
(1997) 09 DEL CK 0068

In the Delhi High Court

Case No : Civil Writ Appeal No"s. 2900, 4191, 4216 and 4381 of 1996, 3674 of 1995 and 368, 1987 and 4064 of 1997

Jagpal Singh

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 19-09-1997

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48
Constitution of India, 1950 — Article 226

Citation : (1997) 6 AD 594 : (1997) 70 DLT 435 : (1997) 43 DRJ 434 : (1997) 2 ILR Delhi 227

Hon'ble Judges : Usha Mehra, J

Bench : Single Bench

Advocate : B.S. Charya and R.P. Gupta, for the Appellant;

Judgement

Usha Mehra, J.

(1) In all these writ petitions since a common question of law is involved, Therefore, they are taken up together and disposed of by one order.

(2) The principal questions of law raised in these petitions are:

1.What should be the qualifying service for eligibility of pension, particularly when this condition was not laid down in the pension scheme made applicable to the employees of the respondent? 2. Whether after having had the petitioners to seek voluntary retirement, the respondent can withdraw any of the benefit in this case ex-gratia payment in case pension is granted to the petitioners. 3. Whether those petitioners who did not opt within 30 days are barred from claiming the pension? 4. Whether the employees who stood super-annuated prior to November, 1992 but after August, 1981 are not entitled to opt for pension?

(3) In order to appreciate and dispose of the above points raised, let us understand relevant facts and the rules on the point which are necessary for the determination of these questions.

(4) S/SHRI Baij Nath Bhargava joined the respondent as conductor on 21st September, 1955. He retired on 31st May, 1994. (2) Kartar Singh joined as Driver in 1957 and thereafter worked as Vehicle Examiner. He sought voluntary retirement under the Scheme w.e.f. 31st October, 1986 (3) Jang Singh joined Driver in 1972. He applied under the scheme for voluntary retirement on 30th March, 1993 and stood retired w.e.f. 31st May, 1993. (4) Gopal Krishan Nanda joined as Assistant Store-keeper on 15th March, 1962. In 1993 he was promoted as Chief Store-keeper. He applied under the voluntary retirement scheme on 18th March, 1993 and stood relieved from duties w.e.f. 31st May, 1993. (5) Kaliram joined as Driver on 28th February, 1957 and stood superannuated in normal course on 30th November, 1982. (6) Ishwar Singh joined Dtc as Conductor on 23rd May, 1977. He applied under the voluntary retirement scheme and stood retired w.e.f. 31st May, 1993. (7) Jagat Prakash Singh joined as Conductor on 9th May, 1983. He applied for voluntary retirement under the Scheme and stood retired on 31st July, 1993. (8) Jagpal Singh was appointed as Driver in 1980. He applied for the voluntary retirement under the scheme on 26th March, 1993. On 28th April, 1993 he made representation for withdrawing his application for voluntary retirement. Inspire of his withdrawal of option, the respondent retired him on the basis of withdrawal option w.e.f. 31st March, 1993.

(5) From the above facts it is clear that so far as S/Shri Kaliram, Gopal Krishan Nanda, Jang Singh, Kartar Singh and B.N. Bhargava are concerned they had completed more than 20 years service before applying for voluntary retirement so the condition of the respondent that since the petitioners were not having 20 years qualifying service, Therefore, not entitled to pension is devoid of merits. In fact the petitioners, namely, G.K. Nanda., B.N. Bhargava had more than 30 years service, Kartar Singh had more than 29 years service, Kali Ram and Jang Singh had more than 20 years service. So far as other petitioners are concerned, they had more than ten years qualifying service at the time they applied under the voluntary retirement scheme. Therefore, the question for consideration is what qualifying service was required to make them eligible for the pension after they had been adhered to seek voluntary retirement.

(6) That the Voluntary retirement scheme as issued by the respondent was to be applicable to those of the employees who had completed 10 years of service or were 40 years old. On completion of 10 years or 40 years such an employee could opt for voluntary retirement. So far as seeking voluntary retirement after completing ten years service, there is no quarrel with this proposition. The question is not the eligibility to voluntary retirement scheme but the qualifying service required to make the employee eligible for pension. The eligibility criteria for falling under the voluntary retirement scheme is different than the pension scheme. While applying the pension scheme to the employees of Dtc it was made clear that it would be applicable on the same pattern as applicable to the Central Government Employees. Therefore, the arguments of the petitioners that the eligibility criteria mentioned in the office circular for seeking voluntary retirement would automatically apply to make an employee eligible for pension, to my mind,

this argument has no force. The petitioners cannot be allowed to stretch this criteria of eligibility given in the office circular dated 27.11.92 applicable to them for the eligibility criteria of pension. Petitioners in order to get pension can only be governed by the Central Civil Services (Pension) rules, 1972 known as Ccs (Pension) Rules. The relevant pension rules are reproduced as under:

48.Retirement on completion of 30 years" qualifying service : (1) At any time after a Government servant has completed thirty years" qualifying service- (a) he may retire from service, or (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension : Provided that :- (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and (b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months" pay and allowances in lieu of such notice : Provided further that where the Government servant giving notice under Clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule. Provided further that the provisions of Clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is - (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes. (ii) posted abroad in foreign based offices of the Ministries/departments. (iii) on a specific contract assignment to a foreign Government. unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year. 48-A. Retirement on completion of 20 years" qualifying service (1) At any time after a Government servant has completed twenty years qualifying service, he may, by giving notice, of not less than three months in writing to the appointing authority, retire from service. Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes, (ii) Posted abroad in foreign based offices of the Ministries/Departments, (iii) On a specific contract assignment to a foreign Government, Unless after having been transferred to India, he has assumed the charge of the post in India and served for a period of not less than one year.

(7) Reading of Rule 48(1)(b) makes it clear that in public interest the appointing authority can permit Government Servant to retire as in this case the petitioners sought voluntary retirement in public interest as held cut by the respondent/DTC. Under 48(A) the rules require that he had completed twenty years service qualifying for pension. Then there is another rule i.e. Rule 49 and in particular Sub Rule 2(b) which is reproduced as under. Rule 49 deals with amount of pension.

49(2)(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 (s) and in no case the amount of pension shall be less than (rupees three hundred and seventy-five) per mensem;

(8) Reading of Sub-Rule (2)(b) of rule-49 indicates that even if the Government servant has not completed qualifying service of 33 years but has completed qualifying service of 10 years he would be entitled to proportionate pension to the amount of pension admissible under Clause (a) but in any case not less than Rs. 375.00 per month. Thus Rule 49(2)(b) makes pro-rata pension applicable to the Government employee who has completed qualifying service of ten years or more. Therefore, even if some of the petitioners had not completed 20 years qualifying since at the time they sought voluntary retirement still they would be entitled to pro-rata pension as they had completed qualifying service of ten years. These petitioners may not be entitled to full pension but pro-rata pension cannot be denied. There is fallacy in the argument of counsel for respondents that since petitioners did not have qualifying service of twenty years as required under Rule 48-A they would not be entitled to pension. In fact a similar point came up for consideration before the Supreme Court in the case of *Parduman Kumar Jain Vs. Union of India & Anr.* 1994(69) Flr page 510. While dealing with various provisions of the Ccs (Pension) Rules, 1972 and in particular rules regarding the eligibility for pension and the commencement of qualifying service under Rule 13, the Apex Court observed that if a person has more than 10 years of service it would count as qualifying service for pension. He would be entitled to pension on pro-rata basis. He would also be entitled to other terminal benefits. While interpreting Rule 13 the Apex Court took note of Rule 49 and concluded that the service of employee would count as qualifying service for pension if the provisions of Rules 13 and 49 are satisfied.

(9) In the present case, to my mind, all the petitioners have rendered more than 10 years service thereby satisfying the conditions under Rule 49(2)(b) and, Therefore, applying the principle of law as laid down in "*Parduman Kumar Jain*"s case (supra), I have no hesitation to hold that even those petitioners who have less than twenty years service but of ten years or more qualifying service would be entitled to pro-rata pension. In another case of *Yashwant Hari Katakhar Vs. Union of India* 1998 SP 56 the Apex Court applying the principle of pro-rata pension ordered pension to be given to a Government servant who had rendered only 18-1/2 years service. In that case the Administrative Tribunal rejected the claim of Katakhar on the ground that he got premature retirement when he had only 18-1/2 years service. Though as per the Ccs (Pension) Rules the premature retirement could only be after 20 years. Setting aside the order of the Central Administrative Tribunal, the Apex Court held that even though Y.H. Katakhar retired after serving the Government for 18-1/2 years but since he had more than 10 years qualifying service and as such he was entitled to pension. On the

strength of the law laid down by the Apex Court, I find no merits in the objection of the respondent. Mr. J.N. Aggarwal then urged that petitioner Kartar Singh in C.W.No. 4381/96 has not completed 30 years qualifying service and Therefore, does not fall under Rule 48. He resigned before completing 30 years qualifying service. To my mind, this argument has also no force. The answer to the same is given by this Court in the case of Sudarshan Kumar Vs. Dtc & Ors., 1994(7) Slr 163. In that case also a similar defense was raised by the DTC. This Court while rejecting the objection of the respondent held that beneficial scheme extends to all those who rendered the qualifying service. There cannot be any artificial distinction between the person who retired and a person who resigned. In both the cases an employee goes out of service after rendering a requisite qualifying service. Therefore, so far as retirement and resigning is concerned no distinction can be drawn. Hence this meets the objection of the respondent Kartar Singh's case cannot be distinguished merely on the ground that he resigned since retirement and resignation stand on the same footing hence Kartar Singh cannot be deprived of the beneficial legislation. Further reliance by Mr. J.N. Aggarwal on Rule 26(1) that has no application to the facts of this case. Rule 26(1) would apply if a Government servant intends to apply for a post outside his parent office, he should have his application forwarded through the competent authority under whom, he was serving at the time of applying for the post. Once his application has been forwarded unconditionally and he is allowed to join the new post the question of his resigning the post will not arise. But with the amendment in Rule 26 where even though the application was forwarded by the competent authority and the applicant had been asked to resign his post before taking up the new in that eventuality his past service will not be count. The cases covered under Rule 26 are where a Govt. servant has been made to resign in order to take up new post. But that is not the position in the C.M. in hand. These petitioners resigned not to take up new assignments but as a golden hand-shake for the benefit of the DTC. Hence, the past service of the petitioner cannot be forfeited.

(10) For the reasons stated above, the objection of the respondent regarding the eligibility of the petitioners for the grant of pension on the ground of qualifying service has no force. Those of the petitioners who have full qualifying service under Rule 48-A will be entitled to full pension and those who have less than twenty years but more than ten years qualifying service would be eligible to pro-rata pension under Rule 49(2)(b). Turning to the second limb of the respondent's arguments that the petitioners cannot have both the benefits namely ex-gratia payment as well as pension. In order to appreciate this argument of Mr. J.N. Aggarwal as well as of Mr.Gupta counsel for the Dtc, we must appreciate when the Voluntary Retirement Scheme was made applicable and the Pension Scheme was introduced in the DTC. What were the reasons behind for the introduction of these schemes. What benefits or conditions were stipulated therein? What were the conditions stipulated under those schemes.

(11) That Vide office order dated 27th November, 1992, the Dtc introduced

Pension Scheme in Dtc as applicable to the Central Government employees. The said circular was based on a letter written by the Joint Secretary of Government of India to the Chairman-cum-Managing Director of the DTC. Whereby the Central Government conveyed its sanction for the introduction of Pension Scheme to the employees of Dtc as on the same pattern as applicable to the Central Government employees. This was subject to certain conditions. One of the condition related to cut out date. The date from which the Pension Scheme was made applicable was 3rd August, 1981. It was also stipulated therein that all existing employees including those retired from 3rd August, 1981 onward be given option to opt for the Pension Scheme or the contributory provident fund as at present. But for new employees Pension Scheme was made compulsory. The employees who had retired after 3rd August, 1981 and who had already withdrawn employer's share under the Epf Act, partly or wholly, shall have to refund the same with interest in the event of their opting for the Pension Scheme. Pursuance to this letter of Joint Secretary, office letter No. 16 dated 27th November, 1992 was issued, which is reproduced as under:

"DELHITRANSPORT Corporation (A GOVT. Of India UNDERTAKINGS) I.P. Estate, New Delhi No.Adm-I.5(41)/92 Dated : 27.11.92 Office Order NO. 16 Sub: Introduction of Pension Scheme in Dtc as applicable to the Central Govt. Employees. The introduction of Pension Scheme for the employees of the Dtc has been sanctioned by the Central Govt. and conveyed by the M.O.S.T. vide letter No. T-12019/21/88-TAG dated 23.11.1992 as on the same pattern as for the Central Govt. employees, subject to the following conditions: 1) The pension scheme would be operated by the Lic on behalf of DTC. 2) The date of effect of pension scheme would be 3.8.1981. 3) All the existing employees including those w.e.f. 3.8.1981 onwards would have the option to opt for the pension scheme or the employees contributory provident fund as at present within 30 days from the date of issue of this office order for the implementation of the pension scheme as approved by the Govt. of India. 4) The Pension Scheme would be compulsory for all the new employees joining Dtc w.e.f. 23.11.92, the date of sanction of the scheme . 5) The pension scheme would be operated by the Lic on behalf of DTC. The employee's share in the Epf A/C of the Dtc employees, who opt for pension scheme would be transferred to the Lic, for operating the pension scheme on behalf of Dtc and the amount deposited in the Central Govt./State Govt? Guaranteed Securities would be encased on maturity. 6) The employees who have retired on or after 3rd August, 1981 and the existing employees, who have drawn the employer's share, under the E.P.F. Act, partly or wholly shall have to refund the same with interest in the event of their opting for the pension scheme. The total amount to be refunded by the retired employees/existing employees would be the amount that would have accrued, had they not withdrawn the employer's share. 7) Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the pension scheme, will have to be refunded by them before any benefit under the scheme, is granted to them. 8) A due and drawn statement would be prepared in respect of retired

employees opting for pension scheme and the amount to be paid/refunded, would be worked out by the concerned unit, wherefrom the employee had retired from service. 9) If any of the employee of Dtc, who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the pension scheme benefits. Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise option, should do or with the unit of their present working/where from they retired, within a period of 30 days from the date of issue of this office order. The Unit officers, after receiving the options, from the ex-employees, will take further necessary action for getting the necessary forms completed, which will be supplied to them by the Lic for pension etc. They will also ensure the recovery of E.P.F. and gratuity from the ex-employees before forwarding their replications as mentioned above. The cases of all officers will be dealt with at Headquarters. The options received from the existing employees for not opting pension may be kept in their personnel file and entry made in their service book. sd/- (L.C.GOYALOOA) DY.CHIEF General MANAGER(P)

(12) After the scheme of pension was introduced, the Dtc in order to get rid of its employees introduced Voluntary Retirement Scheme. By this Scheme lot of allurements were given to the employees. After going through the Scheme and in particular para 4(e) & (f) of the letter dated 3rd March, 1993 the petitioners and the like opted for voluntary retirement under the scheme.

(13) The Voluntary Retirement Scheme was introduced vide office order dated 3rd March, 1993, which reads as under:

D.T.C.I.P.ESTATE New Delhi No. Adm1-5(41/93 DT. 3.3.93 Sub : Voluntary Retirement of Employees of Delhi Transport Corporation The matter pertaining to the introduction of voluntary Retirement Scheme for the employees has been under the consideration of Delhi Transport Corporation Salient Features of the proposed voluntary Retirement Scheme are as under:- 1. Applicability: The scheme will be applicable to all regular employees of the corporation i.e. workers and executives who are a pointed against regular vacancies in the corporation. 2. Eligibility: An employee must have completed ten years of service in this corporation of completed 40 years of age of qualify for consideration under the Scheme. For this purpose, period of deputation/retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the corporation will be excluded. 3. Conditions governing voluntary retirement a) Voluntary retirement will be normally allowed only in cases of incumbents of the posts which have been declared surplus or redundant. However, voluntary Retirement Scheme could also be allowed in other cases depending on the merits of each case and in the interest of the corporation. b) Voluntary retirement cannot be claimed by any employee as a matter of right. The corporation will have the right not to grant voluntary retirement for reasons to be recorded in

writing. Under no circumstances will the relief under this scheme be allowed from a date earlier than the date of passing the orders. c) An employee in whose case any disciplinary case is pending will not be considered under this scheme until the disposal of the same. 4. An employee who taken voluntary retirement will be eligible to the following refunds/payments:- a) Balance in his Pf Account as per rules of provident fund applicable to him. b) Encashment of refused leave and accumulated Earned Leave as per rules of the corporation applicable to him as if he retires under the normal rules of retirement. c) Gratuity as per payment of Gratuity Act and Gratuity Rules of the corporation applicable to him. d) Three month notice pay as is applicable in the individual case as per the terms of his/her employment." e) An Ex-parte payment equivalent to 1-72 month's basic pay plus Da for such completed year of service limited to one month pay multiplied by the number of whole month of service left before normal date of retirement. f) Expenses for traveling for the entitled class for the employee and his/her family comprising his/her spouse and dependent members from the place of his/her posting to the place where he/she intends to settle down in India. g) Pensionary benefits as per office order No. 16 at 27.11.92. All amounts due to the corporation will be adjusted against the payment under d & e above and the employee concerned should clear any outstanding dues/advances taken before the date of effect of voluntary retirement. Employees working on the post of conductor in the corporation are proposed to be conversed under the Voluntary Retirement Scheme in the first instances. Such conductors who are desirous of seeking voluntary retirement in the proposed scheme may give their option in the prescribed proforma through proper channel within 15 days to the concerned unit officers who will forward the same to the secretary D.T.C. Board. This issued with the approval of competent authority.

(14) The reading of the office order No. 16 dated 27th November, 1992 followed by the Voluntary Retirement Scheme dated 3rd March, 1993 makes it clear that when the circular of 3.3.93 was issued holding out promises to its employees the Dtc in no uncertain terms told them that they would be getting both the benefits i.e. ex-gratia amount as mentioned in para 4(e) as well as pension is applicable vide office order No. 16. The respondent depicted the benefits which would accrue to the employees who would opt for voluntary retirement. The respondent Dtc, knew that the Pension Scheme was prevalent in the Dtc vide order No. 16 dated 27th November, 1992 and yet the Dtc offered ex-parte payment equivalent to 1-72 month's basic pay plus D.A. for such completed years of service limited to one month pay multiplied by the number of whole months of service left before normal date of retirement. Thus both the benefits were offered by the Dtc with wide eyes open and fully knowing the consequences of the same. After having allured its employees to opt for voluntary retirement it does no lie in the mouth of the Dtc now to turn around and contend that the ex-parte payment as mentioned in para 4(e) was alternative to para 4(f) i.e. benefit of pension. The Voluntary Retirement scheme dated 3.3.93 stipulated both the benefits i.e. ex-parte payment as well as pensionary benefits, this was the golden handshake

formula adopted by the DTC. The Dtc now cannot be allowed to reverse the clock and turn the table on the face of the employees by saying that they would get either the benefit under para 4(e) or (f). Having held out a promise on the basis of which petitioners acted, the respondent cannot be allowed to go back from the same. It would amount to fraud and cheating. The contentions of Mr.Gupta as well as of Mr. Aggarwal, that ex-parte was to be given as an alternative is belied from the very reading of the Voluntary Pension Scheme circulated on 3rd March, 1993. Similarly, the argument of the counsel of the respondent that an employee who will in normal course would retire would not get ex-parte; whereas, these petitioners would get, this argument has also no force. This benefit had been given to them because they gave up their employment and normal increments which they would have earned and have been deprived of other perks which go with the job like house and allowances.

(15) These petitioners were not allowed to be superannuated in the normal circumstances. They were allured to retire much earlier than their normal retirement age and, Therefore, held out certain benefits. It is not the petitioners who ask for voluntary retirement. It was rather the respondent who took out a scheme and persuaded by giving allurements to the petitioners to seek voluntary retirement. Had they been told that they would not be getting a lump sum amount by way of ex-parte, as mentioned in para 4(e), or that the ex-parte was an alternative offer to the pensionary benefits, the petitioners might not have sought for the Voluntary retirement. One of the petitioner, namely, Jagpal Singh of C.W.No. 4216/94 had made representation thereby withdrawing his application opting for voluntary retirement. This he did much before his option was accepted. Yet he was made to retire w.e.f. 31st May, 1993. Petitioners lost their jobs and the perks going with that and yet not paid their lawful dues, it is nothing but a case of malafide on the part of the respondent. It was not a normal retirement, Dtc only wanted to get rid of its employees, hence, offered the scheme with certain benefits specified in para No. 4 of the scheme dated 3.3.93. Petitioner and the like opted for the same and now after having obtained their option, Dtc cannot be allowed to deprive them from the benefits on the basis of which their voluntary retirement was accepted. The Dtc cannot be allowed to build up an argument which is contrary to its own scheme.

(16) For the reasons stated above these writ petitions are allowed. Petitioners are entitled to the pensionary benefits as per law. They will be paid pension in accordance with Ccs (Pension) Rules, 1972 as discussed above. The rule is made absolute. Directions are given to the respondent to work out the amount of pension due to each of the petitioners within a period of eight weeks and the same be paid immediately thereafter with no order as to costs.