

**REPORTABLE**

**IN THE SUPREME COURT OF INDIA**

**CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO.12743 OF 2017**

**(arising out of SLP(C)No.18321 of 2016)**

**KARAN SINGH**

**... APPELLANT**

**VERSUS**

**DELHI TRANSPORT CORPORATION & ANR.**

**... RESPONDENTS**

**J U D G M E N T**

**ASHOK BHUSHAN, J.**

The appellant who appears in person has come up in the appeal against judgment dated 15.03.2016 in Writ Petition (C) No.7662 of 2015 of Delhi High Court by which judgment Delhi High Court allowed the writ petition of Delhi Transport Corporation by setting aside the order dated 19.02.2015 passed by the Central Administrative Tribunal, Principal Bench, New Delhi whereby the Tribunal has directed the Delhi Transport Corporation to pay the appellant pension and other benefits in accordance with the

Pension Scheme issued by the DTC vide their Office Order dated 27.11.1992 read with VRS, 1993.

2. By Memo dated 09.02.1983, the appellant was directed to report T.S. Training School, IPD for training on 10.02.1983 for the post of Retainer Crew or Conductor. The appellant underwent training from 15.03.1983 to 26.05.1983. The appellant was offered appointment by order dated 24.05.1983 after qualifying the written test held on 13.05.1983 for the post of Conductor with effect from 27.05.1983. The appointment letter dated 25.05.1983 was issued appointing the appellant as Retainer Crew with effect from 27.05.1983. On 27.11.1983 he was given regular appointment as monthly rate Conductor w.e.f. 27.11.1983. The Delhi Transport Corporation floated voluntary retirement scheme by circular dated 03.03.1993. Those employees who had 10 years of service and 40 years of age were entitled to opt for voluntary retirement. The appellant submitted his application for voluntary retirement which was allowed by letter dated 30.04.1993. The appellant

was made various payments as per scheme but no order for pension was passed.

3. A writ petition was filed by the appellant in the Delhi High Court seeking a direction to make payment of pension. The writ petition was transferred to Central Administrative Tribunal and was allowed by order dated 09.08.2011 by the Tribunal. The Tribunal held that the respondent having accepted voluntary retirement of the appellant on the ground that he has completed 10 years of service, now, this is too late to say for the Corporation not to make payment of pension on the ground that he has not completed 10 years of qualifying service. Against the order of the Tribunal a writ petition was filed in the High Court by the Corporation. The writ petition was allowed by the Delhi High Court by judgment and order dated 29.05.2013. The High Court held that if the service of the appellant is reckoned from 27.05.1983 and the period of 98 days on which he was on leave without pay, total period of service comes to 9 years, 7

months and 8 days which does not qualify for pension. Review application was filed by the appellant praying for adding period from 15.03.1983 to 26.05.1983 under which he had undergone for training. Review Application was rejected that since no such plea was raised before the Tribunal the same cannot be considered. After rejection of the review, appellant again requested the DTC to re-appreciate the qualifying service and reconsider for grant of pension. In the application apart from requesting for adding training period, he also claimed that he was not paid employee's share of the contribution to Provident Fund, putting a cross against the said claim clearly meant that Corporation itself was considering the case of the appellant as a pension case. He further stated that similarly situated persons have been granted benefit of pension.

4. The appellant was informed by the Corporation vide letter dated 03.10.2013 that his qualifying service was less than 10 years and all employee's due share is being released. An original application

was filed being OA No.43 of 2014 before the Tribunal where the appellant prayed for quashing the order dated 03.10.2013 of the Corporation and sought direction to make payment of pension with interest. The Tribunal vide order dated 19.02.2015 allowed the application holding that the appellant had completed the minimum qualifying service of 10 years for the purpose of pension, hence, the appellant should be granted pension and all other benefits with interest at the rate of 9%. The Tribunal accepted the case of the appellant that by adding his period of training he shall complete 9 years 10 months and 11 days which can be rounded of to 10 years. The judgment of the Tribunal 19.02.2015 was assailed by the DTC by filing a Writ Petition No.7662 of 2015 which writ petition has been allowed by the Division Bench of the Delhi High Court on 15.03.2016. The Division Bench of the High Court by its earlier judgment dated 29.05.2013 having reversed the order of the Tribunal in favour of the appellant which cannot be reopened on the principle of constructive res

*judicata*. The Division Bench of Delhi High court in its judgment dated 29.05.2013 has also relied on this Court's judgment in ***DTC vs. Lillu Ram in C.A. No.11440 9 of 2011*** decided on 14.12.2011 wherein this Court has held that the period of leave without pay cannot be counted as qualifying service for pension.

5. This appeal was heard by us on 01.05.2017 on which date we passed the following order:

*"After hearing the petitioner who appears in-person and the counsel for the respondent for some time, we feel that the following documents would be necessary in order to decide the controversy:*

- (1) Rule regarding counting of service towards pension.*

*This is necessary having regard to the fact that the petitioner herein had undergone training for the period from 15.03.1983 to 26.05.1983. Whereas, the petitioner wants this period to be counted for calculating the qualifying service for the purposes of pension but the respondent has come out with the plea that such a period cannot be counted.*

(2) According to the respondent, the petitioner had remained on leave without pay for 98 days and that period is excluded for counting the qualifying service by the respondent.

The petitioner, on the other hand, has drawn our attention to Rules 21, 27, 28 of the Pension Rules and submits that reading of the aforesaid Rules would show that the aforesaid period is to be counted unless there is a specific order for not counting the said service towards pension.

The respondent shall, therefore, place on record any document or order which was passed in this behalf in the petitioner's case.

(3) The petitioner has also drawn our attention to letter dated 21.10.2013 written by the respondent to him which is an information provided under the provisions of Right to Information Act, 2005. That letter shows that many employees who had not completed 10 years of qualifying service and who had opted for VRS, are given pension. It further shows that this is as per the orders of the High Court or this Court. The respondent shall also produce the copies of all those orders."

6. In pursuance of our order dated 01.05.2017, an additional affidavit has been filed by the respondent. In the additional affidavit the respondent has pleaded that the period from 15.03.1983 to 26.05.1983 i.e. training period cannot be added. It is stated in the affidavit that since the appellant was appointed as conductor on regular basis w.e.f. 27.11.1983, the counting of his service period commences from 27.11.1983, till 30.04.1993 (date of VRS) which comes to 9 years 5 months and 3 days. Further, the period of leave without pay of 98 days for which no salary was paid cannot be counted as qualifying service, thus, the qualifying service of the appellant comes to only 9 years 1 month and 25 days. Rule 21 of CCS Pension Rules has been referred for the purpose. The training period cannot be added as during the said period neither salary nor any stipend is paid. After training written test is conducted, on passing the same the conductor is offered appointment. The respondent has also brought on record an order of this Court dated 19.11.2016 in



C.A.No.7159 of 2014 (D.T.C. vs. Balwan Singh & Ors.) wherein this Court had referred the judgment of two-Judge Bench in *Lillu Ram (supra)* for consideration by a larger Bench. It is useful to extract herewith reason given by the two-Judge Bench for making reference which is to the following effect:

*"The judgment in the case of Lillu Ram (supra) rendered by a Division Bench does not show any consideration or reasons as to why when factually the employee had been sanctioned leave without pay, such period was treated by this Court to be a period of unauthorised absence. Even the relevant rules such as Rules 27 & 28 of the Central Civil Service (Pension) Rules, 1972 or F.R.17-A of the Fundamental Rules on which reliance has been placed by the respondents was not noticed or considered.*

*Prima facie, we are of the view that no adverse effect can be permitted upon the right of the employee to receive pension unless he was given notice by appropriate entry in the service book or through other notice that his absence will be treated as unauthorised absence and will not be counted towards qualifying service for pension. In absence of such notice, after the respondent-employee has taken*

voluntary retirement under VRS and that too on the ground that he has completed ten years of service, it may be unjust and very harsh to inflict him with such adverse consequences. No doubt in sub rule (2) of Rule 28 of the Pension Rules which relates to condonation of interruption of service, an opportunity of representation is required to be given to the employee before making entry in service book regarding forfeiture of past service only, but there appears to be some substance in the submission that Rules of Natural Justice may be attracted even in other similar situation where the entry is regarding unauthorised absence, if it is to have the effect of break in service adversely affecting the length of qualifying service for pension.

In our considered view, the judgment rendered by the Division Bench in case of Lillu Ram (supra) requires re-consideration by a larger Bench. For that purpose, the matter may be brought to the notice of the Hon'ble the Chief Justice of India.

Since the respondents-employees, as per interim orders are getting only 50% of the pension, we are of the view that hearing of this matter needs to be expedited."

7. As noted above, one of the issues which is noted in our order dated 01.05.2017 and on which the

respondent was asked to submit a response is the appellant's plea for adding the period of 98 days to be counted in qualifying service. We have no doubt that the appellant is entitled to count his period from 27.05.1983 on which date he was first appointed followed by regular appointment w.e.f. 27.11.1983.

8. The Tribunal after computing the appellant's appointment from 27.05.1983 has accepted the case of the appellant which comes to 9 years 11 months and 6 days. After adding the training period and deducted 98 days it comes to 9 years, 10 months and 11 days. The appellant who appears in person has also placed before us the photocopy of the service-book of the appellant which also contains the details of his leave. There is no mention in the leave account that leave without pay granted shall be treated as disruption in service. The effect of Rule 27 and 28 has to be considered which matter has been referred for consideration by a larger Bench as noted above. We are of the view that in the interest of justice

it shall be appropriate to await the decision on reference dated 09.11.2016 as made in **C.A.No. 7159 of 2014 (D.T.C. vs. Balwan Singh & Ors.)**. List this appeal after the decision in reference made in C.A. No.7159 of 2014.

.....J.  
( **A.K. SIKRI** )

**NEW DELHI,**

.....J.  
( **ASHOK BHUSHAN** )  
**SEPTEMBER 13, 2017.**

ITEM NO.1502

COURT NO.6

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s).12743/2017

KARAN SINGH

Appellant(s)

VERSUS

DELHI TRANSPORT CORPORATION &amp; ANR.

Respondent(s)

Date : 13-09-2017 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.K. SIKRI

HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Petitioner-in-person

For Respondent(s) Ms. Asha Gopalan Nair, AOR

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice A.K. Sikri and His Lordship.

The matter is directed to be listed after the decision in reference dated 9.11.2016 as made in C.A. No 7159 of 2014.

(B. PARVATHI)  
COURT MASTER

(MALA KUMARI SHARMA)  
COURT MASTER

(Signed reportable judgment is placed on the file)