

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1900/2015

Reserved on: 31.08.2017
Pronounced on: 12.09.2017

Hon'ble Ms. Praveen Mahajan, Member (A)

1. Chandra Pal Singh through LRs
Smt. Satyawati aged 57 years widow of
Late Shri Chandra Pal Singh
2. Shri Vijay Shanker aged 31 years son of
Late Shri Chandra Pal Singh
3. Shri Satpal Singh aged 28 years son of
Late Shri Chandra Pal Singh
4. Shri Satender Pal aged 26 years son of
Late Shri Chandra Pal Singh &
5. Ku. Shital aged 24 years, U/M daughter of
Late Shri Chandra Pal Singh

[All residents of House No.358/24, Hanuman Mandir
Marg, Gali No. 5, Mandawali Fazalpur, Delhi-92]

....Applicants

(Through Shri H.P. Chakravorti with Shri P.S. Khare, Advocates)

Versus

1. The Delhi Transport Corporation
Through its Commissioner
181, Indraprastha Estate,
New Delhi-110002
2. The Employees' Provident Fund Organization,
Ministry of Labour & Employment,
Govt. of India,
Through the Regional Provident Fund Commissioner,
Regional Office Delhi (North)
Bhavishya Nidhi Bhawan,
28, Community Centre, Wazirpur Industrial Area,
Delhi-110052 ... Respondents

(Through Ms. Ruchira Gupta with Ms. Swati Jain, Advocates)

ORDER

The applicant has come before the Tribunal seeking the following reliefs:

- 8.1 To allow the OA and direct the respondents to release pension @ Rs.1,000/- w.e.f. Nov.11 with interest @ 18% compounded yearly; and
- 8.2 To grant any other or further appropriate relief as deemed just and proper by this Hon'ble Tribunal in the facts and circumstances of the case besides cost and expenses of the present litigation to the extent of Rs.50,000/- from the respondent no.1; and

(a) To direct the respondents to take the erring officials of both the respondents up under disciplinary proceedings for not maintaining proper record of subscription of employee/ members of EPF/EPS resulting in delay of release of pension etc. and punishment be imposed upon them accordingly.

2. Brief facts of the case are that the applicant joined as Conductor in Delhi Transport Corporation (DTC) in the year 1978 and was promoted as Assistant Transport Inspector (ATI) in the year 2007, from which post he retired in November 2013. The applicant became member of Employees Pension Scheme (EPS) in the year 1995 and was allotted with membership of EPS 1995 and ID No.DLCMP 0001710000022907 under the EPS 1995. It is stated that from 16.11.1995, the monthly subscription equivalent to one month salary out of one year has been regularly deducted from his salary by respondent no.1. Copy of pay slip of November 2011 showing deduction of Rs.541/- under EPS 1995 is annexed as Annexure A-1. On attaining the age of 58 years, the applicant became entitled for pension under the EPS 1995. He submitted his claim in December 2011 but the same has been rejected vide letter dated 5.08.2014 (Annexure

A-3) by respondent no.2 with the following remarks:

"Others – Name not given in Form 3 PS clarify the same, letter already sent but not clarified the same."

3. The applicant states that though he retired three years earlier, his pension has not been released to him. He has sent legal notice dated 21.01.2015 but there has been no response from respondent no.1. Respondent no.2 i.e. Employees' Provident Fund Organization (EPFO) has responded to the legal notice vide letter dated 24.02.2015, stating that details are being called for from DTC and further action will be taken on receipt of information.

4. It is stated in OA that both the respondents are liable to maintain each employee's account and update the same. It does not seem to have been done by either of them. The applicant has not only prayed for release of pension but also demanded interest at the rate of 18% and damages to the extent of Rs.50,000/- from the DTC for delay and harassment caused to him.

5. Respondent no.1 i.e. DTC, in reply, has submitted that pension of the applicant has to be released by respondent no.2 being EPFO. It is stated that relevant documents have been provided to respondent no.2 and that it is for respondent no.2 to further process the case of the applicant. It is submitted therein that EPS 1995 envisages a contribution from the employee and an equivalent contribution from the employer, towards the employee's retirement savings. They state that, erroneously, the employee's contribution was not deducted from the

applicant's salary from November 1995 till December 2000. Subsequently, his contribution, as required under the Scheme, was deducted correctly w.e.f. January 2001 till November 2011. It is submitted that an amount of Rs.417/- per month was deducted from January 2001 till August 2001 and thereafter an amount of Rs.541/- per month was deducted till November 2011. Since there was a period during which the employee's share of EPF was inadvertently not deducted from his salary, the EPFO sought clarifications from DTC, which have been provided from time to time. Since there was no deduction from the salary of the applicant from November 1995 to December 2000, it is now for EPFO to decide further course of action for release of pension to the applicant. Thus, there was no cause of action on the part of respondent no.1 i.e. DTC.

6. In rejoinder to the counter filed by DTC, the applicant states that it is wrong on the part of respondent no.1 to state that the discrepancy regarding deposit of employee's share of PF from November 1995 to December 2000 came to their notice only when respondent no.2 sought clarification qua the same. He states that employee's share has been deducted but it does not seem to have been entered in the account and transmitted to respondent no.2. In fact, both the respondents were liable to complete paper formalities and pay him his dues on attaining the age of 58 years as per the Scheme.

7. The case came up for hearing on 31.08.2017. No one appeared on behalf of respondent no.2 i.e. EPFO. Perusal of the record shows that they have not even bothered to file counter to the OA and not put in appearance despite having been given so

many opportunities. Under the circumstances, I am left with no option but to decide the case without hearing respondent no.2, based on the material available on record.

8. During the course of hearing, learned counsel for the applicant informed the Court that even the widow of the applicant died in June 2016 and now the family pension is due to the LRs of the deceased. He reiterated the issues already made in his OA. He also drew the attention of the Bench to the provisions contained in EPS 1995. Drawing attention to Section 4 of the Scheme which deals with payment of contribution, he submitted that the employer shall pay the contribution payable to the Employees' Pension Fund in respect of each member of the Employees' Pension Fund employed by him directly or by or through a contractor. Further, it shall be the responsibility of the principal employer to pay the contributions payable to the Employees' Pension Fund by himself in respect of the employees directly employed by him and also in respect of the employees employed by or through a contractor. He stated that from day one i.e. 16.11.1995, the monthly subscription equivalent to one month salary out of one year has been regularly deducted from the applicant's salary by his employer, DTC and continued to be deducted till November 2011. He contended that it is wrong to suggest that no deductions were made from the applicant's salary from November 1995 till December 2000. Referring to Section 12 of the Scheme which deals with Monthly Members Pension, he stated that as per this provision, he has rendered eligible service of 10 years and is entitled to superannuation pension. Finally, he read out Section 16A of the Scheme, which

reads as follows:

"16A. Guarantee of pensionary benefits – None of the pensionary benefits under this Scheme shall be denied to any member or beneficiary for want of compliance of the requirements by the employer under sub-paragraph (1) of paragraph 3 provided, however, that the employer shall not be absolved of his liabilities under the Scheme."

9. Defending the case of respondent no.1, learned counsel Ms. Ruchira Gupta stated that pension of the applicant has to be released by respondent no.2 i.e. EPFO. The respondent-Corporation was only required to release gratuity of the applicant, which has already been granted to him and an amount of Rs.6,96,160/- has been paid. They have also released employer's and employee's share of the CPF amounting to Rs.7,07,449/- as well as Rs.3,84,681/-, totalling to Rs.10,92,130 to the applicant on his retirement. Thus, as far as their liabilities are concerned, they have fulfilled the same.

10. Heard the learned counsels for the parties and perused the pleadings available on record.

11. On going through the facts on record and after hearing both the learned counsels, the undisputed facts which emerge are that the applicant had opted for EPF deduction by becoming a member of the EPS 1995 and he was allotted with membership No.DLCMP 0001710000022907. Having opted for the said Scheme, the onus was on his employer i.e. respondent no.1, under whom he was working, to ensure that necessary deductions are made from the pay of the applicant as per provisions contained in the Scheme. If deduction of subscription

of the applicant from 1995-96 to 1998-99 was not made, or not entered in records, the applicant cannot be held responsible for the same. The mandate was entirely of DTC to deduct subscription from the salary of the applicant, whose responsibility finished once he opted for the EPF Scheme. Respondent no.1 i.e. DTC cannot now wash their hands off from this responsibility. The error of not deducting contribution from the applicant's salary from November 1995 till December 2000 lies squarely with DTC. When the discrepancy regarding not depositing of employee's share of PF from November 1995 to December 2000 came to the notice of respondent no.2 and when it sought clarification for the same, a corrective action should have been taken by the DTC, which apparently does not seem to have been done. The applicant cannot be made to suffer for this lapse of respondent no.1.

12. Under the provisions contained in Section 16A of the EPS Scheme 1995, the pensionary benefits are guaranteed to each of its members. It is mentioned therein that none of the pensionary benefits under this Scheme shall be denied to any member or beneficiary for want of compliance of the requirements by the employer.

13. I, therefore, direct that EPFO (respondent no.2) shall release family pension to the legal heirs of late Shri Chandra Pal Singh at the rate of Rs.1000/- with effect from November 2011. They shall also pay interest at the rate applicable at GPF. In case, EPFO is put to loss on account of this order, it shall not preclude them from proceeding against the DTC, if they so

desire. These directions should be implemented within a period of 90 days from the receipt of a certified copy of this order. OA is disposed of. No costs.

(Praveen Mahajan)
Member (A)

/dkm/