



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: November 03, 2023

+ W.P.(C) 10994/2016

SATYA PAL

..... Petitioner

Through: Mr. Shanker Raju and
Mr. Nilansh Gaur, Advs.

versus

CHAIRMAN CUM MANAGING DIRECTOR, DELHI
TRANSPORT CORPORATION

..... Respondent

Through: Mrs. Avnish Ahlawat, SC (DTC)
with Mrs. Taniya Ahlawat,
Mr. Nitesh Kumar Singh,
Ms. Laavanya Kaushik,
Ms. Aliza Alam and
Mr. Mohnish Sehrawat, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

V. KAMESWAR RAO, J

1. The challenge in this writ petition is to two orders dated September 22, 2015 and August 12, 2016 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ('Tribunal', for short) in OA No.2653/2014 and RA No. 281/2015, respectively, whereby the OA as well as RA preferred by the petitioner were



dismissed by the Tribunal by observing as under:

OA No.2653/2014

“5. As has been ruled by Hon’ble Supreme Court in DTC Vs. Lillu Ram (ibid), the acceptance of application for VRS would not automatically entitle a DTC employee for pension and to become eligible for pensionary benefits, the employee needs to complete qualifying service of 10 years. Para 22 to 25 of the said judgment reproduced in the reply filed on behalf of the respondents reads thus:-

"22. The minimum qualifying service which is required for earning pensionary benefits finds place in Rule 49 of the Pension Rules. For the W P (C) 3665/2013 1 of 5 sake of convenience, Rule 49 is reproduced hereinbelow:-

"49. Amount of pension.- (1) in the case of government servant retiring in accordance with the provisions of these Rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six-monthly period of qualifying service".

23. Thus, looking to the matter from all angles, we are of considered opinion that even though Respondent had completed 10 years of service for being entitled to claim VRS but he had certainly not become entitled to claim pensionary benefits as he had not put in qualifying service of 10 years with the Appellant.

24. Conjoint reading of Rule 3 (1) (q) and Rule 49 of the Pension Rules quoted hereinabove, make it abundantly clear that only those employees would become entitled to pensionary benefits, who had put in 10 years of qualifying service.

25. Looking to the facts of this case, where Respondent/employee had remained absent, without any sanction unauthorisedly for a long period of 486 days during the period of 10 years of service, he had put in with the Appellant, he would fall short of



completing 10 years of qualifying service.”

6. Besides in Jai Pal Singh Vs. DTC & Ors. WP(C) No. 3665/2013, Hon’ble High Court ruled that the leave for which no salary is paid need to be deducted while computing the qualifying service of pension. Para 5 of the order reads thus :-

“5. Suffice would it be to state that number of years interregnum from date of joining till leaving service need not necessarily be the same as qualifying service. The reason is that such period where an employee remains on leave and for which no pay is paid requires said period to be deducted by computing service for the purpose of W P (C) 3665/2013 4 of 5 pensionary benefits if the period is treated as 'dies non'.”

RA No.281/2015

“5. The averments made in the RA and the grounds taken in it do not point out any apparent error on the face of the Tribunal’s order under review. A reading of the pleadings in the RA would indicate as though the review applicant has filed an appeal against the Tribunal’s order.

*6. On the power of the Tribunal to review its own orders the Hon’ble Supreme Court has laid down clear guidelines in its judgment in the case of **State of West Bengal & others Vs. Kamal Sengupta and another**, [2008 (3) AISLJ 209] stating therein that “the Tribunal can exercise powers of a Civil Court in relation to matter enumerated in clauses (a) to (i) of subsection (3) of Section (22) of Administrative Tribunal Act including the power of reviewing its decision.”*

At Para (28) of the judgment, the principles culled out by the Supreme Court are as under:-

“(i) The power of Tribunal to review its order/decision under Section 22(3) (f) of the Act is akin/analogous to the power of a Civil Court under Section 114 read with order 47 Rule (1) of CPC.

(ii) The Tribunal can review its decision on either of



the grounds enumerated in order 47 Rule 1 and not otherwise.

(iii) The expression “any other sufficient reason” appearing in Order 47 Rule 1 has to be interpreted in the light of other specific grounds

(iv) An error which is not self-evident and which can be discovered by a long process of reasoning, cannot be treated as a error apparent in the fact of record justifying exercise of power under Section 22(2) (f).

(v) An erroneous order/decision cannot be corrected in the guise of exercise of power of review.

(vi) A decision/order cannot be reviewed under Section 22(3) (f) on the basis of subsequent decision/judgment of a coordinate or a larger bench of the Tribunal or of a superior court

(vii) A decision/order cannot be reviewed under Section 22(3)(f).

(viii) While considering an application for review, the Tribunal must confine its adjudication with reference to material which was available at the time of initial decision. The happening of some subsequent event or development cannot be taken note of for declaring the initial order/decision as vitiated by an error apparent.

(ix) Mere discovery of new or important matter or evidence is not sufficient ground for review. The party seeking review has also to show that such matter or evidence was not within its knowledge and even after the exercise of due diligence the same could not be produced before the Court/Tribunal earlier.”

7. For the reasons stated in para-5 of this order and in view of principles laid down by the Hon’ble Supreme Court in the matter of review of its orders by the Tribunal, I am of the view that there is no substance in the RA. As such, the RA is dismissed. No costs.”

2. It is stated that the petitioner had challenged the order dated



March 04, 2014 before the Tribunal whereby the appeal filed by the petitioner seeking extension of pensionary benefits was rejected by the respondent. Moreover, it was also prayed before the Tribunal that the respondent be directed to grant pension to the petitioner from date of his retirement i.e., May 31, 1993.

3. The facts which can be noted from the orders passed by the Tribunal in OA as well as RA are:- the petitioner was appointed as Driver in respondent corporation on July 25, 1981. Though, initially he was appointed as Retainer Crew, subsequently, he was brought on monthly rates w.e.f. April 25, 1982, in the respondent corporation.

4. After rendering service in the respondent corporation, the petitioner took retirement by opting voluntarily retirement scheme ('VRS', for short), w.e.f. May 31, 1993, under an impression that he had completed qualifying service for pension.

5. It was the case of the petitioner before the Tribunal that in terms of calculation of the length of his qualifying service done by the respondent corporation, he has rendered the total qualifying service of 10 years 5 months and 25 days and thereby, he is entitled to monthly pension with interest.

6. On the other hand, it was the case of the respondent before the Tribunal that out of total service of 11 years, 1 month and 6 days, the petitioner remained on Leave Without Pay ('LWP', for short) for 509 days, i.e., 1 year 4 months and 24 days and as such, he has only rendered service for 9 years 8 months and 12 days, which makes him unqualified for pension.

7. It was also the case of the respondent that in terms of the



judgment of the Supreme Court in the case of *DTC v. Lillu Ram, Civil Appeal No. 11440/2011*, decided on December 14, 2011 the petitioner having not put in qualifying service of 10 years, he shall not be entitled to pension.

8. After hearing the counsel for the petitioner as well as the respondent, the Tribunal was of the view that the actual service rendered by the petitioner was 9 years, 8 months and 12 days. The Tribunal has also relied upon the Judgment of the Supreme Court in the case of *Lillu Ram (supra)* to observe that the acceptance of application seeking VRS does not automatically entitle a DTC employee for pension and to become eligible for pensionary benefits, one needs to complete 10 years of qualifying service. It has also relied upon the judgment of this Court in *Jai Pal Singh v. DTC & Ors., W.P.(C) 3665/2013*, decided on May 29, 2013, to observe that leave for which no salary is paid, has to be deducted while computing the qualifying service of pension. Accordingly, the OA filed by the petitioner herein was dismissed by the Tribunal.

9. Apart from being aggrieved by the order passed in the OA, the petitioner is also aggrieved by the manner in which the RA of petitioner was dismissed.

10. It is stated that the RA was dismissed by the Tribunal by relying upon the judgment of the Supreme Court in the case of *State of West Bengal & Ors. v. Kamal Sengupta and Anr., [2008 (3) AISLJ 209]*. It was held that the ground taken by the petitioner herein did not point out any apparent error on the face of the impugned order passed in the OA.



11. Therefore, against the orders passed by the Tribunal in OA and RA, the petitioner has come before this Court seeking quashing of the orders passed by the Tribunal.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. It is the submission of Mr. Shanker Raju, learned counsel appearing on behalf of the petitioner that the petitioner has opted for the VRS vide option submitted on March 29, 1993, by specifically mentioning therein that he has opted for VRS with pensionary benefits. The request of the petitioner was accepted by the respondent and he stood retired from the service w.e.f. May 31, 1993. It is his submission that though petitioner's own share of the provident fund was released, the share of the management was not released for the purpose of pension and transferred to the Pension Corpus Fund.

13. He submits that in the year 2003, when the petitioner was not granted the pensionary benefits, he made a request to the respondent corporation to allow him to rejoin their services. However, his request was not acceded to, as intimated to him, vide letter dated May 1, 2003.

14. He further submits that to claim pensionary benefits, it is necessary on the part of an employee to render 10 years of qualifying service. As per him, on June 12, 2012, in response to a RTI application submitted by the petitioner, he received the following response:

"In 1993, at the time of VRS, your qualifying service reckoned 10 years 6 months."

15. As per Mr. Raju, the calculation of qualifying service of the petitioner as per the provisions of CCS (Pension) Rules, 1972 ('Pension Rules', for short) is as follows:



- “1. Name & Designation : SAYTYA PAL, EX-DRIVER.
 2. Date of initial Appointment
 (Temporary appointment) : 25-7-1981
 3. Training period as Retainer crew : 25-7-81 to 24-4-82
 4. Date 'Brought on monthly rate': 25-4-82
 5. Leave without pay : 501 days (1 year, 4 months 16 days i.e. (365+120+16 =501 days)
 (Note : Total of LWP is placed at the end of the typed copy of service book.

6. Date of Voluntary retirement: 31-5-1993

7. Calculation of Qualifying service :

Appointed as Retainer crew 25-07-1981

Date of voluntary retirement 31-05-1993

Y M D

1993-05-31

1981-07-25

7. Total length of service : 11-10-06

Temporary service from 25-7-81 to 24-4-82

(9months) is to be counted as qualifying service

as per Rule 13 of CCS (Pension) Rules but

Respondent DTC has wrongly deducted

the same and calculated qualifying service. (-) 00-09-00

11-01-06

Petitioner availed 501 days Leave and same

is regularized as leave without Pay /EOL

and no entry has been made in service book

to treat it as non-qualifying service for Pension

but respondent DTC has deducted the period of

leave as non-qualifying service which violates

Rule 21 of CCS (Pension) Rules.

Less LWP (501 days)

1-04-16

09-08-20”

16. It is his submission that the period of LWP in the case of the petitioner, cannot be counted as non qualifying service, since entry to



that effect was not made in the service record of the petitioner. The period of LWP has been unlawfully deducted from the total service of the petitioner which reduces the total qualifying service of the petitioner less than 10 years.

17. He submits that the petitioner has rendered his service for the period of 11 years 10 months and 6 days in the respondent corporation, i.e., from July 25, 1981 till May 31, 1993 as, he has worked continuously for 9 months, on temporary basis from July 25, 1981 till April 25, 1982, i.e., till the date he was brought on monthly rates in the respondent corporation. Therefore, his service of 9 months has been unlawfully deducted from his total service, which makes his total service as 11 years 1 month and 6 days, despite there being a settled position of law, that the period undergone as temporary service has to be counted in qualifying service, as per Rule 13 of the Pension Rules.

18. He submits that the respondent corporation has taken inconsistent stands qua calculation of the qualifying service of the petitioner. As per the pension calculation sheet, the total qualifying service of the petitioner is shown as 10 years 6 months, whereas, as per the noting of the respondent corporation, it is shown as 10 years 5 months 25 days. Moreover, the petitioner is granted Gratuity on the basis of rendering total qualifying service of 10 years and 6 months. However, later on his Gratuity was again revised on the basis of rendering 9 years 9 months of service, which shows that even initially, the period of 9 months of temporary service was included in his total qualifying service. More so, in the reply to the RTI, dated October 28, 2016, it was shown that he has rendered 9 years 8 months and 20 days



of service.

19. It is also his submission that the respondent has calculated the qualifying service of the petitioner by taking into account the date when he was put on monthly rate, i.e., on July 25, 1982, and this date has been wrongly entered in the service record of the petitioner and the same can be seen from the letter of the respondent corporation dated September 23, 2013.

20. He submits that there has been miscalculation of qualifying service of the petitioner, as he was brought on monthly rates of pay, (on regular service, w.e.f. April 25, 1982) by an order dated May 19, 1982 and if the service of monthly rate is treated to be initiated from April 25, 1982, the petitioner completes the qualifying service of 9 years 11 months and 12 days.

21. He submits that as per VRS Scheme dated March 3, 1993, the granting of pensionary benefits, as per office order dated November 27, 1992, are governed by Pension Rules, for grant of pension and qualifying service. Moreover, Rule 49 (3) of the Pension Rules allows rounding of the qualifying service and since the petitioner has completed qualifying service of 9 years 11 months and 12 days, he is entitled to have the benefit of 10 years of qualifying service. In other words, he is eligible for grant of pension. Moreover, the respondent in its reply to the RA admitted that the petitioner has been brought on monthly rates w.e.f. April 24, 1982, yet, it has wrongly calculated the qualifying service as 9 years, 8 months and 12 days instead of 9 years 11 months and 12 days. He submits that it is an admitted fact that qualifying service does not include LWP period, retainer crew service



or training period.

22. It is further his submission that in *Lillu Ram (supra)* the Supreme Court while considering the case of a DTC employee therein, adopted Pension Rules, while computing the qualifying service. The Judgment of *Lillu Ram (supra)* has been considered by this Court in *DTC v. Rajender Singh, W.P.(C) 2264/2012* decided on April 20, 2012 to hold that Rule 49(3) of the Pension Rule is applicable even if an employee seeks VRS and the pension thereto would be governed under the Pension Rules. The Judgment in *Rajender Singh (supra)* ('*Rajender Singh I*', for short) has been upheld by the Supreme Court in *D.T.C. v. Rajender Singh, being SLP No. 30133/2012*, decided on April 26, 2013. Even this Court in *Govt. of NCT of Delhi v. North Delhi Power Ltd. & Ors., LPA No. 677/2011*, decided on August 31, 2015 had applied Rule 49 (3) for rounding of the qualifying service.

23. He submits that the judgment rendered by this Court in *DTC v. Jai Kumar Jain, W.P.(C) 5424/2017* decided on December 24, 2019, had also considered Rule 49 (3) of the Pension Rules for the purpose of rounding of qualifying service. The qualifying service of the petitioner herein is 9 years 11 months and 12 days without including the period of LWP, training and retainer crew service and therefore, he should also get the benefit of Rule 49(3) of the Pension Rules.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

24. On the other hand, it is primarily the submission of Mrs. Avnish Ahlawat, learned Standing Counsel appearing on behalf of the respondent that it is a settled law that Retainer Crew period is not counted towards calculating the qualifying service for grant of pension.



All the retiral benefits, i.e., both the shares of Central Provident Fund ('CPF', for short), i.e., employer's as well as employee's, with interest and gratuity etc. have been released in favour of the petitioner. She submits that the petitioner after receiving all the retiral benefits, filed the time-barred OA in 2014, i.e., after 21 years of receiving all the benefits. So, it is her submission that in the light of the judgments passed by the Supreme Court in the cases of *Union of India v. M.K. Sarkar*, 2010 2 SCC 59 as well as in *D.C.S Negi v. Union of India and Ors.*, 2018 16 SCC 721, the claim of the petitioner is hopelessly barred by time. She has also relied upon the judgment of this Court in *DTC v. Madhu Bhushan*, W.P.(C) 14027/2009 decided on August 10, 2010 to contend the same. It is her case, that the judgment of *Madhu Bhushan (supra)* has attained finality till the Supreme Court and the same has been upheld by the Full Bench of this Court in *R.D.Gupta v. DTC, LPA No. 708/2002*, decided on May 9, 2011.

25. It is her submission that even on merits, the service record of the petitioner reveals that he was on LWP for 501 days and thereby, his qualifying service is calculated as 9 years 8 months and 12 days.

26. She submits that the qualifying service of the petitioner is calculated only after taking into account the fact that the petitioner was brought on monthly rates w.e.f April 25, 1982. The calculation of the total service as 11 years 10 months and 6 days as done by the petitioner includes trainee and Retainer Crew period. She further submits that the qualifying service of the petitioner has been calculated only from April 25, 1982, i.e., from the date, the petitioner was put on monthly rates with respondent corporation and not from July 25, 1982 and the



calculation includes the probation period as well as the sanctioned leaves, while the period of LWP has been excluded and only thereafter, the qualifying period comes out to be 9 years 8 months and 12 days.

27. She has also relied upon the Judgment of the Supreme Court in the case of ***DTC v. Balwan Singh, (2019) 18 SCC 126***, to submit that the Supreme Court, while taking note of Rule 3(1)(q) and Rule 21 of the Pension Rules, has held that the period of leave for which salary is payable should be taken into account for determining the pensionable service, while the period for which no salary is paid, should be excluded.

28. It is her submission that the issue, whether to count LWP period or Retainer Crew period, in calculating the qualifying service, is settled by the Supreme Court in the case of ***Balwan Singh (supra)***, as well as, in the case of ***Karan Singh v. DTC, Civil Appeal No. 12743/2017*** decided on ***October 22, 2019***, (hereinafter referred to as '***Karan Singh II***') wherein, it has been held that both the afore-said periods, cannot be counted to calculate the qualifying service.

29. She submits that even rounding of under Rule 49(3) of the Pension Rules, is not permissible as per the settled position of law by the Supreme Court in the cases of ***Lillu Ram (supra)***, ***Balwan Singh (supra)*** and ***Karan Singh II***. It is her submission that Rule 49 only talks about amount of gratuity to be paid to an employee but it does not qualify an employee for pension who is having less than 10 years of qualifying service.

30. She submits that the judgment relied upon by the petitioner in the case of ***Rajender Singh (supra)***, is clearly distinguishable on facts.



It is also her case that **Rajender Singh (supra)**, has been followed by the Tribunal in the case of **Jai Kumar Jain v. DTC in OA No. 4239/2014**, decided on March 9, 2017. The order of Tribunal in **Jai Kumar Jain (supra)** was challenged by the respondent corporation before this Court in **DTC & Anr. v. Jai Kumar Jain, W.P.(C) 5424/2017**, decided on December 24, 2019 and the same was allowed by this Court in favour of the respondent corporation, by relying upon the judgment of the Supreme Court in **Balwan Singh (supra)**. Even the review petition filed subsequently, in **Review Petition No. 175/2020**, decided on December 2, 2020, was dismissed by this Court. Moreover, the SLP filed before the Supreme Court by **Jai Kumar Jain** being **SLP No.14417/2022**, decided on August 22, 2022, has been dismissed by the Supreme Court. So, it is her submission that the Supreme Court in the matter of **Rajender Singh (supra)**, has left the question of law open. However, the judgment in **Balwan Singh (supra)** clearly lays down the law that in order to be eligible for grant of pension, an employee has to render 10 years of minimum qualifying service.

31. So, on the basis of the afore-said submissions, she seeks dismissal of the writ petition.

ANALYSIS:-

32. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether the petitioner is entitled to avail the benefit of Rule 49(3) of the Pension Rules, which contemplates rounding of the period of three months, inasmuch as, service rendered by an employee for the period of three months and above but less than six months can be treated as a complete one-half



year and reckoned as qualifying service for the purpose of grant of pension.

33. Before we refer to Rule 49(3) of the Pension Rules, it is necessary to highlight the brief facts which have been noted by us in the aforesaid paragraphs; there is no dispute that the petitioner was appointed as Retainer Crew on April 25, 1981 and he continued to work as Retainer Crew, till he was brought on monthly rates w.e.f. April 25, 1982.

34. It is the conceded case that on May 31, 1993, the petitioner had taken voluntary retirement from the service of the respondent corporation. It is also the conceded case that the petitioner remained on LWP for the period of 509 days, i.e., 1 year 4 months and 24 days. Rule 3(1)(q) and Rule 21 of the Pension Rules, if meaningfully read together, provide that the period of LWP need to be excluded for the purpose of determining the qualifying service. It is also a settled law, in terms of the judgment of the Supreme Court in the case of **Balwan Singh (supra)** that the period of LWP, has to be excluded for the purpose of determining the qualifying service. The relevant paragraph of **Balwan Singh (supra)**, is reproduced as under:-

“19. 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 for



leave, that period has to be excluded from the period to be counted for admissibility of pension. Rule 3(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.”

(emphasis supplied)

35. If that be so, the issue must be proceeded on the premise that the period of LWP i.e., 1 year 4 months and 24 days, need to be excluded from the service put in by the petitioner with the respondent corporation for the purpose of determining his qualifying service for the purpose of grant of pension.

36. Having said that, as per the respondent corporation, the petitioner *in toto*, has put in 9 years 8 months and 12 days of qualifying service with the corporation, if the same is determined from April 25, 1982.

37. The submission of Mr. Raju, learned counsel for the petitioner in this regard is that even if the service of the petitioner is counted w.e.f. April 25, 1982, he has put in 9 years 11 months 12 days of service and as such, entitled to the benefit of Rule 49(3) of the Pension Rules.

38. We are not in agreement with this submission of Mr. Raju for



the reason that as per the calculation of the petitioner, he has rendered 11 years 10 months and 6 days of the total service in the respondent corporation, which includes the period of 9 months, i.e., from July 25, 1981 till April 25, 1982, undergone by the petitioner as Retainer Crew, which has to be excluded for determining the period of qualifying service, as per the ratio laid down by the Supreme Court in **Karan Singh II**. Additionally, if the period of LWP i.e., 509 days (which means 1 year 4 months and 24 days) is excluded then the net qualifying service would come out to be 9 years 8 months and 12 days or even less, but surely it will not be 9 years 11 months and 12 days, for the petitioner to be entitled to avail the benefit of Rule 49(3) of the Pension Rules. Rule 49(3) of the Pension Rule has been interpreted by one of us (V. Kameswar Rao, J) in the case of **DTC v. Karan Singh, 2013 SCC OnLine Del 2192**, (hereinafter referred to as '**Karan Singh I**'), wherein, this Court has held that it is only in the eventuality when the period is equal to 3 months and above, the same can be treated as a complete one-half year. In other words, a government servant must put in 3 months of service, over and above the period of 6 months, i.e., second half of the year (in this case), then only the principle underlying Rule 49(3) of the Pension Rule, shall get attracted and it is not such a case here, in view of our conclusion above. The relevant paragraph of **Karan Singh I** is reproduced as under:

*“11. The question which arises for our consideration
“whether the respondent is entitled to count the period of
98 days of leave without pay for the purpose of qualifying
service of 10 years, to be eligible for grant of pension?”
Rule 21 of the CCS (Pension) Rules, 1972, stipulates leave*



during service for which leave salary is payable and all extraordinary leave granted on medical certificate shall count as qualifying service. In other words, it is only such leave for which salary is payable shall count as qualifying service. In this case the leave was without pay. Hence, the period of 98 days shall necessarily be excluded for the purpose of qualifying service of 10 years, the respondent's total qualifying service would come to 9 years, 1 month and 25 days (total service rendered is 9 years, 5 months and 3 days). Rule 49(3) of CCS Pension Rules, 1972 would not benefit the respondent for the reasons (1) the same is not applicable as the service is not above 3 months, (2) even if applicable the service would be 9 years, 6 months and 0 days. Further if the service of the respondent is reckoned from May 27, 1983 and the period of 98 days is excluded then also the total period of service put in by the respondent is 9 years, 7 months and 8 days. In that eventuality also the benefit of Rule 49(3) would not be applicable to the respondent as the same is attracted when the period is equal to 3 months and above which shall be treated as completed one half year. In this case beyond a period of 6 months i.e. second half the respondent has not put in 3 months of minimum service to seek the benefit of Rule 49(3)."

(emphasis supplied)

39. At this stage, we may also refer to the judgment in the case of **Rajender Singh (supra)** on which reliance has been placed by Mr. Raju. The said judgment has no applicability to the case in hand, inasmuch as, the issue that had arisen before the Co-ordinate bench of this Court, was whether the respondent therein would be entitled to the pension on the ground that he had put in 10 years of qualifying service in the backdrop of Rule 49(3) of the Pension Rules. It was an admitted case of the parties therein, that the respondent had completed 9 years 10



months and 6 days of qualifying service. Though an issue was raised by the DTC/petitioner Corporation therein, that Rule 49(3) of the Pension Rules cannot be invoked inasmuch as the respondent had taken voluntary retirement under the VRS, the said plea, was negated in view of the judgment of the Supreme Court in the case of **Lillu Ram (supra)**, wherein the Supreme Court clarified that whereas voluntary retirement is governed under the VRS, the pension would be governed by the Statutory Rules, i.e., the Pension Rules and by noting the fact that the respondent therein had completed 9 years 10 months and 6 days of qualifying service, it held that he shall be entitled to avail the benefit of Rule 49(3) of the Pension Rules and such, dismissed the petition of the DTC.

40. Suffice to state, it is not such a case here, inasmuch as, the respondent herein has not completed 9 years 9 months of service, which is a pre-requisite for calculating the length of qualifying service under Rule 49(3) of the Pension Rules.

41. In fact, the Division Bench in **Rajender Singh (supra)**, in paragraph 3, has clarified the position governing Rule 49(3) of the Pension Rules, in the following manner:

“3. On a plain reading of Rule 49(3), it is clear that while calculating the length of qualifying service, a fraction of a year equal to 03 months and above is to be treated as a completed „one half-year“ and reckoned as qualifying service for that duration.”

(emphasis supplied)

42. The judgment in the case of **Karan Singh I** is on the similar lines, as has been held by the Division Bench in **Rajender Singh**



(*supra*).

43. Reliance has also been placed by Mr. Raju on the judgment of this Court in the case of **North Delhi Power Ltd. & Ors. (*supra*)**, more specifically paragraph in 30, wherein, a Division Bench of this Court has held, as under:

“30. As regards the interpretation placed by the learned Single Judge on sub-Rule 3 of Rule 49, the view is sound and legal. The argument of the DISCOMS that the head note of the Rule requires the Rule to be interpreted in relation to the amount of pension is noted and rejected for the reason the head note of a Rule does not determine the sweep of the span of the Rule, and if the language of the Rule is clear it has to be given effect to. The language of the Rule proclaims that in calculating the length of qualifying service the fraction of a year equal to 3 months and above shall be treated as a completed one half year, requires it to be held that the Rule contemplates rounding up of a fraction to the next nearest half and thus relates to the calculation of the length of qualifying service. Such persons who attained 20 years qualifying service as a result of the rounding up of the fraction to the next nearest half would thus be entitled to have their qualifying service reckoned by getting the benefit of the rounding up of the fraction to the next nearest half.”

In view of our finding above that the petitioner in the present case has not completed 3 months over and above 9 years 6 months, and as such, he is not entitled to avail the benefit of the rounding of in terms of Rule 49(3) of the Pension Rules, the judgment in **North Delhi Power Ltd. & Ors. (*supra*)**, specifically, paragraph 30 of the judgment, shall not help the case of the petitioner.

44. At this stage, we would like to reiterate that the period of



service put in by the petitioner as Retainer Crew, has to be excluded for counting the qualifying service. This we say so, even in the case of **Karan Singh II**, the Supreme Court had excluded the period of 2 months of service undergone as Retainer Crew by the appellant therein, to determine his qualifying service and as the appellant had failed to qualify with the minimum qualifying service of 10 years, his appeal was dismissed.

45. In fact, the petitioner has taken contrary stands as to whether his service period undergone as Retainer Crew has to be included in the qualifying service. On one hand, it is his case, in the writ petition, that the period put in by him as Retainer Crew need to be included, on the other hand, in his written submission, he has contended otherwise, that even without including the period undergone as Retainer Crew, his qualifying service is coming out to be 9 years 11 months and 12 days. The relevant parts of the writ petition as well as the written submission from where contradictions can be seen, are reproduced as under:

Writ Petition

B. Because Ld. Tribunal failed to appreciate that the petitioner worked in DTC for a total period of 11 years 10 months and 6 days from 25-7-81 to 31-5-1993. The continuous temporary service is 9 months from 25-7-1981 to 25-4-82 i.e. till the date he was brought on monthly rate and as such temporary service was followed by permanent service without any break in service.

C. Because Ld. Tribunal failed to appreciate that the temporary service of 9 months has been unlawfully deducted from total service thereby making it as 11 years 1 month and 6 days whereas temporary service shall be counted as qualifying service as per Rule 13 of CCS (Pension) Rules, 1972).



Written Submission

12. That the Judgment in this Hon'ble Court in WPC 5424/2017 dated 24.12.2019 in DTC vs. Jai Kumar Jain in para 9 considered the impact of 49(3), but since the service comes to be 9 years 11 months and 24 days which also included leave without pay and under suspension period the service came to be less than 9 years 9 months as such Rule 49(3) has not been applied. However, in the case of Petitioner no such period is involved and the qualifying service came to be 9 years 11 months 12 days without including periods of leave without pay, training and retainer crew service and benefit of rounding of qualifying service entitled the Petitioner for pension and arrears (copy of Judgment annexed)."

(emphasis supplied)

46. In view of our above discussion, we agree with the conclusion drawn by the Tribunal and thus, the impugned order passed by the Tribunal does not require any interference.

47. The writ petition is dismissed. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 03, 2023/aky