

(2019) 02 DEL CK 0452

In the Delhi High Court

Case No : Civil Writ Petition No.3459 Of 2017, Civil Miscellaneous Application No. 15139 Of 2017, 41642 Of 2018

Delhi Transport Corporation

APPELLANT

Vs

Ram Kishan Sharma

RESPONDENT

Date of Decision : 11-02-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 49, 49(2)(b), 49(3)

Citation : (2019) 02 DEL CK 0452

Hon'ble Judges : Vipin Sanghi, J;A.K.Chawla, J

Bench : Division Bench

Advocate : Aditi Gupta, Abhishek Goyal, Poonam Gupta

Final Decision : Disposed Off

Judgement

Vipin Sanghi, J

1. The limited issue on which notice was issued by us in this petition was with regard to the relief of costs and interests from the date of retirement of the respondent i.e. 31.01.1993, on the retiral dues, till payment is awarded to the respondent.

2. In our order dated 25.04.2017, we have noticed the relevant facts and we consider it appropriate to reproduce the relevant extract from the said order, which reads as follows:

"1. We have heard learned counsel for the petitioner. The petitioner has assailed the order dated 20.09.2016 passed by the Central Administrative Tribunal (Principal Bench) in O.A.4064/2014. The tribunal vide the impugned order allowed the claim of the petitioner for grant of pension under the Delhi Transport Corporation Pensions Scheme, 1992. The tribunal has directed payment of arrears of pension to the respondent along with interest from the date it become due till the date of payment. The tribunal has also awarded cost of Rs.25,000/- to the respondent/applicant. The pension was initially denied to the respondent

on the ground that he took voluntary retirement on 31.01.1993 - when he completed 9 years, 10 months and 9 days service. To be eligible for drawing pension, he should have rendered minimum 10 years of service.

2. Pertinently, when the petitioner sought to release the Contributory Provident Fund to the respondent, the said amount was not accepted by the respondent/applicant.

3. The respondent learnt of the circular dated 03.06.2004 issued by the petitioner, which clarified the position with respect to applicability of Rule 49 (3) of Central Civil Services (Pension) Rules, 1972. The circular clarified that qualifying service of nine years, nine months and above will be rounded off to 10 years for the purpose of grant of pension under Section 49 (2) of the CCS (Pension) Rules, 1972.

4. Upon learning of the said clarification, the respondent initially approached the tribunal by filing O.A.2406/2009. Eventually, he filed the aforesaid O.A.No.4064/2014, which has been allowed by the Tribunal.

5. The submission of learned counsel for the petitioner is that the circular of 03.06.2004 could not be given retrospective effect from the year 1993, when the respondent took voluntary retirement. We do not find merit in this submission of the petitioner. A perusal of the circular dated 03.06.2004 shows that it merely seeks to clarify the position with regard to the application of manner of calculation of the qualifying service for determining the eligibility of the Government Servant to proportionate pension. To appreciate the position, we may set out the relevant extract from Rule 49 and the Circular dated 03.06.2004. Rule 49, in so far as it is relevant reads as follows:

"49 Amount of Pension

(1) In the case of Government servant retiring in accordance with the provisions of these rules before completing qualifying service of ten year, 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.

(1-A) xxxx xxxx xxxx xxxx

(2) In the case of a Government servant retiring in accordance with the provisions of these rules after completing the qualifying service of not less than ten years, the amount of pension shall be calculated at fifty per cent of emoluments or average emoluments, whichever is more beneficial to him, subject to a minimum of three thousand and five hundred rupees per mensem and a maximum of forty-five thousand rupees per mensem.

(2A) xxxx xxxx xxxx xxxx

(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.

(4) xxxx xxxx xxxx xxxx

6. The circular of 03.06.2004 reads as follows:

"No.28/16/2004-P & PW (B)

Government of India

Ministry of Personnel, Public Grievances & Pensions

Department of Pension and Pensioners Welfare

3rd Floor, Lok Nayak Bhavan,

New Delhi - 110 003, The 3rd June, 2004

To

Shri Sandeep Mukherjee,

Assistant Director

Institute of Secretariat Training & Management

Administrative Block, Old JNU CAMPUS

NEW DELHI - 110067

Subject: Rule 49 (2) (b) of Central Civil Services (Pension) Rules, 1972- Minimum qualifying service for grant of pension-clarification whether 9 years 9 months qualifying service can be rounded of to 10 years under the provisions of Rule 49 (3) of CCS (P) Rules, 1972.

Sir,

I am directed to refer to ISTM's letter no.A-15011/2/2004- ISTM dated 5th May, 2004 on the subject cited above and to say that the matter has been considered in this department and it has been observed that Rule 49 (2) (b) of Central Civil Services (Pension) Rules, 1972 provide for grant of pension on completion of 10 years qualifying service. It may further be mentioned here that above rule refers to completion of 10 years qualifying service for grant of proportionate pension. The above rule does not bar applicability of Rule 49 (3) for rounding off of minimum qualifying service required for grant of pension. In view of the above, it is clarified that with reference to the provisions of Rule 49 (3) of Central Civil Services (Pension) Rules, 1972 qualifying service of less than 10 years but 9 years 9 months and above will be rounded off to 10 years for the purpose of grant of pension under Rule 49 (2) (b) of Central Civil Services (Pension) Rules, 1972.

2. This issue with the approval of Additional Secretary (Pension).

Yours faithfully,

(Geeta Ram)

Director (PW)

Phone 011-24624752

To

All Under Secretaries/Desk officers Department of Pension US (A)/US/(1)/US (F)/US.(G)/DO (F) DO (C)"

7. That being the position, we are not inclined to agree with the submission of learned counsel for the petitioner that the said circular would not apply to the case of the respondent, since the respondent retired in 1993.

8. Learned counsel for the petitioner has also argued that the original application filed in 2009 was barred by limitation, since the respondent had retired in the year 1993 and the O.A. was filed in 2009.

9. We cannot agree with this submission of the learned counsel for the petitioner, since the right to receive pension is a continuing right, and cause of action is a continuing cause of action.

10. The challenge to the impugned order on merits is therefore rejected. However, considering the fact that the respondent had approached the tribunal initially in the year 2009 vide O.A.2406/2009, we are inclined to issue notice to the respondent to consider the aspect of entitlement for interest prior to the said period, and also the aspect of costs imposed upon the petitioner.

11. Limited the aforesaid aspect, issue notice to the respondent, returnable on 11.08.2017."

3. Learned counsel for the petitioner submits that the respondent had first approached the Central Administrative Tribunal vide OA No.2406/2009 which was disposed of on 31.08.2009, directing the petitioner to treat the said Original Application as the respondent's representation and to pass a speaking order within two months with regard to claim of his pension while taking into account the orders of the Government of India dated 03.06.2004 and the letter of the DTC dated 23.01.2008. Learned counsel submits that post the said order, the petitioner passed a reasoned order on 28.12.2009 denying the claim of the respondent for pension. Only thereafter, the respondent preferred the Original Application in the year 2014 which has been allowed by the impugned order. Learned counsel submits that in the light of the aforesaid, the grant of interest on the arrears of pension from 1993 onwards was not justified. She places reliance on the judgment of the Supreme Court in Union of India & Anr. vs. Tarsem Singh, 2008 8 SCC 648. In this case, the respondent had claimed that he was entitled to disability pension since 13.11.1983. He approached the High Court only in the year 1999 to claim disability pension. Learned Single Judge allowed the writ petition on 06.12.2000 with a direction to pay the arrears of disability pension for 38 months prior to the date of filing of the writ petition. He was dissatisfied with denial of the disability pension from 13.11.1983 and,

therefore, preferred a Letters Patent Appeal which was allowed by the Division Bench on 06.12.2006. The order was further modified on 23.02.2007. As a result of those orders, he was held to be entitled to arrears of disability pension from 13.11.1983 and on the arrears he was held entitled to interest @ 6% per annum.

4. The Supreme Court after taking note of several decisions observed as follows:

"5. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the re-opening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition.

6. In this case, the delay of 16 years would affect the consequential claim for arrears. The High Court was not justified in directing payment of arrears relating to 16 years, and that too with interest. It ought to have restricted the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser. It ought not to have granted interest on arrears in such circumstances."

5. Learned counsel submits that the grant of interest to the respondent on the arrears from the date of his retirement was not legal or justified in the facts and circumstances of the case. The respondent having slept over his rights cannot seek to profit by award of interest for his own inaction. She submits that even the costs have wrongly been imposed by the Tribunal.

6. On the other hand, counsel for the respondent has supported the impugned order. He submits that the respondent's claim was squarely covered under the pension scheme as well as under the petitioner's own communication and the Governmental order. However, most unjustifiably, the same was denied by the petitioner. Therefore, imposition of costs and interest is justified and proper.

7. It is clear to us that the claim of the respondent was wrongly denied by the

petitioner, and therefore, the order of the Tribunal awarding costs to the respondent is completely justified, since the respondent was driven to prefer two applications before he could get relief.

8. We do not agree with the submission of learned counsel for the petitioner that in the light of the judgment in Tarsem Singh (supra), the respondent should not be granted any interest. Interest is awarded primarily to offset the effect of inflation and falling value of money. In our view, the ratio of the Supreme Court in the decision of Tarsem Singh (supra) is not that no interest should be awarded on arrears in such like cases.

9. However, we find merit in the petitioner's submissions that the respondent could not have been awarded interest on arrears from the date of his retirement, considering the fact that he also contributed by being negligent and not raising his claim before the Tribunal in a timely manner. His first approach to the Tribunal was only in the year 2009, vide OA No.2406/2009.

10. In the aforesaid light, we are inclined to limit the relief of grant of interest to the respondent to three years prior to the filing of the first Original Application in the year 2009 i.e. vide OA No.2406/2009. The grant of interest for the period prior to the said date is set aside. The impugned order is modified in the aforesaid terms.

11. The petition stands disposed of accordingly. The petitioner is directed to make payment of the interest and the costs within four weeks from today. Pending applications stand disposed of.