(2010) 04 DEL CK 0165

In the Delhi High Court

Case No : Writ Petition (C.) No. 2627 of 2010

Delhi Transport Corporation — APPELLANT

Vs

Smt. Chanchal Sharma — RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 26
Constitution of India, 1950 — Article 226

Citation : (2010) 04 DEL CK 0165

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

Bench : Division Bench

Advocate : Avnish Ahlawat, for the Appellant; Kittu Bajaj, for the Respondent

Judgement

Mool Chand Garg, J.—The short point involved in this matter is, as to whether, the husband of the respondent, Late Shri Kalanath Sharma (hereinafter referred to as "the deceased"), who had been appointed as Conductor with the Delhi Transport Corporation (for short "the Corporation") on 18.11.1966 and promoted as Assistant Traffic Inspector, but had resigned from service on 04.06.1990, was not eligible for the pension scheme which was floated by the petitioners w.e.f. 27.11.1992 even though the same was made applicable to all the employees who had retired after 3.8.1981 and were given option to opt for pension scheme or the provident fund within a period of thirty days from the date of the order. The said scheme was compulsory for the new employees.

2. The respondent had been prosecuting the claim of the deceased that he be also given the pension benefits inasmuch as he not only applied for pension soon after the scheme was floated by the petitioners but also kept on following the same from time to time. There also, the petitioners contested the claim of the respondent primarily on the ground that the deceased was an employee who resigned from the services of the petitioners and therefore, he was not entitled to opt for the pension. It was also their case that, in any event, the deceased did not opt for pension. However, the Central Administrative Tribunal, Principal Bench

(hereinafter referred to as "the Tribunal") did not agree with the contentions of the petitioners and vide impugned order dated 5.11.2009 allowed the TA bearing No. 920/2009 in favour of the respondent.

3. At this stage, it would be appropriate to take note of some of the admitted facts. It is not in dispute that even at the time of resignation the deceased indicated that he was interested in the pension scheme on parameters which might be laid down. After the pension scheme was notified on 27.11.1992, the deceased opted for pension scheme on 19.12.1992, though the same is disputed by the petitioners.

4. Learned Counsel for the respondent had submitted that the Apex Court in a judgment delivered in the case of D.S. Nakara and Others Vs. Union of India (UOI), held that pension was not only pension for loyal service rendered in the past but pension also has a broader significance, in that it is a measure of socio-economic justice which inheres economic security in the fall of life when physical and mental prowess is ebbing corresponding to aging process and, therefore, one is required to fall back on savings.

5. Referring to the plea raised by the petitioners denying pension benefits to the deceased on the ground that he was not a retired employee but has resigned from the services of the petitioners, it was submitted by the respondent before the Tribunal that because of Rule 26 of the CCS (Pension) Rules, a Division Bench of this Court in the case of Sudarshan Kumar v. Delhi Transport Corporation and Anr. 1994 (7) SLR 163 held that a person who was in employment on 27.11.1992 and had thereafter resigned from service, would be entitled to pension.

6. She has also referred to a Division Bench of this Court in LPA 33/1998 where the distinction between a retired employee and a person who has resigned has held to be immaterial for their entitlement to the benefit of pension. She submitted that on the authority of this judgment the issue has been settled, namely, when an employee had rendered qualifying service and had separated from the establishment on or after the crucial date of 03.08.1981, irrespective of whether or not it was by a retirement or resignation, he becomes entitled to the benefit of pension.

7. The Tribunal on that basis held that even an employee who had submitted his resignation would be entitled to the benefit of pension once it is found that he had rendered the qualified service and in that case resignation would not stand in the way of claiming pension. At this juncture, it may be observed that it is not the case of the petitioners that the deceased did not have qualifying service at his credit for the purpose of availing the benefit of pension.

8. It is not in dispute that the conscious efforts were made on behalf of the deceased to pay back the CPF benefits received by him. Such efforts were made by the deceased soon after his resignation from the services of the petitioners and immediately after the pension scheme came into being. Even as per the details obtained under the Right to Information Act, it has been found that there

were some documents available with the DTC Headquarter which shows that the deceased has opted for pension. In this regard, in paragraph 3 of the impugned order, the Tribunal has noted as under:

3. The applicant, according to the averments in the claim, points out that immediately after the Scheme was notified, on 19.12.1992 Kalanath Sharma had opted for pension. But there was nothing heard thereafter, and the matter was being pursued relentlessly. At one point of time, the application was stated as rejected for the reason that the documents with the Corporation did not reveal an application as having been received from the employee, but with reference to details obtained under the Right to Information Act, the applicant with additional documents filed on 30.07.2009 invited our attention to the minutes of a meeting of the Corporation, so as to show that the claim of the employee had practically been fully taken notice of. The notings on the file in this regard dated 19.12.2004 could be extracted hereinbelow:

Since he has submitted his option form in DTC (HQ) instead of the Unit where he worked. Therefore, the Pension Cell could not consider his request. He approached to the Public Grievance Commission. In the meeting held on 9.11.04/10.12.2004, the matter has been considered at length and the Public Grievance Commission vide minutes dt. 9.11.2004 decided and ordered that the case of pension of Sh. Kalanath may be placed before the next meeting of Pension Trust and his pension may be released.

The rest of the documents also indicated that the claim was to be considered as admissible taking notice of the broad facts.

9. In these circumstances, the Tribunal gave the following directions:

8. In the aforesaid circumstances, we direct that late Mr. Sharma was to be treated as a person who had opted for pension after his resignation, of course, when the scheme had been brought into force. Therefore, he was to be granted pension as admissible, at least notionally. Since the employee himself had not preferred a writ petition and on the date of the presentation of the claim, what would have been admissible was only family pension to the applicant here, we direct that from the date on which the employee had passed away (3.2.2005), the respondent is to start payment of family pension to the applicant. The arrears as on today are to be paid within a period of three months, and so long as the applicant as per law will be eligible to claim family pension, such payments are to continue. We also direct that as a rough and ready measure, the CPF dues received by the husband need not be paid back by the widow.

10. The learned Counsel appearing for the petitioners assailed the aforesaid order of Tribunal by relying upon some documents which have been placed on record i.e. the letters dated 29.4.1998, 16.7.1998 and 28.4.2000, which are available at page Nos. 124, 127 and 132 respectively, and the order dated 8.6.1998, which appears at page No. 129, rejecting the request made on behalf of the deceased for pension.

11. However, these documents nowhere show that the deceased was not interested in the pension scheme. As observed earlier, even at the time of his resignation, the deceased had very categorically stated that as and when the pension scheme is introduced, he would be interested therein. His request dated 19.12.1992 is already on record. It may also be observed that as per their own decision the petitioners have held that the deceased was entitled for pension. Office noting in this regard is referred to herein for the sake of reference:

Discussed the matter with FA-cum-CAO in the presence of Addl. CAO, Sr. Manager (A/c) HQ and Dy. Manager (A/c) Pension. It has been informed to the FA/CAO that we have granted pension to only those retirees who have exercised option within stipulated time or extended time in response to an advertisement published in the leading newspapers in the year 1992. The Unit Officer has also not forwarding his case with Pension Calculation Sheet. However, Claimant contended that he had sent his option by Regd. Post. In support, thereof, he has submitted the photocopy of postal receipt - Original postal receipt stated to have been lost for which FIR also stated to have been lodged at Police Station, Vikas Puri, New Delhi - He further contended that necessary intention of pension scheme was sent and was very much received on by the Corporation on 1.1.1993 (Page 19/Cr.)

The brief facts of the case based on the discussion held are as under:

1. DTC introduced the Pension Scheme vide Office Order No. 16 dated 27.11.1992. But in the case of retired employees, who retired between 3.8.1981 and 27.11.1992, an advertisement (Placed at Flag X) was published in the leading newspapers inviting option from the employees who retired from the services of the Corporation.

2. She. Kalanath, Ex. ATI, T. No. 12302 resigned from the service of the Corporation w.e.f. 4.6.1990.

3. Later on, while disposing of LPA No. 33/98, the DB of Hon''ble High Court vide its judgment dt. 16.3.2000 (copy placed at Flag Y) rightly stated on five issues that (i) an employee having less than 20 years of qualifying service but 10 years or more is also entitled to pension on opting for voluntary retirement under the Scheme announced by DTC: (ii) DTC is entitled to charge interest on the amount of employer''s share of Provident Fund; (iii) employees resigned from service after rendering qualifying service shall also be entitled to pension; (iv) those who had opted but did not submit or fill-up forms are also entitled to pension (v) but those who had retired after 3.8.1981 and before 27.11.1992 and did not opt are not entitled to pension. The DTC compliance the orders of the DB of the Hon''ble High Court in LPA 33/1998 dt. 16.3.200 after getting approval from the DTC Board vide resolution No. 81/2000 dated 24-7-2000 (copy available at Flag XX). Thereafter, in the SLP, the hon''ble Supreme Court also upheld the said judgment in its decision dated 8.5.2001 (copy available at Flag Z).

4. Actually, after the judgment dt. 16.3.2000, the DTC should invite option from

the employees who resigned from service after rendering qualifying service, i.e., 10 years. But DTC did not do so. However, Sh. Kalanath submitted his application dated 28.4.2000 (page 82/Cr. In the linked file) requesting for grant of pension.

In view of the above discussion, it is immaterial whether he has exercised his option or not, as DTC invited option from only retirees. Therefore, Shri Kalanath is entitled for pension as he has submitted his application on 28.4.2000 after judgment dt. 16.3.2000 and even when he resigned from service in the year 1990 for granting of pension.

Submitted for approval please.

Acctt./Ass. Incharge

Dy. Manager(A/c) Pension

Sr. Manager (A/c) Pension

Addl. CAO

FA-Cum-CAO

12. It will also be of importance to take note of the office noting available at page 147 of paper book, wherein it has been categorically observed that the employees who have resigned from service after rendering qualified service shall also be entitled to pension. The relevant portion of the said noting is reproduced hereunder:

In this connection, it is stated that in view of the CMD minutes dt. 6.6.2005 (page 19/N), the Pension Cell has put up detailed note on 20-21/N and the file was sent by the FA/CAO for comments of the Administration. But no specific comments/recommendations has been made by the Administration, rather the file has been returned to Pension Cell for taking decision by Pension Cell.

However, the brief facts of the case are re-submitted as under:

1. DTC introduced the Pension Scheme vide Office order No. 16 dated 27.11.1992. But in the case of retired employees, who retired between 3.8.1981 and 27.11.1992, an advertisement (placed at Flag X) was published in the leading newspapers inviting option from the employees who retired from the services of the Corporation.

2. Sh. Kalanath, Ex. ATI, T. No. 12302 resigned from the service of the Corporation w.e.f. 4.6.1990.

3. Later on, while disposing of LPA No. 33/98, the DB of Hon''ble High Court vide its judgment dt. 16.3.2000 (copy placed at Flat Y) ordered on the following five issues that

i) An employee having less than 20 years of qualifying service but 10 years or more is also entitled to pension on opting for voluntary retirement under the

Scheme announced by DTC;

ii) DTC is not entitled to charge interest on the amount of employer''s share of Provident Fund;

iii) Employees resigned from service after rendering qualifying service shall also be entitled to pension;

iv) Those who had opted but did not submit or fill-up forms are also entitled to pension;

v) But those who had retired after 3.8.1981 and before 27.11.1992 and did not opt are not entitled to pension.

The DTC compliance the orders of the DB of Hon''ble High Court in LPA 33/98 dt. 16.3.2000 after getting approval from the DTC Board vide resolution No. 81/2000 dated 24-7-2000 (copy available at Flag XX). Thereafter in the SLP, the Hon''ble Supreme Court also upheld the said judgment in its decision dated 8.5.2001 (copy available at Flag Z).

4. Actually, after the judgment dt. 16.3.2000, the DTC should have invited option from the employees who resigned from service after rendering qualifying service, i.e., 10 years as discussed with FA-CAO vide note on page 17/N. But DTC did not do so. However, Sh. Kalanath submitted his application dated 28.4.2000 (page 82/Cr. In the linked file) requesting for grant of pension. In view of the above discussion, it is immaterial whether he has exercised his option or not, as DTC invited option from only retirees.

Now, the point of issue of consideration is whether he is to be treated as pension opted in terms of photocopy of letter dt. 1.1.1993 (page-19), although original is not available in the Pension Cell.

In view of the position explained above, worthy CMD may like to take final view.

Acctt./Ass. Incharge

Dy. Manager(A/c) Pension

Sr. Manager (A/c) Pension

Addl. CAO

FA-Cum-CAO

13. In view of the peculiar facts and circumstances of this case, we do not find any ground to interfere with the order of the Tribunal while exercising our jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed.

CM No. 5233/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is accordingly disposed of.

