# CENTRAL ADMINISTRATIVE TRIBUNAL
# PRINCIPAL BENCH


OA 4179/2011


**Hon'ble Mr. P.K. Basu, Member (A)**


Reserved on: 7.12.2016
Pronounced on: 14.12.2016


Baldhir Singh, Store Attendant, P.T. No.44449, GHD
S/o Shri Rattan Singh
R/o Village & P.O. Mundhela Kalan
New Delhi-110073                                    ...Applicant

(Through Shri Anil Mittal with Ms. Komal Aggarwal, Advocate)

        Versus

Delhi Transport Corporation
I.P. Estate,
New Delhi-110002
(through Chairman-cum-Managing Director)     .... Respondent

(Through Ms. Aarti Mahajan Shedha with Shri Manoj Kumar,
Advocate)


ORDER


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


        The applicant was appointed as Store Attendant with effect

from 8.06.1983 as a daily wager in Delhi Transport Corporation

(DTC).   He was removed from service on 3.08.1984.   This

removal was challenged by the applicant raising an industrial

dispute and the Labour Court vide its Award dated 5.05.1990

ordered his reinstatement with full back wages and continuity of

service.   The respondents vide order dated 9.07.1992 engaged

the applicant as a daily wager Store Attendant for 89 days.   The

applicant filed Writ Petition (C) No.775/1992 in the Hon'ble High Court of Delhi challenging order dated 9.07.1992 and vide order dated 14.08.1992, the Hon'ble High Court allowed the Writ Petition and directed DTC to reinstate the applicant with all consequential benefits in terms of Award dated 5.05.1990.  By order dated 19.11.1992, the services of the applicant were again dispensed with.    The applicant filed Contempt Petition No.69/1994 in the Hon'ble High Court of Delhi for disobedience of order dated 14.08.1992.  Vide order dated 29.08.1996, the respondents reinstated the applicant as regular Store Attendant in the pay scale of Rs.775-1025 and gave his continuity with effect from 16.05.1986.

2.    Vide order dated 25.05.2010, the DTC informed the applicant that he would stand retired from service from 30.11.2010.  The order further mentions that "He has opted for DTC Pension.  His nominee is Smt. Nimmi Devi (wife) as per record."

3.    The applicant retired from service on 30.11.2010.  He represented to the respondents that he should be paid pension. However, the respondents vide their corrigendum dated 26.07.2011 informed the applicant that though he is shown as DTC pension optee in order dated 25.05.2010 but in accordance with the decision taken by the Pension Dispute Committee, duly

approved by the competent authority, he is treated as not opted

for DTC pension.

4.     The respondents have filed minutes of the meeting held on

10.11.2010 and 12.11.2010 of the Committee constituted to

examine the disputed pension cases and in the case of the

applicant, the following is recorded in the minutes:

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> "<u>Sh. Baldhir Singh, Ex-S/Attendant, T.No.44449 of GH Depot</u>:
>
> Sh. Baldhir Singh, Ex-S/Attent, T.No.44449 was dispensed with from the services by DM (RGD) vide No.RGD/PFC(M)/92/2429 dated 19.11.92 and was reinstated in services with full back wages and continuity of services by Hon'ble High Court vide judgment dated 29.8.96.  He was covered under EPS-95 and deductions of EPS-95 from Oct-96 to Nov-2008 have also been made by the Unit concerned.   His EPS-95 deduction of Rs.18422/- from Oct-96 to 31.3.02 was adjusted by PF Section/ H.Qr. but Rs.38000/- on a/c of EPS-95 from April-02 to Nov-08 has not been adjusted/ transferred in the PF Employer Share."

5.     Vide order dated 27.11.1992, the DTC introduced Pension

Scheme for employees of the DTC as applicable to the Central

Government employees. This Pension Scheme was to be

operated by LIC on behalf of DTC.  The date of effect of the

Pension Scheme was stated to be 3.08.1981.   As regards

eligibility, para 3 and 4 of the order read as follows:

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"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 of 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.

4.     The Pension Scheme would be operated by the LIC on behalf of DTC. The employees share in the EPF A/C of the DTC employees, who opt for pension scheme would be transferred to the LIC, for operating."

6.     The applicant's case is that the service record filed by the respondents (Annexure - R3) clearly mentions "Pension Opted" by the applicant. Secondly, the order issued by the respondents dated 25.05.2010 also mentions that the applicant has opted for DTC Pension.  Order dated 29.08.1996 by which the applicant was appointed as Store Attendant with effect from 16.05.1986, clearly mentions that he will be entitled for back wages and continuity of service towards intervening period i.e. from 16.05.1986 to till date in terms of Award dated 5.05.1998 of Labour Court.  It is argued that since the applicant has to be treated as in service from 16.05.1986 and the Pension Scheme is operational from 3.08.1981, he is clearly entitled for benefits of Pension Scheme and, therefore, he has prayed for the following reliefs:

(i)     Quash order dt. 26.7.2011 (Annexure A.1);

(ii)    Direct respondent to extend benefit of pension policy dated 27.11.1992 (Annexure A.2) to the applicant on the terms and conditions as

contained therein and to pay arrears of pension with interest.

7.     The applicant further referred to Annexure A/5 annexed to the rejoinder, which is internal note of DTC in which it is mentioned as follows:

> "The Pension Scheme was introduced in DTC in accordance with office order No. 16 circulated vide Admn-5(41)/92 dated 27.11.92. In accordance with the aforesaid office order all the employees had to give their option within 30 days from the date of issue of the office order. Since Shri Baldhir Singh was not in service during this period as such no option was exercised by him. Shri Baldhir Singh has now been re-instated in service w.e.f 16.5.86/29.08.96."

8.     The applicant further stated that EPS deduction has been stopped with effect from April, 2002 based on internal notings at annexure A/5. My attention was drawn to the specific notings, which are quoted below:

**" 36-37**

> "In this connection it is stated that before the adjustment of wrongly deducted contribution on account of EPS-95 is to be made from RPFC in respect of Sh. Baldhir Singh S/Attendant P.T. No.44449, D.M. GHD may be requested to intimate this office under what circumstances the contribution was not stopped up to Nov/08 where as at N/9 it has been recorded that "EPS-95 deduction has been stopped w.e.f. April/02. Moreover yearwise details from April /02 to Nov/08 may also be got prepared along with wages & contribution year may be counted from March to Feb  and added in the file.
>
> Sd/-                    Acctt.                    D.A.

Manager A/cs (PF)
DM GHD

Reference to the note of Manager A/Cs (PF) H.Qrs. it is stated that (EPS-95) in respect of Sh. Baldhir Singh, S/A, P.T. No.44, 449, was wrongly deducted by the PFC (Ministerial) Maya Puri Depot & Keshopur Depot. None of this unit (GHD) can be held responsible for this deduction because the said deduction has been made in the previous units, where the concerned employee was working previously i.e. MPD & RPD.

The year-wise contribution & wages are available at page No.15 to 18 as per requirement. Please adjust this amount (wrongly deducted) in the employer's share, as mentioned in the list attached with the file."

9. Learned counsel for the respondents contended that the applicant was brought on monthly rates in the year 1996 in pursuance of the directions of the Hon'ble High Court and at that time EPS-95 Scheme was in existence. As per EPS-95 Scheme, Rs.541 was deducted per month from the salary of the applicant till 2008. At that time, as per clause 9 of the appointment letter, the applicant was required to give nomination and a declaration form in duplicate as to whether he is already a member of the Employees Provident Fund Scheme (EPFS) 1952 and in his letter dated 6.10.2009 (Annexure R/2), the applicant has stated as follows:

"That the applicant is a member of EPF and a deduction of Rs.541/- was lastly made in November, 2008, while the applicant was in KESHO PUR DEPOT.

That the applicant came to know from some reliable sources that I am entitled for DTC pension as per my service book, wherein it has been marked clearly "PENSION OPTED".

It is stated that the above would show that the applicant was a member of the EPF Scheme and deductions were made upto 2008.

10. It is also mentioned by the learned counsel for the respondents that though the Pension Scheme was introduced in 1992, it could not get implemented immediately due to several problems that arose. However, ultimately it was got implemented. The learned counsel also relied on the judgment of the Hon'ble High Court in **Delhi Transport Corporation** Vs. **Madhu Bhushan Anand**, W.P ( C) 14027/2009 in support of her claim of denial to Pension Scheme to the applicant, specifically to para 43, where the Hon'ble Court observed as follows:

> "43……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 though 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."

However, we find that in this case the facts are different. In this case the applicants had opted out of Pension Scheme and the DTC accepted the same and paid to them even the management's share in the CPF account. The Court held that

their claims are hit by delay, laches and limitation. They are not entitled to plead that right to receive pension is a continuous cause of action, for the reason, in law either pension can be received or benefit under the CPF account. Therefore, since the facts are different, this judgment will not come to the rescue of the respondents.

11.     The respondents have further relied on order dated 24.03.2011 in OA 3088/2009 with OA 3089/2009. Again in this case, the employees had withdrawn from the Pension Scheme and opted for CPF Scheme and accepted benefits therefrom. The facts being substantially different, the judgment in this case will not apply in the present case.

12.     Lastly, the respondents relied on order dated  30.09.2013 in OA 2999/2011. The observations of the Tribunal are quoted below:

> "3.As far as the claim of applicant for pension in terms of the Scheme dated 27.11.1992 is concerned, we find that the applicant had never opted for the benefit of the said Scheme and had opted for Employees Pension Scheme 1995 (RPF). The Scheme was formulated by Provident Fund Commissioner. Under the Scheme, a sum of Rs.541/- was remitted to the Regional Provident Fund Commissioner, which entitled the applicant for pension under RPFC for which he had to fill up form 10D with the Provident Fund Commissioner. The applicant received salary slip every month till his retirement, in column 5 of which (right under the Father's name) the code E which stands for Employees Fund Scheme 1995, optee (RPF) was clearly mentioned. In the salary slip of the applicant, an amount of Rs.541/- per month deducted and remitted to RPFC every month was also indicated. Thus having not opted for pension in

terms of the Scheme dated 27.11.1992, the applicant cannot be declared entitled to pension in terms of the said Scheme."

Again, this is a case of employees who opted out of the Pension Scheme and accepted the CPF Scheme and payments made by the Management as per CPF including the Management share. The facts being substantially different, this would also not act as precedent in the present case.

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

14. Effectively, the applicant is working on the post of Store Attendant with effect from 16.05.1986. He opted for the Pension Scheme as is clear from the service book as well as order dated 25.05.2010 issued by the respondents. It is a fact that deductions were made as per CPF Scheme upto November, 2008 but that cannot be interpreted to mean that the applicant had opted for the CPF Scheme. In fact, the applicant in his letter dated 6.10.2009 has mentioned that he came to know that he is eligible for the Pension Scheme from some reliable sources. Therefore, clearly it was the respondents fault that in respect of an employee who has been serving since 1986, they have deducted amount towards CPF and not stopped it from the moment when they appointed him in 1986 on regular basis, specifically when he had opted for the Pension Scheme right in the beginning. In fact, the internal notings of the department annexed with the rejoinder also indicate that the department had

realized that there was a mistake in deducting the amount. As already stated, the judgments cited by the respondents cannot act as precedent here because in this case, the applicant had opted for Pension Scheme as per order dated 25.05.2010.

15.    The Scheme of pension itself makes the applicant eligible for pension. Therefore, merely on the ground that the respondents have been deducting Rs.541/- per month towards CPF and the applicant has never protested, he cannot be denied the benefit of Pension Scheme. The act of deduction was the fault of the respondents. They knew the rules and contents of order dated 1992 and the import of the order dated 16.05.1986 much better than a low paid employee like the applicant. So the respondents cannot take advantage of a mistake committed by themselves.

16.    OA is thus allowed. Respondents are directed to fix the pension of the applicant as per Pension Scheme and make payments accordingly after adjusting payments already made to him on his retirement from the CPF account, within a period of 60 days from the date of receipt of a certified copy of this order. No costs.


( P.K. Basu )
Member (A)


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