

(2018) 11 CAT CK 0137

In the Central Administrative Tribunal

Case No : Original Application No. 3546 Of 2014

Anil Kumar

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 20-11-2018

Acts Referred:

Citation : (2018) 11 CAT CK 0137

Hon'ble Judges : Vijay Lakshmi, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Puneet Verma, Koonal Tanwar, Chandra Shekhar Goswami

Final Decision : Allowed

Judgement

Pradeep Kumar, Member (A)

1. The applicant was appointed as Conductor in Delhi Transport Corporation (DTC) on 18.07.1983. It is alleged that he did not issue tickets to the passengers. He was removed from service w.e.f. 06.07.1992.

At that time, an industrial dispute was already pending decision in Industrial Tribunal in respect of DTC Worker Demand for implementation of 4th Central Pay Commission's scales. Applicant was treated as a protected worker and DTC moved Industrial Tribunal for approval of this order of removal. Industrial Tribunal vide order dated 22.05.2000 set aside this order of removal.

2. Applicant represented on 05.09.2000 and again on 19.09.2000 to allow him to join duty and payment of back wages. This was not agreed to. Applicant preferred Writ Petition No.5568/2002. Hon'ble High Court decided the writ on 08.12.2003. The operative part of this judgment reads as under:

"This writ petition seeks the implementation of the order dated 22.5.2000 under Section 33(2)(b) by which permission under Section 33(2)(b) for seeking approval of the tribunal for the removal of the petitioner from service was declined.

It is not in dispute that the Order dated 22nd May, 2000 has not been challenged by respondent-DTC and has become final. Accordingly, the writ is allowed, the writ of mandamus is issued to the respondent to implement the effect of the above Order dated 22nd May, 2000 in accordance with the judgment of the Hon'ble Supreme Court extracted above. All the emoluments accruing to the petitioner shall be paid on or before 15.2.2004 along with reinstatement. The writ petition stands allowed, accordingly."

3. This order was not implemented. Applicant preferred contempt petition. During pendency of this petition, applicant was allowed to join duty w.e.f. 01.05.2004 and back wages were released.

4. The Government of India introduced a Scheme known as Assured Career Progression Scheme (ACP Scheme) in the year 1999, providing at least two financial upgradations in hierarchy to the Central Government employees upon completion of 12 and 24 years of regular service respectively, who were stagnating in the same pay scale and were not granted any promotion on completion of 12 and 24 years of regular service. DTC adopted this ACP Scheme w.e.f. 12.08.2002. However, applicant pleads that first ACP benefit was not given to him while releasing the back wages. He gave representation also on 10.08.2004. Eventually, first ACP benefit was granted vide order dated 13.11.2006 and it was given w.e.f. 01.05.2004. Thereafter, second ACP was given w.e.f. 18.07.2007 vide order issued on 16.08.2007.

5. Applicant is aggrieved that since he was given back wages for entire period after removal, he ought to have been given first ACP w.e.f. 12.08.2002, since ACP was implemented from this date and he had already completed 12 years service at par with others (Braham Pal Singh - B.No.17096, Ved Prakash Sharma - B.No.17669, Ved Pal - B.No.18738).

6. Later, Government of India introduced MACP Scheme in replacement of ACP w.e.f. 01.09.2008. This Scheme was also implemented by DTC w.e.f. 01.09.2008. Orders to this effect were issued on 17.12.2009. With this, applicant ought to have been granted third MACP benefit on completion of 30 years of service w.e.f. 16.07.2013. This has, however, not been given to him despite his efforts. He sent a legal notice also towards this end on 29.04.2014, but to no avail.

7. Feeling aggrieved, OA has been filed. Applicant has sought relief of issuing direction to the respondents that first ACP be given to him w.e.f. 12.08.2002, second ACP w.e.f. 18.07.2007 and third MACP w.e.f. 16.07.2013. No interim relief was sought. Applicant has since superannuated w.e.f. 31.07.2019. He also mentioned that pension has also not been released to him.

8. Applicant relies upon the following judgments:

(i) Decision dated 04.04.2013 of Chandigarh Bench of this Tribunal in OA No.658-CH of 2012 (Raj Pal vs. Union of India). The Tribunal gave following directions:

"12. Firstly, we deal with the objection raised by the respondents with regard to delay and laches. Since benefits flowing from the ACP Scheme is a recurring cause of action and the applicant has been denied his valuable right which flow from policy that cannot be denied on the ground that the applicant has not approached the Court of law well within the time. Once, it has been held by the Honble Apex Court that past service rendered in the State Govt. is to be counted towards grant of financial benefits then without any discrimination the said benefit is to be extended to the similarly placed person."

(ii) Decision by Principal Bench of this Tribunal dated 14.07.2015 in OA No.907/2013 (Raghu Nandan Vashisht vs. SDMC). While allowing this OA which was for ACP benefit that were delayed, the Tribunal relied upon a judgment by Hon"ble Apex Court and observed:

"14. In State of Madhya Pradesh and Others v. Yogendra Shrivastava, (2010) 10 SCC 538, the Honble Apex Court held:

"18. ... Where the issue relates to payment or fixation of salary or any allowance, the challenge is not barred by limitation or the doctrine of laches, as the denial of benefit occurs every month when the salary is paid, thereby giving rise to a fresh cause of action, based on continuing wrong. Though the lesser payment may be a consequence of the error that was committed at the time of appointment, the claim for a higher allowance in accordance with the Rules (prospectively from the date of application) cannot be rejected merely because it arises from a wrong fixation made several years prior to the claim for correct payment."

Applicant also pleaded that in his case also the OA needs to be allowed despite delays.

9. Respondents have submitted detailed reply on 24.04.2015. It is submitted that applicant was given first ACP w.e.f. 01.05.2004 and second ACP was given on 01.09.2008. He is eligible for third MACP on 01.09.2014 after adjusting the deferment period and the same is under process.

10. It is pleaded that he was reinstated on 21.04.2004 while he resumed duty on 26.04.2004 and was granted first ACP w.e.f. 01.05.2004. The case of applicant was examined by audit and objection was raised that second ACP is due from 01.09.2008 and not 18.07.2007. The third MACP is delayed due to deferment of second ACP from 18.07.2007 to 01.09.2008, and as such it was proposed to be given w.e.f. 01.09.2014 instead of 17.07.2013 when he completed 30 years of service.

11. Matter has been heard at length. Sh. Puneet Verma, learned counsel represented the applicant, Sh. Koonal Tanwar and Sh. Chandra Shekhar Goswami, learned counsel represented the respondents.

12. Facts are not in doubt. Applicant was removed from service. However, this order was turned down by Industrial Tribunal. This order was neither challenged by respondents nor implemented. Applicant had to approach Hon"ble High Court

whereafter he was reinstated and back wages were given.

13. Since back wages were given as directed by Hon"ble High Court, that period is required to be treated as duty and is required to be counted for the purpose of first and second ACP as ACP Scheme was implemented by respondents and these benefits are required to be released from the due dates.

14. Respondents have not brought out any reason for deferment of the two ACP benefits, except pleading that audit had raised objections. In absence of any specific reason, it is not possible to adjudicate whether these reasons are good enough to lead to deferment. Accordingly, these pleas of respondents are not acceptable.

15. Accordingly, OA is allowed. Respondents are directed to grant the applicant first ACP w.e.f. 12.08.2002 when DTC implemented this Scheme as he had already completed more than 12 years of service without any promotion. The second ACP shall be released w.e.f. 17.07.2007 when he completed 24 years of service. The third MACP shall be granted to him w.e.f. 17.07.2013 when he completed 30 years of service. The arrears and consequential benefits shall be released within 90 days from the date of receipt of certified copy of this order. It will not carry interest. No costs.