

Central Administrative Tribunal  
Principal Bench  
New Delhi

**O.A.No.3713/2014**

Order reserved on 30.01.2017  
Order pronounced on 08.02.2017

**Hon'ble Shri V. Ajay Kumar, Member (J)**

Sh. Braham Prakash  
Son of Late Jagannath  
Aged about 61 years  
Resident of J-359, Old Seemapuri  
Delhi – 110 095  
(Retired Electrician Grade I,  
Delhi Transport Corporation  
At the time of retirement posted at Dilshad Garden Depot)  
Delhi – 110 095) ... Applicant

(By Advocate: Mr. Sudarshan Rajan with Mr. Ramesh Rawat)

Versus

1. The Chairperson cum Managing Director  
Delhi Transport Corporation  
Government of N.C.T. of Delhi  
I.P.Estate  
New Delhi.
2. Depot Manager  
Seemapuri Depot  
Delhi Transport Corporation  
Delhi – 95. .... Respondents

(By Advocate: Shri Ajesh Luthra)

**O R D E R**

**By V. Ajay Kumar, Member (J):**

The applicant, who is Electrician Grade-I in Respondent-Delhi Transport Corporation, was removed from service on 29.07.1992. The

matter came up before the Court of Sh. Rakesh Kumar Sharma, PO: Labour Court XVII: KKD: Delhi, which directed to reinstate the applicant with 50% payment of back wages (Annexure A6, dated 18.08.2011). The respondents, thereafter, reinstated the applicant vide its letter dated 28.11.2011 read with Order dated 01.12.2011 (Annexure A8), and he was deemed to have retired, on attaining the age of superannuation, on 31.08.2013.

2. The respondent – DTC went in appeal before the Hon'ble High Court and the Hon'ble High Court dismissed the Writ Petition No.330/2012 filed by the respondents, on 17.01.2012. The LPA No.146/2012 filed by the respondents, before the Hon'ble High Court of Delhi, also dismissed vide its Order dated 16.07.2012 (Annexure A10). Thereafter, the respondents have released the retirement dues to the applicant. But they have not granted pension to the applicant.

3. The DTC introduced a Pension Scheme vide office order No.16 dated 27.11.1992. Employees were supposed to give option as to whether they opt for the Pension Scheme or the Employees Contributory Provident Fund. Para 9 of the Scheme states as follows:

"9. If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme Benefits."

4. In response to the representation filed by the applicant on 31.03.2014, seeking granting of pension, the respondent-DTC Vide the impugned Order dated 12.08.2014 (Annexure A1), informed as under:

"You have submitted representation dated 31.03.2014 addressed to the Chairman for pension. This is to inform you that your dues have been prepared while taking into account – not opted because in the service book – not opted, has been marked according to your records and you have already been informed that your pension related matter was placed before Dispute Settlement Committee of Delhi Transport Corporation by Pension Department and the Pension Department had informed that the employee is not entitled for pension from Delhi Transport Corporation as per the decision taken by Dispute Settlement Committee, the reply thereof has already been given to you by letter Ref.SPD/Settlement 14/782 dated 17.04.2014."

5. Being aggrieved by the above order, the applicant has filed this O.A. seeking mainly the following relief(s):

(a) The Hon'ble Tribunal may, quash and set aside the impugned order dated 12.08.2014 issued by the Respondent no.2.

(b) Direct the Respondents to grant pension and clear ancillary benefits to the applicant in terms of their office order No.16 dated 27.11.1992 with all consequential benefits.

(c) Direct the respondents to clear the arrears of pension to the applicant in a time bound manner.

(d) Direct the respondents to pay interest @ 18% p.a. on the arrears of pension from date it became due till the date of payment of such pension."

6. The learned counsel for the applicant has placed reliance on a judgement of this Tribunal, passed in OA No.934/2015 (**Ram Pal v. Delhi Transport Corporation & Anr.**), decided on 04.10.2016 and submits that the case of the applicant is covered by the said decision.

7. Heard the learned counsel for both sides and perused the relevant documents.

8. The date on which the DTC introduced the Pension Scheme in November, 1992, the applicant was not in the service of the DTC as he had been removed from service on 29.07.1992. Therefore, the question of the applicant opting or not opting for the Pension Scheme

does not obviously arise. In fact, only when the matter was finally decided by the said Labour Court, in the year 2011, the applicant was reinstated and the appeals filed by the respondents in the Hon'ble High Court of Delhi were dismissed, and thereafter, the applicant retired on superannuation in 2013, on a "deemed" basis.

9. As stated by the respondents, the applicant represented before the respondents for grant of pension but, as already stated earlier, because of the entry in the service book of his not having opted for the Pension Scheme, he was not granted the pension.

10. Obviously, since the applicant was not in the service of the DTC at the time of the said scheme was introduced and, thereafter, was reinstated and retired on a "deemed" basis, it cannot be held against the applicant that he has not opted for the Pension Scheme. The balance of convenience clearly lies in his favour as per para 9 of the said Scheme.

11. We have perused the decision of this Tribunal in **Ram Pal** (supra) and find that, on identical circumstances, the Tribunal disposed of the same.

10. In view of the above and for parity of reasons, the O.A. is disposed of with a direction to the respondents to treat the applicant as having opted for the Pension Scheme in accordance with para 9 of the Scheme and grant him all consequential benefits as commutation

etc. as per the pension scheme, within a period of 90 days from date of receipt of certified copy of this order. No order as to costs.

(V. Ajay Kumar)

Member (J)

/nsnrvak/