

(2012) 04 DEL CK 0033
In the Delhi High Court
Case No : Writ Petition (C) 2264 of 2012

Delhi Transport Corporation

APPELLANT

Vs

Sh. Rajender Singh

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49(3)

Citation : (2012) 189 DLT 159

Hon'ble Judges : V.K. Shali, J; Badar Durrez Ahmed, J

Bench : Division Bench

Advocate : J.S. Bhasin, for the Appellant; None ., for the Respondent

Final Decision : Dismissed

Judgement

Badar Durrez Ahmed, J.—The only issue which arises for consideration in this writ petition is whether the respondent is entitled to pension on the ground that he has 10 years of qualifying service in the backdrop of Rule 49(3) of the CCS (Pension) Rules, 1972. It is an admitted position that the respondent has completed 09 years, 10 months and 6 days of qualifying service.

Rule 49 of the said rules reads as under:-

49. Amount of Pension

(1) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten years, the amount of service gratuity shall be calculated at the rate of half month's emoluments for every completed six monthly period of qualifying service.

(2)(a) In the case of a Government servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirty-three years, the amount of pension shall be calculated at fifty per cent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem;

(b) In the case of a Government servant retiring in accordance with the provisions of these rules before completing qualifying service of thirty three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than [Rupee three hundred and seventy-five] per mensem;

(c) notwithstanding anything contained in Clause (a) and Clause (b) the amount of invalid pension shall not be less than the amount of family pension admissible under sub-rule (2) of Rule 54.

(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.

(Underlining added)

(4) The amount of pension finally determined under Clause (a) or Clause (b) of sub-rule (2), shall be expressed in whole rupees and where the pension contains a fraction of a rupee it shall be rounded off to the next higher rupee.

2. On a plain reading of Rule 49(3), it is clear that while calculating the length of qualifying service, a fraction of a year equal to 03 months and above is to be treated as a completed "one half-year" and reckoned as qualifying service for that duration.

3. The respondent, as stated above had completed 09 years 10 months and 6 days of qualifying service. In other words, he had admittedly completed 91/2 years plus a further 04 months and 06 days of qualifying service which if read in the light of Rule 49(3) would amount to another half year of qualifying service. This, in turn, would mean that the respondent had, in fact, completed 10 years of qualifying service and, therefore, he would be entitled to pension.

4. A plea had been raised by the learned counsel for the petitioner that recently the Supreme Court, in the case of DTC v. Lillu Ram (Civil Appeal No. 11440/2011 decided on 14.12.2011), held that the case of a person invoking VRS and that of a person retiring under the said rules are different. Therefore, according to the learned counsel for the petitioner, Rule 49(3) of the said Rules cannot be invoked in this case inasmuch as the respondent had taken voluntary retirement under VRS (Voluntary Retirement Scheme). He placed reliance on para 26 of the said decision of the Supreme Court, which reads as under:-

As mentioned hereinabove, there are two different things one with regard to grant of VRS and another with regard to entitlement for pensionary benefits. First one is governed under the VRS whereas the second one is governed under the Statutory Rules. Merely because his application for voluntary retirement was accepted, automatically, he would not become entitled for grant of pensionary benefits.

5. We do not agree with the submission made by the learned counsel for the petitioner. What the Supreme Court has observed is that merely because a person's application has been accepted for voluntary retirement it does not mean that he is automatically entitled to the pensionary benefits. The Supreme Court clarified that whereas voluntary retirement is governed under the VRS, pension would be governed under the Statutory Rules, which, in this case, are the CCS (Pension) Rules, 1972. Thus, there is nothing in the Supreme Court's decision which would indicate that the said pension rules would not apply.

6. In fact the contents of para 26 of the said decision of the Supreme Court would make it clear that the CCS (Pension) Rules, 1972 were the Rules which were applied in that case also. Therefore, it cannot be contended that Rule 49(3) of the said Rule would not have any application in the present case.

7. The Tribunal has taken the same view as has been indicated by us above and, therefore, we find no reason to interfere with the impugned order dated 03.01.2012 passed in OA 701.2011. The writ petition is dismissed. There shall be no order as to costs.