

**(2010) 02 DEL CK 0232**

**In the Delhi High Court**

**Case No :** Writ Petition (C.) No. 978 of 2010

Azad Singh and Others

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

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**Date of Decision :** 16-02-2010

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2010) 02 DEL CK 0232

**Hon'ble Judges :** Mool Chand Garg, J;Anil Kumar, J

**Bench :** Division Bench

**Advocate :** Anil Mittal, for the Appellant; Avnish Ahlawat, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

Anil Kumar, J.—The petitioners had challenged the order dated 9th November, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in TA No. 1254/09 and 1255/09 titled Azad Singh & Ors. Vs. DTC (TA No. 1255/09) and Om Praksah Conductor Vs. DTC (TA No. 1254/09) declining their prayers to fix their basic pay at the same stage at which the basic pay of their contemporary colleagues were fixed as the petitioners had continued in service without any break and a direction to the respondent to pay arrears of salary from the date of their re-instatement till payment with interest after fixing their basic pay and other benefits.

2. On account of continued absence, the services of the petitioners were discontinued. Aggrieved by the discontinuance of their services, they had raised industrial dispute and awards were passed in their favor. Under the award, which was in their favor, they were re-instated with part of back wages.

3. The awards were challenged before the High Court, however, they were upheld with some modification. The special leave petitions were also filed in the Supreme Court where it was ordered that the petitioners be re-instated without their laying any claim for back wages.

4. In the Supreme Court while re-instating the petitioners, it had been clarified that during the period they were out of employment, though that period had to be taken into account for the purpose of continuity of pensioner benefits but as far as the arrears for the period were concerned when they were absent, no specific order was passed. The petitioners were given a time limit of three weeks for joining the duties.

5. Pursuant to the orders passed by the Supreme Court two of the petitioners became entitled for re-instatement. The other two petitioners whose appeals were not pending before the Supreme Court also became entitled for similar relief and their appeals in other Courts were disposed of.

6. The petitioners, thereafter, however filed the original application seeking that since they have been re-instated, their emoluments should be re-fixed as if they were never out of employment and in the circumstances, it was prayed to fix their basic pay at the same stage at which the basic of their contemporaries were fixed as the petitioners had continued in service without any break.

7. The Tribunal considering the facts and circumstances and noticed that continuity was awarded only as a gesture of goodwill during the interregnum period when the petitioners were not in service in order not to have break in service however, the back wages were totally negated and consequently the petitioners were held to be not entitled for the relief claimed. Under the circumstances, the Tribunal relying on the observations of the Supreme Court, held that there is no question of grant of increments as even wages were not payable to them during the period they were not in service and only the continuity of the service has been awarded for the purpose of pensionary benefits. The Tribunal has also noted that the issue of increment does not arise, as it is only by way of fiction that the period during which the petitioners were out of service, was to be treated as continuous for the purpose of retiral benefits only.

8. The learned counsel for the petitioner has not disputed that in the Supreme Court the emphasis was on re-instatement and continuity of service was granted during the interregnum as goodwill gesture. This is also not disputed that the back wages were not awarded to the petitioners. Since the back wages were not awarded, the petitioner did not become entitle for increments during the period when they were out of service and the period they were out of service was only to be computed for the purpose of their entitlement to receive the pension. Had the period during which the petitioners were out of service been not computed for considering their entitlement for the pension, some of them might not have become entitled even for pension. In the circumstances, the reasoning of the Tribunal that the petitioners are not entitled for increments cannot be faulted nor there is any such irregularity and illegality in the order of the Tribunal which will entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

9. The writ petition is without any merit and it is therefore dismissed.