

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 12743 OF 2017**

KARAN SINGH

....APPELLANT(S)

VERSUS

DELHI TRANSPORT CORPORATION & ANRRESPONDENT(S)

J U D G M E N T

Rastogi, J.

1. This appeal is directed against the judgment dated 15th March, 2016 in Writ Petition (Civil) No. 7662 of 2015 passed by the High Court of Delhi setting aside the order dated 19th February, 2015 passed in O.A. No. 43 of 2014 of the Central Administrative Tribunal whereby the Corporation was directed to pay the appellant pension and other benefits in accordance with the pension scheme introduced by the Delhi Transport Corporation(DTC) vide its Office Order dated 27th November, 1992 read with VRS, 1993.

2. The facts of the case relevant for the purpose are that vide Memo dated 9th February, 1983, the appellant was directed to report at T.S. Training School, IPD for training on 10th February, 1983 for the post of Retainer Crew or Conductor. The appellant underwent training from 15th March, 1983 to 26th May, 1983 and was offered appointment by order dated 24th May, 1983 after qualifying the written test held on 13th May, 1983 for the post of Conductor with effect from 27th May, 1983. He was given regular appointment as monthly rate conductor w.e.f. 27th November, 1983.

3. The Delhi Transport Corporation introduced a pension scheme for its employees, including the retired employees and pursuant thereto issued Office Order No. 16 dated 27th November, 1992 notifying that a pension scheme would be operated by the Life Insurance Corporation of India(LIC). That order reads as under:-

“No. Adm-I-5(4)/92
Dated 27.11.92

Sub: Introduction of Pension Scheme in DTC as applicable to the Central Govt. Employees.

The introduction of Pension Scheme for the employees of the DTC has been sanctioned by the Central Government and conveyed by the M.O.S.T vide letter No. RT-12019/21/88-TAG dated 23.11.92 as on the same pattern as for the Central Govt. employees subject to the following conditions:-

1. The pension scheme would be operated by the LIC on behalf of DTC.
2. The date of effect of Pension Scheme would be 3.8.1981.
3. All the existing employees including those retired w.e.f. 3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Fund as at present, within 30 Days from the date of issue of this O.O. for the implementation of the Pension Scheme as approved by the Govt. of India.
4. The Pension scheme would be compulsory for all the new employees joining DTC w.e.f. 23.11.92, the date of sanction of the scheme.
5. The Pension Scheme would be operated by the LIC on behalf of DTC. The employees share in the EPF A/c of the DTC employees, who opt for Pension Scheme, would be transferred to the LIC, for operating.
6. The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/ existing employees would be the amount that would have accrued, had they not withdrawn the employer's share.
7. Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the Pension Scheme, will have to be refunded by them before any benefit under the Scheme, is granted to them.
8. A due and drawn statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded, would be worked out by the concerned unit, wherefrom the employee had retired from service.
9. If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quit service or dies without exercising an option or whose option is incomplete or conditional or

ambiguous. He shall be deemed to have opted the Pension Scheme Benefits.

Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise option, should do so within the Unit of their present working/ where from they retired, within a period of 30 days from the date of issue of this Office order.

The Unit Officers, after receiving the option from the ex-employees, will take further necessary action for getting the necessary forms completed, which will be supplied to them by the LIC for Pension etc. they will also ensure the recovery of EPF and Gratuity from the ex-employees before forwarding their applications as mentioned above. The cases of all officers will be dealt with at Headquarters.

The options received from the existing employees for not opting Pension may be kept in their Personal file and entry made in their Service Book."

4. A perusal of the scheme indicates that as regards the existing serving employees, it was stated vide Para 4 that the pension scheme would be compulsory for those who joined service under it with effect from 23rd November, 1992 and as regards the existing serving employees, vide para 9, it was stated that those who do not submit any option would be deemed to have opted for the pension scheme. Thus, it is apparent that as regards the existing employees of the Corporation who were still in service when the office order dated 27th November, 1992 was promulgated, if they desired to continue to be the members of the Contributory Provident Fund

Scheme they had to specifically say so, for the reason, their silence was to be treated as a deemed option to opt for the pension scheme and needless to state their positive option to opt for the pension scheme was always there.

5. In sequel thereto, the Corporation notified the voluntary retirement scheme on 3rd March, 1993. The relevant extract is as under:-

“Sub:- Voluntary Retirement of Employees of Delhi Transport Corporation.

The matter pertaining to the introduction of voluntary Retirement Scheme for the employees has been under the consideration of Delhi Transport Corporation. Salient Features of the proposed voluntary Retirement Scheme are as under:-

1. Applicability:

The scheme will be applicable to all regular employees of the corporation i.e. workers and executives who are appointed against regular vacancies in the corporation.

2. Eligibility

An employee must have completed ten years of service in this corporation or completed 40 years of age to qualify for consideration under the Scheme. For this purpose, period of deputation/retention of lien in the parent office in lieu of deputation prior to absorption in the regular service of the Corporation will be excluded.”

6. Those employees who had 10 years of service in the Corporation or completed 40 years of age were entitled to opt for voluntary retirement under the scheme. The appellant

since had crossed the age of 40 years, submitted his application for voluntary retirement which was allowed vide letter dated 30th April, 1993 and various payments were made as per scheme but no order for pension was passed.

7. The question that emerged for determination was whether the appellant had completed 10 years of qualifying service in terms of the scheme of Rules which makes him entitled for pension under the pension scheme introduced by the Corporation dated 3rd March, 1993. To substantiate his claim, the appellant emphasised the computation of qualifying service rendered by him, the break-up of which is as under:-

i)	Trainee	15.03.1983 26.05.1983	to	2 months 13 days
ii)	Retainer Crew Conductor	27.05.1983 26.11.1983	to	6 months 1 day
iii)	Conductor	27.11.1983 30.04.1993	to	9 years, 5 months and 5 days
		Total		10 years 1 month and 19 days

The calculation of the total qualifying service for the purpose of pension is as under:-

	Year - M - Days
Date of VRS	- 1993 -04 -30
Date of Training started	- 1983 -03 -15

	10 - 01 - 19
Less 98 days	00 - 03 - 08

Net qualifying service	09 - 10 - 11

(rounded Off to 10 years)

8. The respondent Corporation in its counter computed his qualifying pensionable service which comes to 9 years 1 month and 25 days. The break-up is as follows:-

"Date of VRS	30.04.1993
Date of appointment on	27.11.1983
Monthly pay	03.05.09
Less 98 days of LWP	08.03.00
Net qualifying service	25.01.09

9. According to the respondent Corporation, even if the training period is added to the aforesaid service rendered by the appellant, the total qualifying service would come to 9 years 4 months and 6 days which fall short of the minimum qualifying service to make him entitled for pension.

10. The comparative statement of the break-up of service of the appellant rendered clearly indicates that he was appointed after qualifying the training of two months as Conductor with effect from 27th November, 1983 and the period other than two months of training which he consumed as a Retainer Crew or Conductor was neither a training nor a service which he rendered in the Corporation and it was the period consumed to qualify the written test and to await order of appointment. In

the facts and circumstances, even if the two months period of training i.e. from 15th March, 1983 to 26th May, 1983 in terms of Rule 22 of Central Civil Services Pension Rules, 1972 is taken note of, the qualifying service of the appellant comes to 9 years 4 months and 6 days.

11. So far as 98 days leave without pay is concerned, this matter was earlier heard and noticing the fact that the effect of leave without pay even sanctioned be treated as a disruption in service or to be counted in qualifying service has been referred to be decided by the larger Bench in Civil Appeal No. 7159 of 2014 (**Delhi Transport Corporation Vs. Balwan Singh & Ors.**), this Court kept the matter pending awaiting the decision. Since this issue has now been decided by a three Judge Bench of this Court on 26th February, 2019 in which this Court taking note of Rule 3(1)(q) and Rule 21 of the scheme of rules has held that the period of leave for which salary is payable would be taken into account for determining the pensionable service, while the period for which leave salary is not payable would be excluded. The relevant paragraph 20 is as under:-

“ In our view, the only aspect which is required to be considered is the requirement of the specific rule of the Pension Rules, which provides for admissibility of pension. No one, including the respondents can be

permitted to plead that they would be unaware of the Pension Rules, which have a statutory force and whose benefit they seek to avail. In fact, the VRS itself, more specifically clause(g), makes these very Rules applicable. Rule 21 is quite clear in its terms, i.e., "all leave during service for which leave salary is payable" would count. The corollary is that if an employee is not paid for leave, that period has to be excluded from the period to be counted for admissibility of pension. Rule 3(1)(q), while defining "qualifying service" provides for service rendered while on duty "or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules." Thus, the period of leave for which salary is payable would be taken into account for determining the pensionable service, while the period for which leave salary is not payable would be excluded. The Rule is crystal clear and does not brook any two interpretations. It is a well settled principle of interpretation that when the words of a statute are clear and unambiguous, there cannot be a recourse to any principle of interpretation other than the rule of literal construction."

12. In the instant facts and circumstances and taking note of the view expressed by the three Judge Bench of this Court in **Delhi Transport Corporation Vs. Balwan Singh & Ors.** (supra), the appellant failed to qualify with the minimum qualifying service of 10 years which could make him entitled to claim pension under the pension Scheme, 1993 and this what has been held by the High Court in the impugned judgment.

13. We find no substance in the appeal and the same is accordingly dismissed. No costs.

14. Pending application(s), if any, stand disposed of.

.....J.
(MOHAN M. SHANTANAGOUDAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
OCTOBER 22, 2019