

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1010/2014

Reserved on : 28.09.2016
Pronounced on : 07.10.2016

HON'BLE MR. P.K. BASU, MEMBER (A)

Omparkash, Ex.Driver,
B.No.4492, DKD,
S/o late Sh. Jabar,
R/o Village Samaspur Khalsa,
P.O.Ujjwa,
Delhi-110073.

.. Applicant

(By Advocate : Ms. Komal Aggarwal for Shri Anil Mittal)

Versus

Delhi Transport Corporation,
I.P. Estate,
New Delhi-110002

(through Chairman-Cum-Managing Director). .. Respondent

(By Advocate : Ms. Ruchira Gupta)

ORDER

The applicant was appointed as Driver with DTC in 1971. On 27.11.1992, DTC introduced a Pension Scheme for its employees retiring on or after 03.08.1981. If any employee did not submit his option as per Rule 9 of the Pension Rules, he was deemed to have opted for pension. The applicant states that he had opted for pension in terms of Rule 9.

2. The DTC announced Voluntary Retirement Scheme in March, 1993 providing that employees who had put in more than 10 years of service could seek voluntary retirement. The scheme also provided that the employees seeking voluntary retirement were also entitled to pension. The applicant sought voluntary retirement under the scheme and stood retired from service on 31.05.1993.

3. The grievance of the applicant is that though he was paid his dues like ex-gratia and leave salary, he was neither paid employer's share of Provident Fund nor his pension. When the applicant came to know that the DTC has started implementing the Pension Scheme, the applicant requested the DTC that since he has already opted for pension, his pension may now be started, which the DTC refused to do.

4. It is further stated by the applicant that when DTC had failed to implement the Pension Scheme, having introduced it in 1992, number of writ petitions were filed by various retired employees seeking implementation of the Pension Scheme. The applicant states that the Hon'ble Single Bench of Delhi High Court vide orders dated 19.09.1997, 17.10.1997 and 20.10.1997 allowed various writ petitions holding the workmen who had taken voluntary retirement were entitled to pension. The DTC filed various LPAs, which were decided by the Division Bench of the Hon'ble Delhi High Court by

order dated 16.03.2000 that employees, who were in service of DTC on or after 27.11.1992, would be automatically covered by the Pension Scheme in terms of Rule 9. It is stated that this decision of the Division Bench has been upheld by the Hon'ble Supreme Court.

5. It is further stated vide its order dated 01.04.2009, the Division Bench of the Hon'ble High Court in LPA No.2632/2005 has again held that employees, who were in service on or after 27.11.1992 and had taken voluntary retirement in 1995, are entitled to pension.

6. Being aggrieved by the action of the respondents not to grant him pension, this O.A. has been filed seeking the following relief:

“Direct the respondent to extend the benefit of pension policy dated 27-11-92 (Annexure A-1) to the applicant on the terms and conditions as contained therein and further direct it to pay arrears of pension with interest.”

7. The learned counsel for the respondents stated that the applicant had retired on 31.05.1993. After opting for voluntary retirement, he was paid all his dues including gratuity etc. He was also paid the CPF of which he was a member. Nothing remained due and outstanding by the respondents. The present application has been filed in February, 2014, i.e. after 21 years of his retirement, with no explanation for delay and,

therefore, sought dismissal of this O.A. on the ground of limitation under Section 21 of the Administrative Tribunals Act, 1985.

8. Learned counsel for the respondents further stated that the applicant had opted for the Pension Scheme when it was introduced by the DTC in 1992, but thereafter he had opted out of the same by sending a communication dated 23.05.1995 and sought his Provident Fund to be released. Accordingly, his CPF was released to him vide letter dated 15.10.1995. The applicant was well aware of the fact that he was entitled to be part of either the Pension Scheme or the CPF as he could not have been part of both. He was also well aware of the fact that the employees who have retired from the services of DTC after 03.08.1981 and who have drawn their CPF will have to refund the same with interest in the event of their opting for the pension scheme. This is also the settled position of law. The applicant withdrew the CPF and, therefore, has no claim under the Pension Scheme.

9. Learned counsel for the respondents relied on the judgment of the Hon'ble High Court in **Delhi Transport Corporation** vs.

Baijnath Bhargava (LPA 33/98), in which the Hon'ble High Court has held as follows :

“Having considered the submission made at Bar, at the very outset it may be observed that employees cannot resist the claim of the corporation for payment of interest on the employer's share of provident fund. Equity as urged by learned counsel for the corporation will have no play in this case since parties rights will be governed by the contract. Offer was made by the corporation to the employees to switch over from Contributory Provident Fund Scheme to pension scheme subject to certain conditions. It was at the option of the employees to have accepted the offer in toto or rejected the same. Time was allowed to them to exercise the option. Being governed by the Contributory Provident Fund Scheme they on retirement were paid all dues admissible to them. In case they thought that switching over to pension scheme would be beneficial to them they exercised the option knowing fully well of the consequence that they will have to return the employer's share of Provident Fund with interest. Under the Pension Scheme employer's share of the Provident Fund is not admissible. They have no right to retain the same. Having known the consequences and liability to refund employer's share of Provident Fund with interest the employees are estopped from taking up the issue that they are not bound to pay interest since interest is not being paid by the Corporation on the pension benefits.”

10. Learned counsel for the respondents also relied on the judgment of the Hon'ble High Court in **DTC Vs. Madhu Bhushan Anand** (WPC No.14027/2009), specifically to paras 40 to 43, which are quoted below:

“40. In a nut-shell all these respondents plead that they were under compulsion to opt out of the pension scheme after they had submitted their offer to be voluntarily retired and after the same was accepted and they stood retired; compulsion being the uncertainty of pension being paid and their pressing need for funds. The legal argument advanced by them is that once their offer for being compulsorily retired was accepted, the contract stood concluded by the acceptance of the offer and the terms of the contract was as contained in the VRS Scheme notified on 3.3.1993, which specifically stated that such retirees would be entitled to pension. They claim that later on, the contract could not be modified and thus their subsequent letters to opt out of

the pension scheme and revert back to the CPF Scheme could not be accepted.

41. The argument of the said respondents has to be noted and rejected for the reason nothing prevented the parties to novate the contract. It is settled by now that a VRS Scheme has an element of contract. The VRS Scheme is an invitation to offer. The employees make an offer under the scheme being, to retire on the terms notified as per the scheme. On being accepted, the letter of offer results in the contract being concluded and the employees become entitled to the dues as per the VRS Scheme. But, nothing prevents the parties to novate the contract. In the instant case the contract got novated when the said respondents wrote that instead of being paid pension as per the scheme they be paid the dues as per the CPF Scheme and thereafter they received even the management's share under the CPF Scheme. It is settled law that one manner of accepting an offer is to perform the obligation to be performed as per the offer. Thus, by making payment under the CPF Scheme the Corporation accepted the offer of these employees to forego claim for pension and instead entire due under the CPF Scheme be paid.

42. There remains then the issue to be decided whether the said respondents were under a compulsion and if yes the affect thereof.

43. The compulsion alleged by them is the uncertainty of pension being released. As noted hereinabove the pension scheme notified on 27.11.1992 could not take off because LIC did not fund the scheme as envisaged and later on the Central Government agreed to fund the scheme on 31.10.1995 and indisputably those who retired after 1.11.1995 were paid pension. Thus, the compulsion resulting as the consequence of the uncertainty of pension being released, which may have been uncertain when the said respondents opted out to receive pension and reverted to receive benefit under CPF, came to an end on 1.11.1995. The silence of these respondents for periods ranging from 12 to 15 years when they took recourse to legal action is clearly indicative of there being no compulsion. The silence of these respondents speaks for itself. It is apparent that with the passage of time these respondents became clever by a dozen and thought why not take the benefit of a few who likewise went to Court and obtained relief, by pulling wool over the eyes of the Court by pleading that their act of subsequently opting out of the pension scheme was meaningless because the contract stood concluded, a submission which was accepted by the Courts without considering the further issue of contract being novated."

It is argued that the issue before the Hon'ble High Court in

Madhu Bhushan Anand (supra) was identical to the issue in

the present O.A. and the argument raised in this OA were also raised before the Hon'ble High Court in the above case.

11. Heard the learned counsel for both sides and also gone through the application, the reply of the respondents and various judgements cited by them.

12. There is no doubt that the judgment of the Hon'ble High Court in **Madhu Bhushan Anand** (supra) covers on all fours the present O.A. and, therefore, the O.A. cannot succeed. Apart from on merits, the fact is that it is also badly hit by limitation. The O.A. is, therefore, dismissed. No order as to costs.

(P.K. Basu)
Member (A)

/Jyoti/