

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 3992/2013
MA 3051/2013

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

Reserved on: 9.12.2016
Pronounced on: 16.12.2016

1. J.S. Malhotra, Ex. CGM (Mech)
S/o Shri Krishan Singh Malhotra
R/o G-3 Rashmi Aptt., Harsh Vihar,
Pitam Pura, Delhi-110034
2. Babu Mulamoottil Varghese
S/o Late Shri V. Varghese
R/o G-1, Ridge Castle Apartment,
895 C/2, Dada Bari Road
Mehrauli, New Delhi-110030
3. Amlesh Kumar Kaushik,
Ex. Manager (Mech)
S/o Shri Ram Kishan
R/o A1/45, Sector 4, Rohini
Delhi-110085
4. H.S. Shukla
Ex. Manager (Mech)
S/o Shri Daya Sankar Shukla
R/o 60/1 (F.F.), A-3,
Sector-7, Rohini,
Delhi
5. Shyam Sundar Bhaskar
Ex. Manager (Mech)
S/o Shri Laxmi Narain Bhaskar
R/o H.No.34, DTC Society
P-7 Builders Area,
Gr. Noida (U.P.)
6. G.K. Sabharwal,
Ex. Deputy CGM (Mech)
S/o Late Shri Prabhu Dayal
R/o A3/78, Varun Aptt,
Sector-9, Rohini,
Delhi-110085

7. R.C. Sharma,
Ex. Deputy CGM (Mech)
S/o Late Shri Jagdish Lal
R/o H.No.83, Dipni Aptt,
Rd. No.44, Pitam Pura,
Delhi-110034
8. Raj Kishore Sharma,
Ex. Manager (Mech)
S/o Late Shri B.P. Sharma
R/o Flat No.40, Lucky Home CGHS Ltd.,
Sector-13, Rohini,
Delhi-110084
9. M.L. Agrawal,
S/o Late Shri C.L. Agrawal
R/o H.No.13C, Janhit Aptt.,
Sector-9, Rohini,
Delhi-110085
10. B.B. Jain,
Ex. Deputy CGM (S&P)
S/o Late Shri Chetan Das Jain
R/o X-106, Siddhartha Aptmts.,
Maharana Pratap Enclave,
Pitam Pura,
Delhi-110034
11. Raj Kumar Gupta,
Ex. Manager (Elect),
S/o Late Shri Chokhi Ram
R/o H-5/10 (FF), Rohini,
Sector-11, Delhi-110085
12. P.C. Johar,
Ex. Manager (Mech)
S/o Late Shri Chuni Lal Johar
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New Delhi-110015
13. J.R. Chibhani,
Ex. Manager (Mech)
S/o Late Shri Ruchandmal
R/o E-213, New Rajender Nagar,
New Delhi-60
14. M.K. Gera,
Ex. Sr. Manager (Mech)
S/o Shri Bhagwan Dass
R/o H.No.193, Pocket-7, Sector-23,
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15. V.K. Garg,
Ex. Sr. Manager (Mech)

S/o Shri R.D. Garg
R/o D-694, Saraswati Vihar,
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16.M.K. Sardana,
Ex. Deputy CGM (Mech)
S/o Late Shri D.N. Sardana
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Saraswati Vihar, Pitam Pura,
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17.T.C. Madan,
Ex. Deputy CGM (Mech)
S/o Shri T.R. Madan
R/o 11/384, Sundar Vihar,
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18.M.P. Singh,
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S/o Shri Hukam Singh
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19.Rup Kumar Basu,
Ex. Manager (Mech)
S/o Shri A.K. Basu
R/o B-358, C.R. Park,
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20.N.C. Jain,
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S/o Late Shri Lal Chand Jain
R/o H. No. 132, Gali No.14,
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21.Mohd. Yusuf,
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S/o Late Shri Ali Mohammad
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22.G.K. Popli,
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23.P.C. Garg,
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S/o Shri Bal Krishan
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24.S.K. Sharma,
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25.V.K. Chibber,
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26.S.S. Chauhan,
Ex. Manager (Mech)
S/o Shri K.S. Chauhan
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Near Dwarka Metro Station,
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27.A.M. Ansari,
Ex. Manager (Mech)
S/o Shri Khuda Baksh Ansari
R/o 108, A. Gaffar Manzil,
Jamia Nagar,
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28.Pratap Singh,
Ex. Manager (Mech.)
S/o Shri Rohan Singh
R/o C-30, Om Vihar, Uttam Nagar
New Delhi-110059

29.S.C. Chaudhary,
Ex. Deputy CGM (Mech)
R/o B-85, Anand Vihar,
Delhi

30.Krishan Gopal Soti
S/o Late Shri Ram Gopal Soti
R/o R-122, Vani Vihar,
Uttam Nagar,
New Delhi-110059

....Applicants

(Through Shri Anil Mittal, Advocate)

Versus

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

(through Chairman-cum-Managing Director)Respondents

(Through Shri Ajesh Luthra, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicants in this OA were appointed to various posts in Delhi Transport Corporation (DTC) in the years varying from 1973 to 1980. Their appointment letters are placed at Annexure A-3. Appointment letter dated 17/18.03.1976 (A-3) contains the following condition:

“15. The other conditions of their appointment and service shall provisionally be those as embodied in the D.R.T.A (Conditions of appointment & service) Regulations, 1952 as amended upto date and as may be amended here after. As the conditions of Appointment and service are to be finally determined by the Delhi Transport Corporation which has been established with effect from 3.11.1971, their conditions of service and appointment shall be finally those as may be determined by the Delhi Transport Corporation retrospectively. This will also hold good for the pay scale of the post being offered.”

2. With effect from 7.04.1958, transport services in Delhi were taken over by Municipal Corporation of Delhi (MCD). At that time, employees of MCD were not entitled to any retirement benefits. However, in the year 1961, MCD introduced a Pension Scheme applicable to all its employees including three undertakings namely Delhi Electric Supply Committee, Delhi, Transport Committee and Delhi Water Supply and Sewage Disposal Committee. It is stated that vide resolution No.816

dated 30.11.1961, MCD approved the introduction of Pension Scheme for municipal employees and accordingly necessary regulations were framed under Section 98 of the DMC Act and the same were approved by the MCD vide resolution No.301 dated 4.09.1962.

3. Vide resolution no.708 dated 13.10.1970, MCD approved the Pension Scheme for all its employees with effect from 1.04.1971. Resolution no.708 is quoted below:

"Resolved that as recommended by the Standing Committee vide its Resolution No.743 dt. 13.08.1970, Pension Scheme in the Municipal Corpn. of Delhi be introduced w.e.f. 1.04.1971 and necessary provision for the same be made in the budget estimates for the Yr. 1971-72.

Resolved further that the Commissioner be asked to take immediate steps to get all the formalities completed at the earliest so that the Pension Scheme is introduced on 1.04.1971.

Resolved also that the Committees of the three Undertakings viz., the Electric Supply Committee, the Delhi Transport Committee and the Delhi Water Supply & Sewage Disposal Committee be asked to introduce Pension Scheme for their respective employees w.e.f. 1.04.1971 and complete necessary formalities for the same."

4. In reply to an RTI application dated 5.08.2013, the North Delhi Municipal Corporation vide letter dated 12.09.2013 provided the copy of Delhi Municipal Corporation Services (Death-cum-Retirement Benefits) Regulations 1971. The preamble states as follows:

"Delhi Municipal Corporation Services (Death-cum-Retirement Benefits) Regulations 1971

Dated the 29th Oct., 1971

Framed by the Municipal Corporation of Delhi under Section 98 (1) 816 dated 30th November, 1961, 301 dated 4th September, 1962 and 708 dated 13th October, 1970 in connection with the introduction of Pension Scheme in the Municipal Corporation of Delhi for its employees and approved by the Lt. Governor, Delhi in pursuance of the provisions of sub-section (2) of Section 480 of the said Act, read with Government of India, Ministry of Home Affairs, New Delhi's Notification No.3/6/66-Delhi dated 19th October 1966, and published with Delhi Adm. Notification No.F-2 (130)/67-LSG of 29.10.71 Part IV Delhi Gazette (Extra ordinary)."

5. As per the resolution, the Scheme came into effect from 1.04.1971. The Scheme further stated as follows:

"3. Unless otherwise provided in the Act or these regulations these regulations shall apply to all officers and other Municipal Employees of the Municipal Corporation of Delhi whose pay is chargeable to the 'General Account' or the "Water Supply and Sewage Disposal Account" of the Municipal Fund."

6. In the year 1971, Delhi Road Transport Laws (Amendment) Act 1971 was passed and Transport Services of Delhi were taken out of the purview of MCD Act and DTC was formed with effect from 3.11.1971. By virtue of Section 4 (e) of the said Amendment Act of 1971, all the existing rules, regulations, appointments, notifications, orders, bylaws etc. whether made under Delhi Road Transport Authority Act 1950 or

under the MCD Act 1957, were saved and were deemed to be made under Section 45 of the Road Transport Corporation Act, 1950. Section 4 (e) and 4 (f) are quoted below:

"4. On the establishment under the Road Transport Corporation Act, of a new Corporation:-

(e) all rules, regulations, appointments, notifications, bye-laws, schemes, orders standing orders and forms relating to transport services, whether made under the Delhi Road Transport Authority Act, 1950, or under the Delhi Municipal Corporation Act, 1957, and in force immediately before such establishment shall, in so far as they are not inconsistent with the provisions of this Act, continue to be in force and be deemed to be regulations made by the now Corporation under section 45 of the Road Transport Corporations Act, 1950 unless and until they are superseded by regulations made under that section."

4. (f) notwithstanding anything contained in any other law for the time being in force or in any contract to the contrary, every officer and other employees of the Municipal Corporation of Delhi appointed or deemed to be appointed for the purpose of the Delhi Transport Undertaking shall be transferred to, and become an officer or other employee of, the new Corporation with such designation as the new Corporation may determine and shall hold such office by the same tenure, on the same remuneration and on the same terms and conditions of service with the same right to pension, gratuity and other matters as he would have held the same if the new Corporation had not been established and shall continue to do so unless and until such employment, tenure, remuneration and terms and conditions of service are duly altered or terminated by the new Corporation.

Provided that the tenure, remuneration and others terms and conditions of service of any such officer or other employee shall not be

altered to his disadvantage without the approval of the Central Government.”

7. The case of the applicants is that in view of Section 4 (e) and 4 (f) of the Delhi Road Transport Laws (Amendment) Act 1971, the Pension Scheme introduced from 1961, referred to above, which was applicable to all MCD employees, would be applicable to employees of DTC as well. According to the applicants, when the DTC denied such pension to its employees, they approached the Hon’ble Supreme Court of India in Writ Petition (Civil) No.702/1987 praying therein that the management of the DTC be directed to introduce the Pension Scheme in respect of employees of the DTC. While deciding the said Writ Petition, vide order dated 20.02.1990, the Hon’ble Supreme Court observed as follows:

“It is not in dispute that the employment under some wings of the Municipal Corporation of Delhi have in the mean time become pensionable. For instance those who work under the Delhi Electric Supply Undertaking or the Water Supply and Sewerage Wing of the Corporation have become entitled to pension. Mr. Sharma for the petitioners contended that if in 1971 the transfer of Management had not taken place, long before the earlier writ petitions were filed, the employment in the Transport Corporation would have also become pensionable.”

The Hon’ble Supreme Court allowed four months time to DTC to take an appropriate decision with regard to Pension Scheme for DTC employees.

8. The DTC thereafter introduced Pension Scheme vide office order no.16 dated 27.11.1992. According to the applicants, this office order of 27.11.1992 runs contrary to the aforementioned pension regulations dated 29.10.1971 whereby all employees of DTC were entitled to pension from their very date of appointment whereas office order dated 27.11.1992 stipulates that the Pension Scheme will be effective from 3.08.1981. It is their contention that all existing employees such as the applicants, who were existing employees of DTC on 27.11.1992, were already entitled to pension without the requirement of giving option, pension being one of the service conditions of employees of DTC with effect from 3.11.1971, i.e. the date of inception of DTC, and the employees could not be governed by two different conditions. It is thus argued that office order no.16 dated 27.11.1992 is illegal and unconstitutional being violative of Articles 14 and 16 of the Constitution of India.

9. It is further argued that once the employees of DTC are governed by its own Pension Scheme i.e. 1971 Scheme, the Provident Funds and Miscellaneous Provisions Act, 1952 is not applicable to the employees of DTC in view of Section 16 (1) (b) (c) of the said Act and the employees of DTC could not be forced the RPFC Pension i.e. EPS-95 upon them as there could not be two different pension schemes in the same establishment. It is contended, therefore, that the unilateral enforcement of EPS-95 on the applicants is illegal.

10. In the above background, the applicants have prayed for the following reliefs:

- (i) Declare office order no.16 dt. 27.11.1992 (Annexure A.1) illegal, void-ab-initio and ultra-vires being in violation of Section 4 (e) and (f) of the Delhi Road Transport Laws (Amendment) Act, 1971 and Section 45 of Road Transport Corporation Act, 1950 and consequently quash the same;
- (ii) Declare that all the employees of DTC who were in service on or after 3.11.1971 were entitled to retirement pension as one of their service conditions;
- (iii) Direct the respondent to extend the benefit of pension to the applicants on the terms and conditions as contained in Pension Regulations dt. 29.10.1971 and further direct them to pay arrears of pension with interest from their respective dates of retirement;
- (iv) Declare that imposing of RPFC pension i.e. EPS – 95 on DTC employees is illegal, ultra vires and unconstitutional as DTC employees are covered under their own pension scheme.

11. It is the contention of the learned counsel for the applicants that whereas the notification of 1971 Scheme was done through a regulation and notified in the Gazette, 1992 Scheme is an office order and the office order dated 27.11.1992 cannot override the regulation of 1971. It is further argued that once the regulations of 1971 were issued, the respondents cannot create a class within a class through office order dated 27.11.1992.

12. Learned counsel for the respondents stated that consequent to order of the Hon'ble Supreme Court in Writ Petition (Civil) No.702/1987 (supra), the department framed the Pension Scheme vide office order no.16 dated 27.11.1992. Clause 3 of the Scheme specifically provides for an option, which is as follows:

"3. All the existing employees including those retired w.e.f. 3.8.81 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Fund as at present, within 30 days from the date of issue of this O.O. for the implementation of the Pension Scheme as approved by the Government of India."

13. Admittedly, the applicants opted out of the Scheme and have all retired between 2008 and 2011 obtaining the benefits under the CPF Scheme, which was applicable to them and, having received both the employee and employer's contribution under EPS-95 Scheme, they cannot now seek benefit of Pension

Scheme of 1971 in view of the clear decision of the Hon'ble High Court of Delhi in W.P. (C) 14027/2009, **Delhi Transport Corporation Vs. Madhu Bhushan Anand**, where it was held that those who have received payments under CPF Scheme and employee and employer's contribution, they have no locus standi now to claim any pension. Secondly, it is stated that the respondents had framed the new Scheme on the directions of the Hon'ble Supreme Court where the DTC Workers Union prayed for introduction of the pension scheme in respect of the employees of the Corporation and, therefore, the Pension Scheme of 1992 was framed. The applicants had not raised the argument of applicability of 1971 Scheme before the Hon'ble Supreme Court. Therefore, they had admitted to the fact that there was no pension scheme at that point of time. In any case, if the applicants were aggrieved of the 1992 Pension Scheme and held that that was illegal, they should have approached the Tribunal at that time and not after a belated stage by filing the instant OA in October 2013.

14. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

15. The applicants have challenged the vires of 1992 regulations on the ground that it is in violation of Section 4 (e) and 4 (f) of the Delhi Road Transport Laws (Amendment) Act,

1971 and Section 45 of Road Transport Corporation Act, 1950 and have sought for quashing of the same. Secondly, they have sought declaration that all the employees of DTC who were in service on or after 3.11.1971, be extended the benefit of retirement pension as per regulations dated 29.10.1971. Lastly, they have prayed that imposition of RPFC pension i.e. EPS – 95 be declared as illegal, ultra vires and unconstitutional as DTC employees are covered under their own pension scheme.

16. It appears from the narration of facts that DTC was part of MCD when by an Act of Parliament, DTC was created on 3.11.1971. Vide resolution dated 13.10.1970, MCD had introduced a Pension Scheme and at the time of creation of DTC, Section 4 (e) and 4 (f) of the Amendment Act clearly provided that on transfer to DTC, the service conditions of the employees could not be changed or altered to the disadvantage of the employees and all rules, regulations, appointments, notifications, bye-laws, schemes, orders standing orders and forms relating to transport services, whether made under the Delhi Road Transport Authority Act, 1950 or under the Delhi Municipal Corporation Act, 1957, and in force immediately before such establishment shall, in so far as they are not consistent with the provisions of that Act, continue to be in force and be deemed to be regulations made by the new Corporation under Section 45 of the Road Transport Corporations Act, 1950 unless and until they are superseded by regulations made under that Section.

17. Clearly, the above facts were not placed before the Hon'ble Supreme Court nor the Hon'ble High Court of Delhi in cases cited above. This was a vital fact because according to the facts presented before us, there indeed was a Pension Scheme of 1971 introduced through a regulation of the MCD and Section 4 (e) and 4 (f) of the Amendment Act, 1971 protected the transferred employees by stipulating that they will carry over their service conditions, including pension. The resolution of 1971 came before the resolution of 1992. Therefore, it cannot be denied that there was a Pension Scheme applicable to the employees who joined DTC as MCD employees. The only legal issues that remain, are the following:

- (i) Are the applicants entitled to raise this issue after such a long delay and will not limitation apply on them?
- (ii) According to Section 11/12 of the Code of Civil Procedure, will this OA be not hit by the principles of constructive res judicata as the applicants have not brought this issue before the Hon'ble Supreme Court, in the first instance. In fact, the Union had sought introduction of Pension Scheme, which means that they also agreed that there was no Pension Scheme as on that date.
- (iii) If there was a Pension Scheme existing in 1971, could the DTC have introduced the EPS-95 in view of

Section 16 (1) (b) (c) of the Provident Fund Act, 1952. Section 16 (1) (b) (c) provides as follows:

“16.(1) This Act shall not apply -

xxxx xxxx xxxx xxxx

(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any Scheme or rule framed by the Central Government or the State Government governing such benefits; or

(c) to any other establishment set up by under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.”

18. On the question of delay, learned counsel for the applicants stated that at the time the matter was before the Hon’ble Supreme Court, neither the applicants nor the respondents were aware of the history of DTC, starting from 1961 onwards upto 1971 and neither side placed this fact before the Hon’ble Supreme Court or the Hon’ble High Court in Madhu Bhushan Anand (supra). In any case, an illegal decision cannot be allowed to be perpetuated on the ground of delay and laches. On the issue of applicability of principles of constructive res judicata, it is argued that neither the applicants nor the respondents were aware and, therefore, it was not because of negligence or oversight that this basic legal lacuna could not be pointed out but it happened as the documents from 1961 to 1971 were not available with either side. We are of the opinion

that there is no scope for the applicants to escape the provisions of Section 11/12 of the CPC. These Sections do not provide for any exceptions. Thus, the OA is clearly hit by constructive res judicata and hence not maintainable. Secondly, the OA also suffers from the defect of delay and laches. The applicants cannot rake up an issue after decades. Finally, the decision of the Hon'ble High Court in Madhu Bhushan Anand case (supra) seals the fate of the applicants. As regards non-applicability of EPS-95 due to provisions of Section 16 (1) (b) (c) of 1952 Act, in view of our opinion held as above this argument becomes infructuous. The OA is, therefore, dismissed. No costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)

/dkm/