(2019) 09 CAT CK 0023

In the Central Administrative Tribunal

Case No : Original Application No. 138 Of 2016

Jai Bhagwan APPELLANT

Vs

Delhi Transport Corporation RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0023

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Rajat Rathi, Jatin Parashar, Ajesh Luthra

Final Decision : Dismissed

Judgement

1. The applicant Sh. Jai Bhagwan was a Driver in the respondent-organisation-DTC. He joined the respondent organisation in 1979. He went in for VRS on 31.05.1993.

At that time, the pension scheme was already introduced in DTC vide order dated 27.11.1992 (Annexure A/4) though, at the time of taking VRS, the applicant did not opt for the pension scheme but subsequently, after several years he made representations that he should be sanctioned pension under the New Pension Scheme of DTC. At the time of VRS he was sanctioned all the moneys due to him. It is to be noted that vide order No. PC/96/207 dated 02.04.1996 (Annexure A/7), it was decided that Management's Share of Provident Fund and Gratuity in respect of those ex-employees who had not completed 20 years of qualifying service and got VRS are not entitled for pension. However, those who have retired after completing 20 years of qualifying service and had opted for pension, their request for opting out of pension was send to the Pension Cell immediately.

2. It is the contention of the applicant that he is entitled to be considered under the pension scheme due to the decision of the Hon'ble High Court of Delhi in the matter of DTC Vs. Baij Nath Bhargava & Ors. decided on 16.03.2000 in LPA

No.33/98. He also claimed benefits from the order of Hon'ble High Court of Delhi in LPA No. 531/2009 in Kailash Chandra Vs. DTC dated 14.12.2009.

3. Respondents have controverted the claim of the applicant and have stated that he took VRS in May, 1995 and got all pensionary benefits including employer's contribution. Since at that point of time, he did not opt for the pension scheme, now, after a gap of so much time, he cannot now claim the benefit of the pension scheme.

4. They have stated across the Bar that no DTC employee who has received full benefits under VRS Scheme has been given pension. They have cited order of this Tribunal dated 07.05.2018 in O.A No. 336/2017 in Krishna Gopal Vs. DTC and also in Randhir Singh Vs. Delhi Transport Corporation in O.A No. 4056/2016.

5. Heard Mr. Rajat Rathi, learned counsel for applicant and Mr. Jatin Parashar for Mr. Ajesh Luthra, learned counsel for respondents.

6. Though the applicant had not completed 20 years of qualifying service at the time of taking VRS, he has claimed that he is eligible for pension vide Hon'ble High Court of Delhi's order in DTC Vs. Baij Nath Bhargava & Ors. (supra). As per aforementioned order, the Hon'ble High Court passed the following orders :-

"In view of the above the appeal stand disposed of with the aforementioned directions and observations making it clear that 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. DTC is not entitled to charge interest over the excess amount of gratuity. DTC is entitled to charge interest on the amount of employer's share of Provident Fund employees resigning from services after rendering qualifying services will also be entitled to pension; those who had opted but did not submit or fill-up forms are also entitled to pension but those who had retired after 03.08.1981 and before 29.11.1992 and did not opt are not entitled to pension. Claim of Jagpal Singh to the extent aforementioned is allowed. Parties are left to bear their respective costs." (emphasis supplied)

7. In this manner, the Hon'ble High Court removed the distinction between the qualifying service of 10 years and 20 years and entitled employees opting for VRS less than 10 years of service also to claim pension under the pension scheme. But a perusal of above cited orders of Hon'ble High Court of Delhi it emerges that the benefit was extended only to those persons who had opted for the pension scheme whereas the applicant in the current O.A admittedly did not opt for the scheme.

8. He has also cited Hon'ble High Court of Delhi's order in Kailash Chander Vs. DTC (supra). In the said order, though the Hon'ble High Court observed that two classes of similarly placed persons cannot be countenanced, one of them being allowed the benefit of pension, since they opted for pension before the request for VRS was accepted and the other being denied pension who opted for VRS

thereafter. But, the ratio of the Hon'ble High Court's judgment is that the appellant exercised option for pension before 07.05.1993, which was the cut off date and before that date DTC accepted the request under the VRS. However, once again in the current O.A the applicant has admitted that he did not opt for the pension scheme at that time. Therefore, he is not similarly placed to the applicant in the cited cases.

9. The respondents have relied on Krishna Gopal Vs. DTC (supra) but in the cited case this Tribunal has relied on ruling of the Hon'ble High Court in the case of Shyam Lal Goel Vs. Delhi Transport Corporation (W.P. (C) No.13211/2004) decided on 28.02.2007, Rati Bhan Vs. Delhi Transport Corporation (W.P. (C) No. 7477/2011) decided on 14.10.2011; and Delhi Transport Corporation Vs. Madhu Bhushan Anand (W.P. (C) No. 14027/2009 with connected petitions) decided on 10.08.2010. Since the applicants did not opt for 1992 pension scheme, the Tribunal did not allow the O.A for switching to the pension scheme as follows :-

"10. The records clearly indicate that the applicant did not opt for the 1992 Pension Scheme (Annexure A-1). Even after his opting for the pension in pursuance of office order dated 28.10.2002, the applicant continued to remained covered under the EPF Scheme and he never protested. Such coverage was indicated in his monthly salary slip. Not only that, after his retirement, he received the employer's contribution towards ECPF and all other retiral benefits, including gratuity. Taking these facts into account, I am of the view that the judgments of Hon'ble High Courts in Shyam Lal Goel, Rati Bhan and Madhu Bhushan Anand (supra) aptly apply to the case of applicant and not the other two judgments of Hon'ble High Court relied upon by him."

10. It emerges that in the case of Kailash Chandra Vs. DTC as cited above, the Hon'ble High Court ruled against the distinction being made against the 10 and 20 years of qualifying service but the condition of exercising an option before the cut off date was taken as a consideration. In the case of DTC vs. Baijnath Bhargava, the ratio of the ruling was that the benefit was extended to those who opted for the pension scheme before the VRS was accepted. Similarly, in the case of Randhir Singh Vs. Delhi Transport Corporation (supra) on the grounds that the applicant did not give his option for pension and gratuity and CPF amounts were released to him, this Tribunal did not consider him eligible for pension and ruled that the respondents were not bound to pay him anything else.

11. The applicant in the current O.A not having opted for the pension scheme in 1992 is similarly placed to the applicants in O.A No. 336/2017 and O.A. No. 4056/2016.

12. The DTC counsel has stated across the bar that pension has not been given to anyone who has received full benefits under the VRS scheme.

13. In light of the above, I am of the view that the O.A is devoid of any merit and is dismissed. No orders as to costs.