

(2011) 11 DEL CK 0008
In the Delhi High Court
Case No : Writ Petition (C) 7419 of 2011

Chander Pal

APPELLANT

Vs

The Cmd, M/s Delhi Transport Corporation

RESPONDENT

Date of Decision : 24-11-2011

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14(2)
Constitution of India, 1950 — Article 226
Industrial Disputes Act, 1947 — Section 33C(1)

Citation : (2012) 3 AD 652 : (2012) 186 DLT 36 : (2012) 133 FLR 1 : (2012) 3 LLJ 75 : (2012) 3 SLJ 134

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Ram Sewak, for the Appellant; Manish Garg, S.K. Bansal and Mr. Mohit Sharma, for DTC., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The petitioner has challenged the order dated 30th May, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1988/2010 preferred by the petitioner; by means of the aforesaid order the OA of the petitioner has been dismissed. The petitioner also filed RA No.205/2011 which met the same fate as the said review application has also been dismissed vide order dated 14th July, 2011. This order is also subject matter of challenge in the present proceedings.

2. In order to understand the controversy, we would like to recapitulate the relevant facts.

3. The petitioner herein was appointed as Driver by the respondent Delhi Transport Corporation (DTC) on 27th February, 1978. The services of the petitioner were terminated on 12th June, 1989; it was treated as "deemed

resignation" on the ground that the petitioner had not been attending duties and was unauthorizedly absent. The aforesaid deemed resignation/termination was challenged by the petitioner by raising industrial dispute which was referred to the Labour Court, Delhi for adjudication. This resulted in passing of an award dated 16th August, 1999 whereby the Labour Court held the termination to be bad in law. As per the Labour Court the unauthorized absence could be treated as misconduct and therefore it was necessary to hold an inquiry. Accordingly the award reinstating the petitioner in service with 50% back wages was passed. W.P. (C) No.3943/2000 against this award was filed by the respondent DTC which was dismissed. LPA No.31/2002 preferred thereagainst was dismissed by the Division Bench of this Court and thereafter review application was also dismissed by the Division Bench. The respondent DTC went to Supreme Court and preferred SLP(C) No.7110-7111/2004.

4. It so happened that in various other cases similar action was taken by the respondent DTC of terminating the services of those workers as deemed resignation and which cases had met the same fate up to the High Court level. The respondent DTC had challenge the order in those cases as well by preferring SLPs. These SLPs were granted by the Supreme Court and therefore were converted into civil appeals. Before the Supreme Court all these appeals were taken up together for consideration having regard to communality of questions of law raised therein. These appeals were disposed of by the Supreme Court vide order dated 25th April, 2006 as the parties had settled the matter, consent order was passed by the Supreme Court in those appeals which included the appeal preferred by the respondent DTC against the petitioner herein as well. As per the consent terms all these employees were to be reinstated by the respondent DTC "without their laying any claim for back wages". It was further agreed that intervening period will be taken into account for the purpose of continuity so that certain retiral/pensionary benefits can be availed by them.

5. Pursuant to the aforesaid settlement arrived at between the parties recorded by the Supreme Court in its order dated 25th April, 2006 these persons including the petitioner joined the services. On joining the duties the basic pay of the petitioner herein was fixed at Rs. 4750/- vide order dated 1st October, 2007. While fixing the pay of the petitioner the petitioner was given benefit of increments and two financial upgradations under the Assured Career Progression (ACP) Scheme for the intervening period i.e. the period when he was declared "deemed to have resigned" till the date of his joining the duty. Within two days thereafter, the respondent DTC on the premise that the pay was wrongfully fixed in as much as the petitioner was not entitled to increments, fixed the basic pay of the petitioner at Rs. 3200 as on 14th July, 2006.

6. The petitioner challenged this re-fixation whereby the basic pay of the petitioner was reduced by filing W.P.(C) No. 7294/2008 in this Court. Interim order dated 5th November, 2008 was passed staying the recovery. This writ petition was transferred to the Central Administrative Tribunal (CAT) after

Notification u/s 14(2) of the Administrative Tribunal Act was issued covering the respondent DTC also under the purview of the Administrative Tribunal Act. By the CAT it was assigned TA No.793/2009. In the TA order dated 27th September, 2009 was passed directing the respondents DTC to pass a reasoned order giving reasons for fixation of pay of the petitioner. The respondent DTC passed a speaking order dated 15th April, 2010. In this speaking order, it was mentioned that the consent order passed by the Supreme Court categorically stated that the reinstatement shall be without back wages and the intervening period will be taken into consideration only for the purpose of continuity so that certain retiral/pensionary benefits could be availed by the petitioner and therefore no increments were to be given to the petitioner for this period nor this period was to be counted for ACP benefits.

7. The petitioner again preferred OA No.1988/2010 before the CAT. In this OA following reliefs were claimed by the petitioner which are as under:

a) quash and set aside an order dated 15.4.2010 (Annexure A-1) of the respondent with a consequential direction to respondent to extend already fixed basic pay scale of Rs. 4,750/-, consisting of Financial upgradation benefits of ACP, of the Vth Pay Commission containing ANNEXURE A-10 to an applicant w.e.f. 1.7.2008 onwards till the date of implementation of the VIth Pay Commission revised pay scale and to direct to the respondent to pay extended arrears of pay and allowances with service benefits to an applicant;

b) quash and set aside an application's VIth Pay Commission revised pay scale fixation dated 1.10.2008, containing ANNEXURE A-11, fixed by the respondent on the basis of reduced basic pay scale of Rs. 3200/- applicable on 1.1.1996 and direct to the respondent to re-fix in the VIth Pay Commission revised pay scale of Rs. 5200-20200+ Rs. 2000 of an applicant on the already fixed basic pay scale of Rs. 4626/- dated 21.7.2006 and thereafter, to direct to the respondent to pay after re-fixation of pay scale increased arrears of pay and allowances with service benefits along with already deducted for a sum of Rs. 10,000/- to an applicant;

c) Quash and set aside the respondent's an impugned letter dated 24.5.2010, pertaining to recovery of Rs. 10,26,565/- containing ANNEXURE A-2 is against the settled law.

8. We may point out at this stage that after the award of the Labour Court granting reinstatement with 50% back wages the said award was got executed by the petitioner, in so far as back wages are concerned by filing an application u/s 33C(1) of the Industrial Dispute Act. In those proceedings attachment orders were issued and the back wages were recovered and paid to the petitioner. The respondent DTC had thus issued orders for recovery of the said back wages paid to the petitioner as well on the ground that as per the Supreme Court order the petitioner was not entitled to any back wages and therefore this amount had become recoverable.

9. In these circumstances basically two issues were raised by the petitioner

before the Tribunal; one pertains to fixation of pay on reinstatement wherein the issue was as to whether the increments for intervening period are to be given to the petitioner or not for the purpose of pay fixation; other issue related to recovery of back wages by the respondent DTC which were paid to the petitioner after the award was rendered in favour of the petitioner by the Labour Court.

10. The Tribunal dismissed the OA of the petitioner vide order dated 30th May, 2011 relying upon the case of Azad Singh who was similarly situated as the petitioner and whose OA had also been dismissed by the Tribunal & Which order had been affirmed by the High Court as well.

11. It is not in dispute that Azad Singh and others were also parties in the appeals before the Supreme Court which were disposed of by the Supreme Court vide order dated 25th April, 2006. In their case also the pay was fixed without giving benefit of increments for the intervening period. The order of Tribunal was affirmed by the Division Bench of this Court in its decision dated 16th February, 2008 in W.P.(C) No. 978/2010 titled Azad Singh & Ors. v. Delhi Transport Corporation. While dismissing the said writ petition this Court affirmed the order of the Tribunal in the following manner:

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.

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.

12. It is pertinent to mention that the aforesaid decision of this Court was assailed before the Supreme Court by means of SLP No.13060/2010 and this SLP has also been dismissed by the Apex Court vide order dated 10th May, 2010. In these circumstances, we see no reason not to follow the judgment of Coordinate Bench of this Court in Azad Singh (supra). Thus in so far as pay fixation of the petitioner is concerned no fault is found therein. However we find that due to wrong fixation earlier, which error was corrected later, the petitioner was paid excess salary of Rs. 45,699/-; since this excess payment was made to the petitioner by the respondent DTC by its own mistake with no fault of the petitioner, we direct this amount will not be recovered from the petitioner.

13. In so far as second issue is concerned namely communication dated 24th May, 2010 which pertains to the recovery of amount which was given to the petitioner on the basis of Labour Court award, we find that the Tribunal has not dealt with this issue in the impugned order. In normal course, we would have remitted the case back to the Tribunal to decide the same. However, as noted above, before the Supreme Court settlement was arrived at whereby the petitioner had agreed to forgo entire back wages. In these circumstances, it would not be within the purview of the Tribunal to decide as to whether the respondent DTC can recover the aforesaid amount or not. Axiomatically, the same also does not fall for adjudication in this petition. It would be for the petitioner to agitate this issue before the appropriate forum subject to the aforesaid. In so far as pay fixation is concerned we do not find any merit in this petition; the same is dismissed.