

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 1053/2015

New Delhi, this the 4th day of October, 2016

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

Smt.Sunita Kewal Ramani, 60 years
W/o Sh. Ajit Kewal Ramnani,
Ex-Stenographer, Pay Token No.271,
4B/30, Old Rajinder Nagar,
New Delhi-110060. ... Applicant

(By Advocate : Shri Naresh Kumar)

Versus

Delhi Transport Corporation
Through its Chairman-cum-M.D.
I.P. Estate
New Delhi-110002. ... Respondent

(By Advocate : Shri Ajesh Luthra)

ORDER (ORAL)

The applicant was appointed as Stenographer by respondents– DTC in 1979. The DTC introduced Pension Scheme vide office order dated 27.11.1992 and Voluntary Retirement Scheme on 03.03.1993. The applicant opted for Voluntary Retirement Scheme and retired on 31.05.1993.

2. In 1996, the applicant received the CPF contribution, her own contribution as well as her employer's, and gratuity under protest

stating that she should be granted pension as she has never opted out of the Pension Scheme earlier.

3. The Hon'ble High Court in the matter of **DTC Vs. Baijnath Bhargava** (LPA 33/98) vide its judgment dated 16.03.2000 directed that employees who have rendered less than 20 years of qualifying service but more than 10 years of service are entitled to pension. The applicant had a total qualifying service of 14 years, 10 months and 12 days. The matter was considered by the DTC and the following view was taken:

“After detailed discussion, the Committee decided not to grant pension to Smt. Sunita Kewal Ramani at this belated stage as the judgement in the matter was given by the Hon'ble Court in March, 2000 and, accordingly, pension cases were processed of such claimants as per rule and granted the pension to them but she has not claimed the pension at that time and now after a gap of about 12-13 years she claimed the same. Moreover, she has withdrawn both shares of CPF and gratuity in the year 1996.”

4. Learned counsel for the applicant states that since she had accepted the CPF contribution under protest and had never opted out of the Pension Scheme, in view of the judgment of the Hon'ble High Court in **Baijnath Bhargava** (supra), she has to be granted pension.

5. Learned counsel for the applicant also drew my attention to the minutes of the meeting dated 31.03.2014 (Annexure A-8), through which the case of Shri Ram Saran, Ex-Driver, was cleared

for pension for which he had applied after a gap of 14 years and it is stated by the learned counsel, though not mentioned in the minutes, that Shri Ram Saran also had a criminal case against him. It is also stated that delay should be condoned as the department had done in the case of Shri Ram Saran. Further more, it is also argued that pension is a recurring cause of action and, therefore, there is no question of any delay.

6. Learned counsel for the respondents has placed before us the judgment of the Hon'ble High Court in **DTC Vs. Madhu Bhushan Anand** (WPC No.14027/2009), specifically to para 25, 29 and 35, which are quoted below:

“28. Suffice would it be to state that a bare perusal of the orders referred to by learned counsel, evidence that a printed proforma has been used. The same pertained to the earlier VRS Schemes. It is settled law that rights are determined not with reference to the language of the proforma but the statute or the scheme applicable. The said two petitioners submitted offers to be voluntarily retired under the schemes notified on 5.12.1994 and 8.12.1995. Further, they received the cheques tendered to them which included the management's share in the Contributory Provident Fund Account. These cheques were received by them on 31.3.1995 and 31.10.1995 respectively. They encashed the cheques. We may note that these two petitioners had filed writ petitions in the year 2005 and 2007 respectively laying a claim for pension which were transferred to the Central Administrative Tribunal and registered as TA No.689/2009 and TA No.1385/2009 respectively, which have been dismissed by the Tribunal vide impugned order dated 23.9.2009. The claim of these writ petitioners would even otherwise be barred by the law of limitation. The principle that right to receive pension is a continuous cause of action is not available to them inasmuch as qua them, the issue was whether they were entitled to receive dues as per Contributory Provident Fund Scheme or under the pension scheme. They were paid full dues when they retired on 31.3.1995 and 31.10.1995 respectively as per the Contributory Provident Fund Scheme and if they had any grievance pertaining to the same, it had to be brought before a Competent Court within at most 3 years thereafter.

29. Thus, W.P.(C) Nos.1639/2010 and 1729/2010 are dismissed.

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35. The claim of the respondents in category 1 and category 2 may be taken up together for the reason whether they exercised a positive option to be brought under the pension scheme or having exercised no option whatsoever and hence as deemed optees being brought under the pension scheme, their status would be the same as entitled to be brought under the pension scheme under the notification dated 27.11.1992. Since all these respondents applied for being voluntarily retired when the scheme notified on 3.3.1993 was extended from time to time in the year 1993, they certainly would be entitled to pension for the reason clause 4(g) of the scheme notified on 3.3.1993 clearly stated that such persons would be entitled to pensionary benefits. But, there are certain further facts which need to be noted qua them. The case of the Corporation is that having opted under the pension scheme or deemed to have opted under the pension scheme, the said respondents specifically opted out from the pension scheme and by the time they retired under the Voluntary Retirement Scheme, the pension scheme had not been formally brought into effect (as noted above it was formally brought into effect for the retirees who retired post 1.11.1995), they filed applications specifically stating that they intend to opt out of the pension scheme and be retained as members under the Contributory Provident Fund Scheme and thus on accepting their offers to be voluntarily retired the Corporation paid over to them not only their share in the Contributory Provident Fund Account but even the management's share, which they accepted without demur and hence could not rake up the issue after 12 to 15 years i.e. when they filed either writ petitions in this Court which were transferred to the Central Administrative Tribunal or filed Original Applications before the Central Administrative Tribunal."

7. The facts of that case were that the respondent had opted for voluntary retirement under the scheme notified on 05.02.1994 and 08.12.1995. They received cheques tendered to them which included the management share in the CPF account and they encashed the cheques also. The Hon'ble High Court held that once they had accepted the payment under the CPF amount, they cannot rake up the issue after 12 to 15 years. It is further stated that while passing its order in **Madhu Bhushan Anand** (supra), the Hon'ble

High Court had also taken note of the order of the Hon'ble High Court in **Baijnath Bhargava** (supra).

8. Heard the learned counsel for both sides and perused the pleadings as well as various judgments.

9. There is no doubt that judgment in **Madhu Bhushan Anand** (supra), which was passed in 2011, will hold the field. Moreover, this judgment has considered the judgment of the Hon'ble High Court in **Baijnath Bhargava** (supra) and then held that once the employee has accepted the CPF contribution, he cannot rake it up after a long gap of time. This takes care of both the objections which are raised by the applicant.

10. In view of the judgment in **Madhu Bhushan Anand** (supra), the argument of the applicant that delay cannot be considered, fails. Also, in the light of this judgment, the applicant cannot seek relief based on what the department did in the case of Shri Ram Saran. In this case, the applicant has approached this Tribunal after a gap of almost 20 years from the date she received the CPF contribution and gratuity. The O.A. is, therefore, dismissed. No order as to costs.

(P.K. Basu)
Member (A)

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