

(2018) 09 CAT CK 0076

In the Central Administrative Tribunal

Case No : Original Application No. 4645 Of 2015

Ashok Kumar Dabas

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 24-09-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 9

Citation : (2018) 09 CAT CK 0076

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Anil Mittal, Komal Aggarwal, Chandra Shekhar Goswami, Karunesh Tandon

Final Decision : Dismissed

Judgement

1. Brief facts of the current O.A. are that the applicant was appointed as Conductor with Delhi Transport Corporation (DTC) in the year 1985 on regular basis. The respondents vide Order No. 16 dated 27.11.1992 introduced a pension scheme for its employees retiring on or after 03.08.1981. If any employee did not opt for the pension as per Rule-9 of the Pension Rules, he was deemed to have opted for the pension Scheme. Due to family problems, the applicant sought retirement from service and gave notice vide his letter dated 7/8.8.2014 under Regulation (c) of the DRTA (Conditions of Appointment and Service) Regulations, 1952 to the Depot Manager, Nangloi Depot to accept his resignation. The respondents informed the applicant vide letter dated 19.09.2014 that the resignation tendered by him has been accepted w.e.f. 01.12.2014. The applicant requested the respondents that he wished to withdraw his resignation but the same was declined by the respondents vide letter dated 28.04.2015.

2. On 30.06.2015 the applicant was informed that since he had opted for the DTC Pension Scheme, he was entitled to his own share of provident fund and the same would be paid to him by cheque. The applicant alleges that the respondents neither released any post retirement benefits nor paid the pension

to the applicant. He then issued a legal notice dated 15.10.2015, requesting the respondents to release his gratuity, provident fund, leave encashment, arrears of pension etc. with interest. The respondents, vide the impugned letter dated 23.10.2015 informed the applicant that since he had resigned from the Corporation on 07.08.2014, he was only entitled to his own share of provident fund and no other benefits were due. Consequently, the applicant's share of provident fund was released to him but his gratuity, leave encashment, arrears of pension, commuted value of pension and monthly pension were not paid.

3. The applicant submits that in a similar OA-858/2013 (Ram Kishan Vs. DTC), this Tribunal vide order dated 29.10.2014 held that the applicant is entitled for pension even though he had resigned from service after 29 years of service. The said order was upheld by the Hon"ble High Court of Delhi vide order dated 17.03.2017 in WP(C)-2627/2015.

4. Aggrieved by the illegal and arbitrary action of the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

"(a) Quash order dt. 23-10-2015 (Annexure-A.1).

(b) Direct respondent to pay Gratuity, Leave Encashment, arrears of Pension from 19-9-2014, Commuted value of Pension etc. with interest and monthly pension in terms of Annexure-A.2 to the applicant."

5. In the counter reply, the respondents state that the applicant sought resignation from DTC vide letter dated 07.08.2014 which was accepted w.e.f. 01.12.2014 vide letter dated 19.09.2014, i.e. before completion of 30 years of qualifying service. The applicant had opted for the DTC Pension Scheme, hence the Contributory Provident Fund was released to him on 30.06.2015. The respondents contend that the applicant is not entitled for the pensionary benefits, since he sought resignation from the organization and has not taken voluntary retirement from the organization, as per the Scheme.

6. During the course of hearing, the learned counsel for the respondents Sh. Chander Shekhar Goswami emphasized that the applicant is not entitled for pensionary benefits since he had tendered his resignation from the organization before completing 30 years of service. Consequently, the applicant is also not entitled for other benefits like leave encashment and gratuity etc., which are normal pensionary benefits.

7. The learned counsel for the applicant Sh. Anil Mittal vehemently argued that even though the applicant had tendered his resignation before completion of qualifying service, however the applicant did have to his credit almost 29 years of service. Sh. Mittal emphasized that a mere change of nomenclature cannot wash out 29 years of dedicated service put in by the applicant and that he should be granted proportionate pension, taking into account the actual number of years for which he served the respondents. Placing reliance on the judgments of Hon"ble High Court of Delhi (i) Shanti Devi Vs. Delhi Transport Corporatio,

[WP(C)-4871/2010] dated 15.10.2012, (ii) Sudarshan Kumar Vs. Delhi Transport Corporation and another, 1994(7)SLR 163, Sh. Mittal submitted that the issue has already been adjudicated favourably in favour of the petitioners therein. The Hon"ble High court of Delhi in Delhi Transport Corporation Vs. Ram Kishan, [WP(C)-4698/2015] dated 17.03.2015 has held a similar view, benefit of which needs to be extended to the applicant.

Citing the decision of Hon"ble High Court of Delhi in the case of Sudershan Kumar (supra) Sh. Mittal argued that it has been held that the result of the resignation was in no way different from the normal retirement, and the phraseology used should be understood in a liberal sense, and that there cannot be any artificial distinction between a person who retired and a person who resigned. He submitted that in Para-8 of the aforesaid judgment, it has been held that:-

"(8) According to the petitioner there was no occasion for him to wait for an order of retirement being made because there was no such provision at the relevant time. The petitioner points out that in the case of the Government servant governed by Rules 48 and 48-A of the Rules he can always seek retirement on completion of 30 years qualifying service instead of resignation and thereafter have the benefit of the pension. When such a provision was not available in the year 1986 petitioner had no other option except to resign in view of his ill health and in such a situation he cannot be treated differently from the persons who retired after tendering qualifying service. The denial of the benefit of the pension according to the petitioner is artificial and arbitrary since there cannot be any rational distinction between a person who resigned and a person who was retired after completing the qualifying service. In the absence of any assistance on the part of the Respondent, I assume that, in view of the Pension Scheme read with the letter Annexure 2(dt-2.9.1993) C.C.S. Rules governs the employees of the Respondent Corporation and if so, after the introduction of the scheme, an employee could be retired on completion of the qualifying years of service."

The learned counsel further argued that similar view has been upheld in the case of Shanti Devi (supra) in paras-19 & 20 of the said judgment, which read as under:-

"19. We may also point out that the distinction between 'voluntary retirement' and 'resignation' is primarily based on as to whether the person concerned had the qualifying service or not. If the Government servant concerned had the qualifying service and he sought to leave the service, it could very well be treated as retirement from service. While a 'resignation' could be sought at any point of time, even a few days after a government servant was appointed, 'voluntary retirement' could only be sought if the Government servant had the prescribed qualifying service.

20. In the present case, the said Dilbagh Singh admittedly had more than 20

years of qualifying service and therefore, he could have sought voluntary retirement under Rule 48-A. There was no impediment on his invoking the said Rule 48-A. Therefore, we are of the view that when the said Dilbagh Singh submitted the so called 'resignation' letter on 26th September, 2007, he actually sought voluntary retirement under Rule 48-A. On the basis of this factual understanding, Rule 48-A would be applicable and not Rule 26 of the said Rules."

Relying strongly on the aforesaid citations, the learned counsel pleaded acceptability of the prayer raised in the OA.

8. After going through the facts of the case, I find that there are two hurdles in the way of grant of pension to the applicant. Firstly the fact that the applicant tendered his "resignation" instead of seeking "voluntary retirement" as stipulated under CCS (Pension) Rules, 1972, and secondly, that he had not completed the qualifying service at the time when he tendered his resignation.

9. In the judgments relied upon by the applicant, a view has been held that distinction between voluntary retirement and resignation should not prove to be an impediment in invoking Rule-48(A). The aforementioned judgments have laid down the law in this regard after succinctly discussing the entire matrix in detail. However, what the applicant has failed to point out is that both the aforementioned judgments, simultaneously, held that this distinction (between resignation and voluntary retirement) would not constitute an impediment for grant of pension, provided the person concerned had the qualifying service. In para-19 of Shanti Devi (supra) before erasing the fine distinction between resignation and voluntary retirement, their Lordships, as a prefix, observed that:-

"We may also point out that the distinction between "voluntary retirement" and "resignation" is primarily based on as to whether the person concerned had the qualifying service or not....."

Similarly, in para-8 of Sudarshan Kumar (supra), it has again been held that:-

"....The denial of the benefit of the pension according to the petitioner is artificial and arbitrary since there cannot be any rational distinction between a person who resigned and a person who was retired after completing the qualifying service....."

Thus the benefit claimed by the applicant would be available to him only if (& when) both the roadblocks of "resignation" vis-à-vis "voluntary retirement", and, completion of qualifying service are satisfied. The case of Ram Kishan (supra) relied upon by the applicant is distinguishable on facts since there the applicant had completed the qualifying service, unlike the applicant in the present OA.

10. It is not in dispute that the applicant did not have to his credit the requisite qualifying service of 30 years. Even if applicant's request for "resignation" was to be treated as a request for "voluntary retirement" applying the rationale of the aforementioned judgments, the second hurdle of his not meeting the criteria of qualifying service, still remains. In the case of Sudarshan Kumar & Shanti Devi

(supra) their Lordships, while deciding that there cannot be any artificial distinction between a person who retired and a person who resigned, simultaneously observed that benefit of Pension Benefit Scheme extends to all those who had rendered the qualifying service. The requisite of qualifying service has not been done away in any of the relied upon citations.

11. During the course of hearing, the learned counsel for the applicant submitted that the respondents may be directed to grant him proportionate pension, since he does not fulfill the criteria of qualifying service. If this plea is accepted, and proportionate pension is given to someone who does not have the qualifying service, there would be no reason to deny it to someone with 28 years of service or to someone who has only 25 or 15 years of service or may be, even less. However, unfair it might seem to deny pension on this ground, when a few months more could have bridged the gap, the fact remains that it is a stipulation under law. The job of the Tribunal is to interpret the law and not to lay down the law, which is the prerogative of the legislature.

12. In view of the aforesaid discussion, in my view, the relief claimed by him in the O.A. is not available to him. The O.A. is dismissed. No costs.