(2018) 12 CAT CK 0094

In the Central Administrative Tribunal

Case No : Original Application No. 3271 Of 2016

Ajit Singh APPELLANT

Vs

Delhi Transport Corporation RESPONDENT

Date of Decision : 12-12-2018

Acts Referred:

Citation : (2018) 12 CAT CK 0094

Hon'ble Judges : Pradeep Kumar, Member (A)

Bench : Single Bench

Advocate : Surinder Tyagi, Ruchira Gupta

Final Decision : Dismissed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was a conductor with the respondents (DTC). He was appointed in the year 1982. Thereafter, he took voluntary retirement on 31.07.1993. For employees, CPF scheme was inforce and new scheme of pension was also introduced and options were called. Prior to retirement, the applicant had initially opted for pension, however, somehow it is made out that he had opted out from the same and his retirement settlements have accordingly been done and all the amounts except Employees Contribution amounting to Rs. 25,005.48/- have already been released and paid under clear acknowledgement by the applicant. The applicant pleads that since he had opted for pension and employee's contribution is still available with respondents, he needs to be granted pension. Since this has not been given to him, the grievance is ventilated in the instant case.

2. The respondents drew attention to an application written by the applicant himself which was received on 20.09.1995, wherein it is clearly mentioned that he has opted out of the pension. Attention was drawn to a subsequent letter issued on 10.10.1995 in respect of 49 employees who had opted out of pension. The applicant's name appears at serial no. 48 of the same.

The respondents also produced the service record of the applicant wherein it is recorded "opted pension scheme" but there is another specific mention on 31.10.1995 "opted out vide PC/Ex-empl/95/638 dated 10.10.1995". Thus, the applicant did not want pension from the department, but instead requested to release of his CP fund vide.

Other documents releasing all the dues excluding the applicant's contribution under clear acknowledgement have also been submitted as part of counter (cheque no. 091270 dated 31.07.1993 for Rs. 46136/- and cheque no 594072 dated 27.12.1995 for Rs. 3156.54/-). Their plea in the instant case is that the applicant had clearly opted out of pension and taken voluntary retirement way back in 1993. The present OA is therefore not maintainable. Further, this OA is time barred also. The respondents further mentioned that the Employees Contribution amounting to Rs. 25,005.48/-can also be paid to him as soon as he makes a request.

The respondents also drew attention that the applicant was on 441 days leave without pay. Accordingly the qualifying service also works out to less than the required minimum period of 10 years. On this ground also, the applicant is not admissible for any pension.

3. The applicant drew attention of a judgment of Hon'ble Delhi High Court, wherein it was decided that leave period cannot be deducted for working out the qualifying service. However on a specific query as to what was the nature of the leave in this case, specifically whether it was leave without pay, the applicant was unable to throw any light there upon.

4. The applicant further drew attention to a judgment by the Hon'ble Delhi High Court wherein in respect of pensioners the cause of action was said to be continuous and it was pleaded that limitation will not apply. However, the judgment has been scrutinized. This judgment is in a case wherein an employee was originally eligible for pension and certain delays had occurred. In this context, it was held that limitation would not apply. The instant case is one where the applicant is praying to be covered under pension scheme. Accordingly this judgment has no ratio in the instant case.

5. Heard at length Shri Shri Surinder Tyagi, learned counsel for the applicant and Ms Ruchira Gupta, learned counsel for the respondents. It clearly comes out that applicant had opted out of pension scheme and had taken all payments already. Having taken a conscious decision and this being the long settled position, it cannot be reversed at this belated stage. The judgments quoted by applicant at Para 3 and 4 above are also not of much help in this case. In the result, the instant OA is dismissed being devoid of merit. No order as to cost. The applicant is however at liberty to approach the respondents for releasing the Employee's contribution amounting to Rs. 25,005.48/-. He may make a representation for the same within four weeks from receipt of certified copy of this order and respondents shall release the same within eight weeks thereafter.