

KARAN SINGH

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v.

DELHI TRANSPORT CORPORATION & ANR.

(Civil Appeal No. 12743 of 2017)

SEPTEMBER 13, 2017

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[A.K. SIKRI AND ASHOK BHUSHAN, JJ.]

*Service law – Pension and other benefits – Voluntary Retirement Scheme – Scheme floated by the respondent-corporation whereby employees who had 10 years of service and 40 years of age were granted option for voluntary retirement – Appellant submitted his application for voluntary retirement which was allowed – He was made various payments as per the scheme but no order for pension was passed on the ground that he did not qualify for pension – Held: The qualifying service after adding the training period and deducting 98 days on account of leave without pay, came to 9 years, 10 months and 11 days – The appellant placed the photocopy of the service-book which contained the details of his leave – There was no mention in the leave account that leave without pay shall be treated as disruption in service – The question whether period of leave without pay is to be counted as qualifying service for pension, is pending before the larger bench in **Balwan Singh** case – In the interest of justice, it is held appropriate to await the decision in **Balwan Singh** case – Appeal to be listed after disposal of **Balwan Singh** case.*

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*DTC v. Balwan Singh* in CA. No.7159 of 2014 dated 19.11.2016; *DTC v. Lillu Ram* 2017 (11) SCALE 588 – referred to.

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Case Law Reference

2017 (11) SCALE 588 referred to Para 4

CIVIL APPELLATE JURISDICTION : Civil Appeal No.12743 of 2017.

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From the Impugned Order dated 15.03.2016 passed by the High Court of Delhi at New Delhi in Writ Petition (Civil) No.7662 of 2015.

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A Karan Singh (Petitioner-in-person).

Avnish Ahlawat, Ms. Asha Gopalan Nair, Ms. Nivedha Nair, Advs.  
for the Respondents.

The Judgment of the Court was delivered by

B **ASHOK BHUSHAN, J.** 1. 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  
C 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  
D 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  
E 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  
F 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  
G 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

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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*

A *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:

B *“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:*

C (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.*

D (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.*

E *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.*

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

G (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.”*

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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*

A        *ten years of service, it may be unjust and very harsh to inflict*  
B        *him with such adverse consequences. No doubt in sub rule*  
C        *(2) of Rule 28 of the Pension Rules which relates to*  
D        *condonation of interruption of service, an opportunity of*  
E        *representation is required to be given to the employee before*  
F        *making entry in service book regarding forfeiture of past*  
G        *service only, but there appears to be some substance in the*  
H        *submission that Rules of Natural Justice may be attracted even*  
I        *in other similar situation where the entry is regarding*  
J        *unauthorised absence, if it is to have the effect of break in*  
K        *service adversely affecting the length of qualifying service*  
L        *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

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KARAN SINGH v. DELHI TRANSPORT CORPORATION  
[ASHOK BHUSHAN, J.]

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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. A

Devika Gujral

Matter pending.