
(2018) 07 CAT CK 0139

In the Central Administrative Tribunal

Case No : Original Application No. 2427 Of 2017

Kalu Prasad

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 02-07-2018

Acts Referred:

Industrial Disputes Act, 1947 — Section 33(C)
Constitution Of India, 1950 — Article 19(1)f, 31, 300A

Citation : (2018) 07 CAT CK 0139

Hon'ble Judges : Praveen Mahajan, Member (A)

Bench : Single Bench

Advocate : Ravinder S Garia, Rajeev Kumar

Final Decision : Disposed Of

Judgement

1. Briefly stated, the facts of the current O.A. are that on 24.10.1982, the applicant joined as Conductor with respondents- Delhi Transport Corporation (DTC). In the year 1993, he was held guilty of several charges in disciplinary enquiry and removed from service. Learned Labour Court vide its order dated 29.01.2005 directed reinstatement of the applicant in service with full back wages. In compliance thereof, on 13.07.2005, the applicant was reinstated in service. Respondent filed a Writ Petition No. 3959/2010 before the Hon'ble High Court. On 11.11.2010, Hon'ble High Court issued Rule Nisi in the matter and directed it to be listed in due course and stayed the proceedings before the Deputy Labour Commissioner under Section 33(C) of the Industrial Disputes Act and directed the matter to be listed for hearing on 11.09.2017. On 31.05.2017, the applicant retired from service. Vide Memo dated 03.03.2017, the respondents informed the applicant that no retiral benefits except his own share of provident fund would be payable to him, other benefits like gratuity and pension would be subject to the outcome of the Writ Petition filed by DTC before Hon'ble Labour Court. The applicant made various representations, which were rejected by the respondents on 15.03.2017, 02.05.2017 and 26.05.2017.

Aggrieved by the same, the applicant has filed the current O.A. seeking the following reliefs:-

"(a) Quash set aside order/memo/communications dated 3/3/2017, 15/3/2017, 2/5/2017 and 26/5/2017.

(b) Direct grant/payment of full retiral benefits to the applicant.

(c) Pass any other or further relief as deemed fit and proper in the facts and circumstances of this case may also be granted in favour of the plaintiff and against the Defendant."

2. The applicant has relied upon the decision of Hon'ble Supreme Court in the case of State of Jharkhand and Ors. Vs. Jitendra Kumar Shrivastava and Anr. (Civil Appeal No. 6770/2013), wherein the Hon'ble Supreme Court held that Pension and Gratuity are property and hence protected under Article 300 A and 19(1) f and Article 31 of the Constitution of India.

3. In reply, the respondents without disputing the facts of the current O.A. have stated that the enquiry was conducted and the applicant was given full opportunity to defend his case. The Enquiry Officer gave his finding on the basis of evidences and established the charges levelled in the charge sheet against the applicant. After considering the findings and the gravity of the offence, a show cause notice dated 30.06.1993 for removal from services was issued to the applicant. The applicant did not submit any reply to the show cause notice within the stipulated period, which showed that he had nothing more to say. The Disciplinary Authority, considered all the aspect and confirmed the proposed punishment. Accordingly, the applicant was removed from service of the Corporation vide Memo dated 15.07.1993. An approval Application u/s 33(2)(b) was filed before the Industrial Tribunal-II, Delhi. Consequent upon the award/order dated 13.10.1997 and 29.01.2005 passed by the Presiding Officer, Industrial Tribunal-II/Labour Court No. VIII, Delhi, the applicant was reinstated in the service of the Corporation with immediate effect subject to the Court case filed by DTC against the award/order of Labour Court dated 13.10.1997 & 29.01.2005. DTC has filed WP(C)-3759/2010 before the Hon'ble High Court of Delhi and the same is pending. Hence, the prayer made by the applicant is not tenable and the O.A. is liable to be dismissed.

5. A perusal of the case file shows that the applicant (Kalu Prasad) was removed from the services of the Corporation in a cheating case w.e.f. 15.07.1993 under Clause 10 of the D.R.T.A. (Conditions of appointment and Service). Management had filed OP No. 421/93 in the Labour Court, which was dismissed on 13.10.1997. The workman also filed ID No. 379/98 in the Labour Court, which was decided in his favour on 29.01.2005. The DTC has filed a Writ Petition(C) No. 3759/2010 in the Hon'ble High Court of Delhi against the order of Industrial Tribunal Labour Court dated 13.10.1997 and 29.01.2005. In view of these facts, when the Writ Petition is still pending for adjudication before the Hon'ble High Court, the Tribunal cannot intervene or issue any directions in this regard. The

applicant is advised to seek redressal before the appropriate forum. The O.A. is accordingly disposed of. No costs.