
(2009) 12 DEL CK 0236

In the Delhi High Court

Case No : LPA 531 of 2009

Kailash Chander

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 14-12-2009

Acts Referred:

Citation : (2009) 12 DEL CK 0236

Hon'ble Judges : A.P. Shah, C.J;Dr. S. Muralidhar, J

Bench : Division Bench

Advocate : Kittu Bajaj, for the Appellant; J.S. Bhasin, for the Respondent

Final Decision : Allowed

Judgement

1. This appeal is directed against an order dated 28.11.2008 passed by the learned single Judge dismissing the appellant's W.P.(C) No. 8467/2008.

2. The appellant retired from the service of the Delhi Transport Corporation (DTC), the respondent herein, as Assistant Traffic Inspector on 31st May, 1993. He opted for voluntary retirement under the VRS Scheme dated 3.3.1993. By office order dated 27.11.1992, an option had been given by the DTC to its employees to shift from the CPF Scheme to the Pension Scheme. According to the appellant, he never opted at that time for pension under the Pension Scheme as he assumed that he would need a lump sum amount at the time of retirement for rehabilitating himself.

3. Within a few months thereafter DTC introduced a VRS Scheme. Under Clause 4(g) of the VRS Scheme dated 3.3.1993, pension was payable in terms of the Office Order dated 27.11.1992. It is the case of the appellant that under the VRS Scheme, there was no requirement to exercise any separate option for payment of pension. He states that he made an application on 30.3.1993 under the VRS.

4. The appellant has placed on record with the writ petition, a copy of the letter dated 28.4.1993 addressed by him to the Deputy Chief GM (Pension), DTC in the

following terms:

The Dy. Chief G.M. (Pension)

Delhi Transport Corporation,

I.P. Estate, New Delhi

THROUGH DY. MANAGER (CCR)

Sub: Change in option submitted for the Pension Scheme introduced by DTC

Sir,

With regards it is submitted that earlier I had submitted option for seeking Employer's Fund in the prescribed form for exercising option for the Pension Scheme introduced by the DTC vide its Office Order No. 16 dated 27.11.92. I had submitted application for seeking the Voluntary Retirement from the Corpn. Since the Voluntary Retirement Scheme has been introduced after introduction of Pension Scheme, I request your goodself for providing me pension after retirement from services of the Corpn.

Thanking You.

Yours faithfully,

Sd/-

(KAILASH CHANDER)

Asstt. Tr. Inspr.

(CCR)

5. Thereafter, on 7.5.1993, DTC issued the following Circular:

No. IRD-VRS/HQ/93/352 Dated: 7-5-1993 Some of the employees, who have opted for the Voluntary Retirement Scheme and whose request for V.R.S. has been accepted/under consideration and who had earlier not opted for the Pension Scheme, have now opted for the Pension also. A list of such cases may please be forwarded to the Dy. CGN (Pension) under intimation to this office, so that necessary action in their cases could be taken by the Pension Cell.

Sd/-

(A.K. SHARMA)

DY. CHIEF GENERAL MANAGER (IR)

6. The stand of the DTC before the learned single Judge was that once the appellant's case for VRS was accepted, and if he had not at that time exercised the option for pension, he would not thereafter be entitled to opt for the pension scheme. The appellant was given all his VRS benefits on 31.5.1993.

7. The appellant has placed on record an internal file noting dated 22.4.1993 of the Deputy Chief General Manager (I.R.) in which the proposal for permitting employees who had opted for the VRS to be also allowed to opt for the pension scheme was mooted. The said note reads as under:

A number of employees who have opted for Voluntary Retirement have simultaneously requested that they should be allowed to opt for the Pension Scheme now.

The matter was discussed earlier during an HOD's meeting and consensus emerged that to make VRS more attractive, such employees who have earlier not opted for Pension, but now while applying for VRS, requested to change their option in favour of Pension Scheme, may be allowed to do so. It is, therefore, proposed that such employees who had earlier opted out for Pension Scheme, but while applying for VRS, have requested to be covered under the Pension Scheme, may be allowed to join the Pension Scheme, provided their request for voluntary retirement is acceded to. Submitted please.

Sd/-

(A.K. SHARMA)

DY. CHIEF G.M. (I.R.)

22-4-1993

8. DTC does not deny the fact that the above proposal was in fact mooted. Further, in the affidavit dated 10.12.2009 filed in the present proceedings, it is reiterated that "the appellant while opting for VRS vide his application/consent letter dated 30.3.1993 did not opt for pension/ pensionary benefits and therefore the appellant was not entitled for grant of pension/benefit of circular dated 7.5.1993 under the VRS Scheme".

9. The learned single Judge has accepted the above explanation of the DTC and dismissed the writ petition.

10. Having heard learned Counsel for the parties and having perused the record, we are unable to agree with the reasoning and conclusion of the learned single Judge. A collective reading of the note dated 22.4.1993 and the Circular dated 7.5.1993 reveals that the DTC intended to give all employees who opted for the VRS to also opt for pension, although they may not have expressly done so at the time of opting for the VRS. Further, it is plain that even on 28.4.1993, before his request for voluntary retirement under the VRS was accepted, the appellant had clearly indicated that he wanted to also opt for pension. We are unable to take a narrow view of the Circular dated 7.5.1993. The DTC's stand that Circular dated 7.5.1993 extended the facility of option for pension scheme only to those whose request for retirement under the VRS had not been accepted by that date, cannot be countenanced since that would mean that there are two classes of similarly placed persons, one of them being granted the benefit of pension and

the other denied. We find such a classification to be arbitrary and not based on any rational criterion. Factually also, the appellant exercised the option for pension before 7.5.1993 and before the date DTC accepted his request under the VRS. We therefore find no justification for DTC denying to the appellant the opportunity of opting for pension.

11. Accordingly the impugned order of the learned single Judge is hereby set aside. The amounts due to the appellant, computed on the basis that he opted for the Pension Scheme as on 7.5.1993, will be paid to him. The arrears shall be paid to the appellant by the DTC within a period of eight weeks from today together with simple interest @6% per annum from the date the said amount became due till the date of actual payment. The appeal is allowed in the above terms.