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

+ **W.P.(C) 4638/2018**

JAGDISH CHANDER

.... Petitioner

Through: Mr. Padma Kumar S., Advocate.

Versus

DELHI TRANSPORT CORPORATION

.... Respondent

Through: Ms. Bhakti Pasrija Sethi, Mr. Moksh
Pasrija and Ms. Reshma, Advocates.

CORAM:

JUSTICE S. MURALIDHAR

JUSTICE TALWANT SINGH

ORDER

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21.01.2020

Dr. S. Muralidhar, J.:

1. This petition is directed against the order dated 17th November, 2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') dismissing the Petitioner's OA No. 1271/2012. The petition also challenges the order dated 4th September, 2017 passed by the CAT, dismissing the Petitioner's Review Application being RA No. 39/2016, against the above order dated 17th November, 2015 in his OA.

2. The background facts are that the Petitioner was appointed as a Conductor with the Respondent/Delhi Transport Corporation ('DTC') in 1994. On 13th

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December, 1986, the Petitioner submitted an application to DTC requesting for leave, citing medical grounds, with effect from 15th December, 1986. The DTC sanctioned leave to him till 24th December, 1986. However, on account of his persisting illness, the Petitioner could not join back on the aforesaid date. He first submitted an application for extension of leave till 31st December, 1986; a second time, for extension till 15th February, 1987; and a third time, for extension till 7th May, 1987. Each of these applications was accompanied by medical certificates attesting to his continued ill health.

3. The DTC sanctioned and regularized leave to the Petitioner till 6th May, 1987. By an order dated 6th May, 1987, however, the Petitioner was deemed to have resigned from service. The Petitioner raised an industrial dispute against the aforesaid order of deemed resignation, challenging the action of DTC as not adhering with Section 25-F of the Industrial Disputes Act, 1947 ('ID Act').

4. Upon being referred to the Industrial Tribunal ('Tribunal'), the Tribunal first considered the question of whether the above order dated 6th May, 1987 amounted to retrenching the Petitioner under Section 2 (oo) of the ID Act or terminating his services. The Tribunal found that since in the domestic enquiry conducted prior to ordering his deemed resignation, the Petitioner had not been afforded a "reasonable and fair opportunity to put forth his case"; the DTC had violated principles of natural justice. It was of the view that the Petitioner's deemed resignation therefore amounted to his retrenchment. Admittedly, DTC had not complied with the procedure under Section 25-F of the ID Act before

retrenching the Petitioner. The Tribunal by its award dated 23rd February, 1998, saw it fit to order the Petitioner's reinstatement into service with full back wages.

5. The DTC challenged the Tribunal's Award by way of W.P.(C) 5763/1998 before this Court. The Court by an interim order dated 13th January, 1999 in the said petition stayed the operation of the impugned Award of the Tribunal. By another impugned order dated 2nd August, 2000, the Petitioner's application under Section 17-B of the ID Act for payment of full wages and maintenance allowance till the disposal of the petition, came to be allowed.

6. Counsel for the DTC contended *inter alia* before the learned Single Judge that sufficient opportunity had been given to the Petitioner herein to present his case before the order of deemed resignation was passed under Clause 14 (10) (c) of the DRTA (Conditions of Appointment and Service) Regulations, 1952.

7. Counsel for the Petitioner, on the other hand, argued that even though Show Cause Notices ('SCNs') were issued to the Petitioner before the order of deemed resignation was passed, the SCNs merely paid "lip service" to the principles of natural justice, as the Petitioner had been unable to re-join service at that point. Instead, he should have been afforded an opportunity to respond to the SCNs once he joined duty. Counsel for the Petitioner also tried to make out the case that the order dated 6th May, 1987 did not even so much as mention the applications for sanction of leave submitted by the Petitioner and other

communication in this regard in considering whether there were sufficient reasons for the Petitioner's absence.

8. The learned Single Judge, by an order dated 17th May, 2010, finding merit in the aforesaid contentions of learned counsel for the Petitioner, noted in para 11 as under:

“11.....The principle of natural justice of giving an opportunity of being heard is not to be an empty or abstract exercise. Giving of an opportunity of hearing has a corresponding obligation to deal' with the representations and to give reasons for the decision. An opportunity of hearing would be meaningless and its purposes would be frustrated, if the authority giving the hearing does not consider the representations of the noticee or does not: give any reasons Tor agreeing or disagreeing with the noticee. The petitioner DTC has not carried out the said determination. The principle requiring reasons to be given in support of an order is a basic principle of natural justice and it must be observed in its proper spirit and mere pretence of compliance with it would not satisfy the requirement of law (see *Maruti Udyog Ltd. v. Income Tax Appellate Tribunal* MANU/DE/1460/2000 and *Assistant Commissioner v. Shukla & Brothers* MANU/SC/0258/2010). The petitioner DTC is thus not found to have complied with principles of natural justice and its action found illogical.”

9. Having observed thus, the learned Single Judge declined to interfere with the Award dated 6th May, 1987 of the Tribunal. The interim order dated 13th January, 1999 in the petition, staying the operation of the Award was vacated, and the DTC was directed to comply with the Award within 6 weeks from the date of the instant order.

10. The DTC then filed LPA No. 776/2010 against the above order dated 17th May, 2010 of the Single Judge. During the pendency of the said LPA, DTC on 2nd February, 2011 reinstated the Petitioner in service.

11. A Division Bench ('DB') of this Court disposed of the said LPA of the DTC in the following terms:

“In our considered opinion, when the corporation has agreed not to challenge the order of reinstatement, extend the benefit of continuity of service and compute the pension on the said factual backdrop, the grant of back wages by the Labour Court which has been concurred with by the learned Single Judge deserves to be set aside. The appeal is allowed to the extent indicated hereinabove. There shall be no order as to costs.”

12. The Petitioner retired on 30th April, 2011. By way of an office order dated 26th April, 2011, the Petitioner was furnished with the details of the gratuity amount payable to him, which, according to the Respondent's calculations, amounted to Rs.76,824/-, based on 'qualifying service' of about 12 years. A Pension Calculation Sheet dated 19th September, 2011 determines the Petitioner's pension based on his 'last pay drawn' of Rs.8830/-.

13. The Petitioner was aggrieved by the abovementioned calculations, finding them erroneous on account of having been made without granting him the benefit of continuity of service. This had the consequence of him receiving gratuity on a greatly reduced qualifying service, and pension on his basic pay at the time of his removal from service, which did not take into account the

increments and benefits under the Assured Career Progression ('ACP') Scheme that had accrued to him in the meanwhile. Therefore, the Petitioner made a representation dated 23rd January, 2012 to the Respondent seeking the grant of continuity of service, and the consequent grant of increments; benefits of the ACP Scheme; arrears of salary for the period between 1st July 2010, the date from which the Respondent stopped the payment of wages to the Petitioner under Section 17-B of the ID Act, and 1st February, 2011, the date when he was reinstated; and the recalculation of his gratuity and pension.

14. It is not clear from the records of the case what the Respondent's reply, if any, was to the aforesaid representation of the Petitioner.

15. The Petitioner next approached the CAT in O.A. No. 1271/2012, praying for the reliefs as set forth hereinabove. The case of the Petitioner before the CAT was that upon being reinstated in service, the Petitioner was not paid his arrears of salary with effect from 1st July, 2010 i.e. date from which the DTC stopped making payments to the Petitioner pursuant to the order of this Court allowing his application under Section 17-B of the ID Act. Significantly, the Petitioner also attempted to demonstrate that he had not been accorded continuity of service and that his basic pay had been fixed with reference to the wages last drawn by him in 1987 i.e. the year of his deemed retirement. He contended that as a result of denial of continuity of service to the Petitioner for the period of his absence, he has not been receiving annual increments with effect from 1987, revision of pay scale from time-to-time and the benefits

under the ACP scheme. He had even been paid gratuity on the basis of 12 years of qualifying service, whereas, 37 years of his service should have been accounted for, in view of this Court's direction extending to him continuity of service.

16. DTC's case before the CAT was that the DB's order disposing of the above LPA limited the benefit granted to the Petitioner to reinstatement in service and continuity of service for the computation of pension alone, and not for the purposes of re-fixation of pay and grant of benefits under the Assured Career Progression ('ACP') scheme. Learned Counsel for DTC relied on the judgments of the Supreme Court dated 15th October, 2004 in C.A. Nos. 7110/2004 and 7111/2004 (***D. T. C. v. Prakash Chand***) and 15th January, 2003 in C.A. No. 6362/2000 (***A. P. S. R. T. C. v. S. Narsagoud***); judgments of this Court dated 24th November, 2011 in W.P.(C) 7419/2011 (***Chander Pal v. The C. M. D., M/s. Delhi Transport Corporation***) and 16th February, 2010 in W.P.(C) 978/2010 (***Azad Singh v. Delhi Transport Corporation***); and a judgment of the High Court of Madras dated 22nd February, 2005 in C.P. No. 1119/2004 (***Krishnamoorthy N. v. Abhijit Datta***)

17. In the impugned order dated 17th November, 2015, while dismissing the Petitioner's O.A., the CAT firstly accepted DTC's averment as regards the import of this Court's judgment dated 31st March, 2011 in LPA 776/2010 that "the only benefit to be granted to the applicant was of reinstatement to the extent that the benefit of continuity of service and computation of pension

alone had to be granted and not refixation of pay and grant of ACP etc.”

18. Next, the CAT relied on the aforementioned judgments cited by the DTC to conclude that “the period under reference has to be counted for the purpose of pension and not for any other benefit such as notional increments, ACP/MACP benefits or pay scales etc.”

19. The Petitioner filed an R.A. No. 39/2016 against the said order of the CAT dated 17th November, 2015 in O.A. No. 1271/2012 submitting that the judgment of this Court in ***Mahabir Prasad v. Delhi Transport Corporation 212 (2014) DLT 503***, against which an S.L.P.(C) 35163/2014 had been dismissed on 20th November, 2014, had not been taken note of in the impugned order of the CAT. The R.A. was dismissed on 4th September, 2017 on the singular ground that “Mere non reference of a judgment, cited by one of the parties, cannot constitute an error apparent on the face of record.”

20. In the present case, on 6th July, 2018, the following order came to be passed:

“1. Issue notice.

2. Learned counsel for the respondent accepts notice and states that he has received a complete set of paper book.

3. As the entire pleadings before the Tribunal are already on record, the requirement of completion of pleadings is dispensed with.

4. List in the category of ‘After Notice Misc. Matters’ on 27.2.2019.”

21. Thereafter, the Respondent sought, and was granted, time to file a counter-affidavit on 27th February, 2019. However, since no such counter-affidavit was filed till the next date of hearing, i.e. 18th October, 2019, the opportunity to do the same was declared to have closed.

22. The Court had heard learned counsel for the parties and considered the submissions made by them. The Court is of the view that the CAT has fallen into error in denying to the Petitioner continuity of service for the purpose of re-fixation of pay and other benefits on the basis of the judgments relied on by counsel for the DTC.

23. Turning first to the judgment in *Prakash Chand (supra)*, this Court has previously had the occasion to consider its general applicability to cases such as the Petitioner’s, in some detail in its judgment dated 31st August, 2006 in LPA No. 429/2003 (*DTC v. Subhash Chander Mehta*). The Court’s observations in this regard are as under:

“9. The order dated 25.4.2006 of the Hon’ble Supreme Court in *DTC v. Prakash Chand (supra)* states that the questions of law are left undecided. It also does not set aside the judgment of the Division Bench of this Court in *Daya Nand (supra)*. The operative portion of the said order of the Hon’ble Supreme Court reads as follows:

"Considering the peculiar nature of the controversy and without going into the question of law raised, we feel that

on the said circumstances involved, interest of justice will be best served if the following orders are passed....."

10. Two things emerge from a reading of the above order dated 25.4.2006. First, it covered only those appeals before the Hon'ble Supreme Court. It was not intended to apply to all cases where Regulation 14 (10) (c) had been invoked. Secondly, the Hon'ble Supreme Court did not pronounce on the correctness of the judgment of the Division Bench of this Court in *Daya Nand (supra)* case. Thus for all practical purposes, the decision of the Division Bench of this Court in *Daya Nand (supra)* case is still good law. Resultantly, The appellant cannot invoke Regulation 14(10)(c) to sustain the order dated 7.8.1984 by which Respondent No.1 was deemed to have resigned. The present case is, therefore, not ipso facto covered by the said 25.4.2006 of the Hon'ble Supreme Court in *DTC v. Prakash Chand (supra)*. Accordingly we answer issue (a) in favour of the Respondent No.1 workman and against the appellant."

24. From the preceding discussion, it is clear that the judgment in *Prakash Chand (supra)* cannot come to the aid of the DTC. The CAT has relied on the said judgment through a mechanism of selective reading, while failing to notice a crucial qualifier that the judgment was to leave questions of law that arose from the relevant appeals open for future consideration.

25. What however does seem to support the Petitioner's case is the judgment of this Court in *Mahabir Prasad v. Delhi Transport Corporation 212 (2014) DLT 503*. There, a DB, after extensively discussing various judgments of this Court as well as that of the Supreme Court, has observed as under:

“13. In cases of wrongful termination of service, reinstatement with continuity and back wages is the normal rule. This was the observation of the Hon’ble Supreme Court in ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya and Ors.*** (2013) 10 SCC 324. The concept of reinstatement was also discussed therein:

“17. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer.”

14. The court observed that the term “reinstatement” has not been elucidated in the Industrial Disputes Act, 1947. The Shorter Oxford English Dictionary, Vol. II, 3rd Edition stated that, the word “reinstatement” means to reinstall or re-establish (a person or thing in a place, station, condition etc.); to restore to its proper and original state; to reinstate afresh and the word “reinstatement means the action of reinstating; re-establishment.” As per Black’s Law Dictionary, 6th Edition, “reinstatement” means ‘to reinstall, to re-establish, to place again in a former state, condition, or office, to restore to a state or position from which the object or person had been removed’.”

26. Further, in paragraph 19, the Court observed as under:

“19. ***J.K. Synthetics, Narsagoud and Abdul Kareem*** (*supra*) suggest that any award reinstating the employee with the term of “continuity of service” cannot be interpreted to mean that the court granted consequential reliefs or benefits and a specific direction by the court to grant such benefits upon reinstatement, is required. At the same time, the decision in ***Deepali Gundu Surwase*** (*supra*) discusses and assimilates a large number of previous decisions, including those rendered by three judge benches which emphasized the essential purpose of reinstating with back wages

and other benefits, i.e. its restitutionary intent. An employee denied benefit of work and pay, is as much entitled to restitution in law, as a businessman whose contract is terminated capriciously. In the latter case, the courts award damages, a head which often includes damages for loss of profit, and a further interest. Similarly, a tax payer who is made to pay amounts which cannot be legitimately recovered is entitled to interest for the duration that the amounts are retained by the tax authorities. A plaintiff who sues for illegal termination of contract of service (i.e. a managerial cadre official in a private enterprise) on proof of illegal termination can succeed in getting damages. In the case of employment contract of employment, where the employee is terminated for no justifiable cause or wrongfully, surely restitution has to likewise, be complete. This Court notices that the ruling in *Deepali Gundu Surwase (supra)* relied on at least three larger, three judge bench rulings (*Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Pvt Ltd AIR 1979 SC 75*; *Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court AIR 1981 SC 422*, and *General Manager, Haryana Roadways v. Rudhan Singh (2005) 5 SCC 591*) and held that *J.K. Synthetics (supra)* did not correctly state the principle; *J.K. Synthetics*, in turn had considered *Narsagoud* and *Abdul Kareem*.”

27. Further, this Court in *Mahabir Prasad (supra)* referred to the observation in *Deepali Gundu Surwase (supra)* that “in cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.”

28. Therefore, what becomes clear from a perusal of the judgment in *Mahabir Prasad (supra)* is that reinstatement with continuity of service is the norm. While in *Mahabir Prasad (supra)* the Labour Court had ordered reinstatement

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with continuity but without back wages, in the present case the Labour Court ordered both reinstatement and full back wages. The DB of this Court modified the Award only to the extent of denying the Petitioner full back wages but acknowledged that the intent of the Award was to grant the Petitioner continuity of service. This is plain from the operative portion of the order of the DB partly allowing DTC's LPA. It explained the rationale for denial of full back wages as follows: "In our considered opinion, when the corporation has agreed not to challenge the order of reinstatement, *extend the benefit of continuity of service* and compute the pension on the said factual backdrop..."

29. The CAT, in the impugned order, erred in denying the Petitioner the benefit of continuity in service upon reinstatement and in applying the law as explained in ***Mahabir Prasad*** (*supra*) that while this would not entitle him to promotions, the Petitioner would upon reinstatement be entitled to the increments on the pay scale he was drawing at the time of termination of his services and further that for the purpose of gratuity and pension he would be treated as having been in service throughout.

30. The CAT erred in referring to the decision of the Supreme Court in ***S. Narsagoud*** (*supra*) which has been squarely dealt with and rejected by a subsequent decision of the Supreme Court in ***Deepali Gundu Surwase*** (*supra*). In fact, the CAT failed to take notice of the aforesaid judgments in spite of the Petitioner raising this specific point in his RA No. 39/2016.

31. For the aforementioned reasons, the impugned orders of the CAT are hereby set aside. The Respondent/DTC is directed to:

- i. Fix the Petitioner's pay scale by notionally granting him the increments and benefits under the ACP Scheme to which he now stands entitled.
- ii. Grant him arrears of pay for the period between 2nd February, 2011 till 30th April, 2011, in accordance with the pay scale so fixed, and subject to previous orders of the various courts.
- iii. Pass fresh orders granting him gratuity by considering the duration of his qualifying service as 36 years, and pension on the basic pay so arrived at as directed herein;
- iv. Pass appropriate orders in terms of this order no later than 12 weeks, failing which the Respondent shall be liable to pay the Petitioner simple interest at 6% per annum on the sum for the period of delay.

32. The petition is allowed in the above terms.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JANUARY 21, 2020

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