

The Management of Dtc Vs. Om Prakash (Deceased) Represented By: Legal Heirs

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Court : Delhi

Decided On : Apr-22-2013

Judge : V. Kameswar Rao

Appellant : The Management of Dtc

Respondent : Om Prakash (Deceased) Represented By: Legal Heirs

Judgement :

\$~3 * IN THE HIGH COURT OF DELHI AT NEW DELHI % + Date of Decision : April 22, 2013 W.P.(C) 7671/2011 THE MANAGEMENT OF DTC Represented by: Petitioner Ms.Arati Advocate Mahajan Shedha, versus OM PRAKASH (DECEASED) REPRESENTED BY: LEGAL HEIRS Respondent Represented by: Mr.S.N Sharma, Adv. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MR. JUSTICE V. KAMESWAR RAO V.KAMESWAR RAO, J.

(Oral) 1 The challenge in the writ petition is to the order dated 17.03.2011 passed by the Central Administrative Tribunal (the Tribunal) in O.A. 2490/2010 whereby the Tribunal allowed the claim of the respondents herein inter-alia for the payment of interest on arrears of pension w.e.f. 01.08.1993 to 30.06.2009, the actual date of payment of pension arrears and further to the refund of amount of `37,145.72 after adjusting the interest on the principal payment of employer share of Contributed Provident Fund. 2 Brief facts are that the respondent herein was sent

on training as conductor by the petitioner Delhi Transport Corporation on 23.05.1979. Thereafter he was appointed as a retainer crew conductor with the respondent DTC on 04.12.1980. In 1988 the respondent participated in illegal strike, which resulted in he being dismissed from the service. In 1989, pursuant to a settlement entered between the DTC and the respondent and other similarly placed employees, they were taken back in service with 50% back wages. 3 That when the respondent was dismissed in 1988, the petitioner released the employees as well as the employer share of provident fund, which he never returned on rejoining. 4 DTC introduced a pension scheme on 27.11.1992 and the respondents opted for the same. A scheme for voluntary retirement was floated by DTC in 1993 and the respondent applied to be voluntarily retired and upon request being accepted stood required w.e.f. 30.04.1993. As he had less than 20 years service, for that matter even less than 10 years of qualifying service, the respondent was not entitled to pension and the same was not released to him. 5 On 16.03.2000, a Division Bench of this Court decided L.P.A No.13/1998, titled DTC vs. Shri Baij Nath Bharghav, wherein one of the issues that was settled was that those who have taken VRS under the scheme floated by DTC in 1993 would be entitled to receive pension, if they had at least ten years of qualifying service. It is noted that considering that the office order dated 27.11.1992 whereby the DTC had introduced pension scheme, it envisaged refund of employer share of provident fund with interest in case of an employee switching over to the pension scheme. On 19.06.2008, the respondent for the first time made a representation for recalculation of his qualifying service after taking into consideration his training period and release of pension thereafter. On the receipt of representation referred above, the petitioner considered the issue of qualifying service and treated the period, which respondent has not spent on duty pursuant to he being dismissed (earlier been treated as leave without pay), as qualifying service and accordingly his qualifying service was recalculated and the same came to be 10 years 5 months and 6 days. In view of the above position, the respondent became entitled to the pensionary benefit as per the judgment of this court in L.P.A 13/1998. A notice dated 23.12.2008 was issued by DTC calling upon respondent to deposit back the employer share together with interest upto 31.12.2008, amounting to `46,883.06/- with the DTC superannuation trust so that his case of pension may be

forwarded to the pension cell 6 That in response to the notice dated 23.12.2008, the respondent replied to the DTC that the employer share with interest may be deducted from the arrears of pension as he is unable to deposit back the said amount. The request of the respondent was accepted and after adjusting the amount of `48,896.77/-, DTC released an amount of `3,15,889.23/- to the respondent as arrears of pension in the month of July, 2009. We may state here that this grant of `3,15,899.23/- does not include the interest component. The respondent not being satisfied with the payment made by the DTC filed an O.A 2490/2010 before the Central Administrative Tribunal Principal Bench, New Delhi (the Tribunal), wherein he has sought the following prayers: (i) Direct the respondent to pay the interest on arrears of pension released from 01.05.1993 to July 2009 at the same rate of interest as the DTC is being charged on Provident Fund. (ii) Direct the respondent to charge the interest on the PF share from the employee upto April, 1993 and refund the excess interest as the department has charged on the Management share of provident fund i.e. on ` 6409/-. (iii) Any other relief or relieves as deemed fit in the facts and circumstances of the case may also be awarded by passing appropriate order(s) in the interest of justice. 7 The O.A was contested by the petitioner herein by filing a detailed reply. The Tribunal after hearing the parties had allowed the O.A and accordingly allowed the interest on `3,15,899.23 @ 9 per cent per annum from 01.08.1993 to 30.06.2009. In so far as the other second issue is concerned, the Tribunal has concluded as under: Coming to the second issue that the interest deducted by the Respondents from the arrears of pension for non refund of the Employers share along with interest, I find that as the delay in sanction of pension was mainly due to the Respondent not arriving at the correct period of qualifying service put in by the Applicant, he would be entitled to refund of the interest calculated on the Employers share from 01.08.1993 upto 31.12.2008 and adjusted from the arrears of pension. It is seen from the reply affidavit that `3327.74 (`521.26+ `831.70+ `931.50+ `1043.28) have been assessed as interest on the principal amount of Employers share of CPF for the period 28.07.1989 to 31.3.1993 which the Respondent DTC is legally entitled to adjust from the Applicants pension arrears. Balance amount of `37145.72 has to be refunded to the Applicant. Hence, Respondent DTC is accordingly directed to refund `37145.72 (`40473.46- `3327.74). 8 Further the Tribunal awarded costs of

litigation to the respondent, which was fixed at `5,000/-. We have been told that the respondent Om Prakash has since expired. It is also noticed that the legal heirs of late Mr. Om Prakash have been brought on record. 9 We have heard learned counsel for the parties. 10 Learned counsel for the DTC would submit that the Tribunal could not have awarded the interest to the respondent. According to her, the claim was very belated in as much as the respondent had taken VRS in the year 1993 and he for the first time made a claim for pension only on 19.06.2008, when he made representation for recalculation of his qualifying service after taking into consideration his training period. She further submit that the ground on which the respondent had sought addition to his qualifying service was not tenable as the respondent was not entitled to get the benefit of the training period. According to her, the respondent was entitled to get the period, from the date when he was dismissed and subsequently reinstated as qualifying period, which the DTC counted in the year 2008. For so many years he had not made a issue nor approached any judicial forum seeking redressal of his grievance, if any. In so far as the second issue is concerned, learned counsel for the DTC would submit that the respondent had released the employer share of provident fund in the year 1988 and he did not even return the same asked for with interest in the year 2008, so that his pension arrears could be paid. According to her, DTC had taken a lenient view. As such adjustment is not permissible in normal case and DTC is liable to get back the amount of ` 37,145/-, which have been directed to be paid back to the respondent by the Tribunal. 11 On the other hand, learned counsel for the respondent would submit that the delay, if any, for releasing the arrears of pension was on the petitioner. According to him, they should have paid the pension at the time when the respondent had sought VRS. In any case, he would submit that since the respondent has expired, this Court may not disturb the judgment of the Tribunal. 12 After hearing the counsel for the parties, we are of the view that the respondent had taken VRS in the year 1993 and did not raise an issue/ disputed the grant of provident fund by the DTC. In any case, the minimum eligibility for grant of pension was 20 years as per the rules. For the first time on 16.03.2000 this Court in the L.P.A 15/1998 had decided that the person who had put in 10 years of service would also be entitled to pension. The respondent did not raise an issue thereafter. It was for the first time in the year 2008 that he made

a claim for pensionary benefits, that to calling upon the DTC to count the period of training undertaken by him before appointment as qualifying service. According to DTC, training period could not have been counted for the purpose of qualifying service. Still the DTC have taken into consideration the period from the date on which he was dismissed from service and the date of his reinstatement as qualifying service for the purpose of pensionary benefits. Even in a suit, the limitation period is of 3 years. In this case, the claim of the respondent was beyond three years. The claim was apparently belated. Under such circumstance, the Tribunal was not correct in awarding the interest to the respondent from 01.08.1993 to July 2009. To that extent the order of the Tribunal is liable to be set aside. In so far as the direction of the Tribunal to the DTC to return back the amount of `37,145.72 is concerned, we feel that since the respondent has expired, he had earlier shown his inability to pay, we feel the equity demand that such a direction is not interfered with. We are not also inclined to interfere with the costs awarded by the Tribunal in favour of the respondent. 13 The Writ Petition is disposed of to the extent stated above. (V.KAMESWAR RAO) JUDGE (PRADEEP NANDRAJOG) JUDGE APRIL 22 2013 km

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