
(2009) 10 DEL CK 0007

In the Delhi High Court

Case No : Writ Petition (Civil) No. 12401 of 2009

R.K. Verma

APPELLANT

Vs

DTC

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Delhi Road Transport Authority (Conditions of Appointment and Service) Regulations, 1952 — Regulation 14(6)

Citation : (2009) 10 DEL CK 0007

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Anil Mittal, for the Appellant; Latika Chaudhary, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Pathak, J.—Petitioner joined the Respondent as a Junior Clerk on 13th February, 1973. In the year 1974, Respondent created "Data Processing Cell". The posts of input-output Operator, Punch & Verifier Operator, Machine Operator, System Analyst and Data Processing Officer etc. in the said Data Processing Cell were filled amongst the existing employees of Respondent, having requisite qualification and experience. Petitioner was appointed as Punch & Verifier Operator, vide letter dated 2nd September, 1974. In the letter of appointment it was mentioned that he would be governed by the Factories Act, 1948 and the Labour Laws applicable to the industrial workers. Later on, he was promoted as Machine Operator with effect from 1st January, 1983. Subsequently, Respondent decided to wind up the Data Processing Cell and the staff working therein was directed to report to Deputy Purchase Officer in the store department. Vide letter dated 21st December, 1983, Petitioner was placed under the control of Controller of Stores and Purchase Officer. On 16th June 1984, Petitioner was relieved from Stores Department and was posted in Accounts Department (Head Quarters) of the Respondent.

2. As per Regulation No. 14(6)(b) of the Delhi Road Transport Authority

(Conditions of Appointment & Service) Regulations, 1952 (for short hereinafter referred to as "Regulations"), Clerical and Supervisory staff was entitled to the earned leave of 1/11 of the period of duty, as such Petitioner was entitled to the leave at this rate from the time of his initial appointment as a Junior Clerk. Subsequently, when the Petitioner was appointed in the "Data Processing Cell" his leave was to be governed by the leave rules as applicable to the industrial workers and he was entitled to leave at the rate of 1/30 of the duty performed. However, the Petitioner continued to avail the leave benefits in terms of Regulation No. 14(6)(b) of the Regulations, even after his appointment in Data Processing Cell. Due to the mistake, Respondent also continued to grant leave to the Petitioner at the rate of 1/11 of the working days.

3. Sometime in the year 2007, this mistake was realized by the Respondent and therefore leave record of the Petitioner was corrected and he was asked to deposit a sum of Rs. 40,497/- towards excess leave, vide letter dated 19th September, 2007 of the Respondent. This amount was to be recovered from the monthly salary of the Petitioner in 20 equal instalments of Rs. 2024.85.

4. Feeling aggrieved by this order dated 19th September 2007, Petitioner filed a writ petition, which was subsequently transferred to the Central Administrative Tribunal, Principal Bench, New Delhi (for short hereinafter referred to as "Tribunal") and was registered as TA No. 66/2009 and has been disposed of by the Tribunal vide its order dated 1st July, 2009.

5. Tribunal held, that after the applicant became workshop staff on joining as Machine Operator, his leave was to be regulated as per the Labour Laws applicable to the said post. But due to mistake, Respondent continued to allow earned leave to the petitioner at the rate of 1/11 of duty performed. Since this mistake continued for a long period of 34 years, therefore, no recovery was liable to be effected from the salary of the Petitioner in this regard. Accordingly, order dated 11th June, 2007 directing recovery of Rs. 40,497/- from the salary of the Petitioner was bad in law and was liable to be quashed. Tribunal further held that the leave was granted to the Petitioner without his making any misrepresentation. Therefore, amount already paid cannot be recovered, yet the amount to be paid on account of leave encashment at the time of superannuation, would not be payable being based on wrong calculations.

6. Petitioner is aggrieved by the later part of the directions of the Tribunal. Learned Counsel for the Petitioner has contended that since the Petitioner had enjoyed the facility of earned leave at the rate of 1/11 of the duty performed for a period of 34 years, therefore, this position cannot be altered. Petitioner was entitled to retiral benefits in terms of the leave accumulated in his account prior to rectification of leave record in the year 2007. Respondent had itself granted leave at the rate of 1/11 of the working days and all of a sudden on realizing its mistake, Respondent now cannot be allowed to correct the leave record to the detriment of the Petitioner with retrospective effect.

7. We have considered this argument of learned Counsel but do not find any force therein. Initially, Petitioner was appointed as a Junior Clerk in the year 1973 and was entitled to the earned leave in terms of Regulation No. 14(6)(b). However, after he was appointed in the "Data Processing Cell" he became entitled to the earned leave, as applicable to the said post in terms of the concerned Labour Laws. Petitioner was entitled to leave at the rate of 1/30 of the working days. In spite of this, due to some confusion, Petitioner continued to avail the leave till the year 2007 in terms of the Regulations, when this mistake was discovered by the Respondent. We are of the view that if some benefit had been awarded by an employee, which was not available to him, due to mistake of the employer, same can be rectified after such mistake came to light. Thus, in our view, Respondent has rightly corrected the leave record of the Petitioner. In this scenario, Petitioner would be entitled to retiral benefit as per the corrected record. It cannot be said that Petitioner would be entitled to the benefit of leave encashment on the basis of uncorrected leave record even after such a mistake was noticed and corrected. Mistake can be corrected at any time. Accordingly, we are of the view that Tribunal has rightly held that though whatever has been paid to the Petitioner, cannot be recovered from him, but the amount yet to be paid on account of leave encashment at the time of superannuation, cannot be paid to him on the basis of old record, as the same was based on wrong calculations.

8. We do not find any error in the view taken by the Tribunal.

9. Dismissed.