out of which he was either on leave without pay or under suspension for 134 days. Accordingly, his qualifying service comes

down to 9 years, 7 months and 10 days. There is no ground to add his previous service when he was working on daily wages till 6th May, 1983 in the qualifying period.

10. Hence, the Respondent has not completed 10 years of qualifying service for grant of pension in view of the judgment of the Hon'ble Supreme Court in the matter of *Delhi Transport Corporation v. Balwant Singh & Ors.* (supra). No relaxation can be granted in calculating the qualifying period for pension. The period of leave without pay is to be deducted from the total qualifying service and there is no ground to add the period of the daily wages service of the Petitioner in the qualifying service. Hence, the impugned order dated 9th March, 2017 of the CAT in OA No. 4296/2014 cannot be sustained and the same is hereby set aside.

11. The Writ Petition (C) No.5424/2017 is allowed in the above terms. The Writ Petition (C) No.5649/2017 is hereby dismissed. The pending application(s) stand disposed of. No order as to costs.

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TALWANT SINGH, J

S. MURALIDHAR, J

DECEMBER 24, 2019

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