

**Central Administrative Tribunal
Principal Bench**

OA No. 3924/2016

Order reserved on: 19.09.2018
Order pronounced on : 25.09.2018

Hon'ble Mr. Pradeep Kumar, Member (A)

Sh. Ajay Kumar Chawla, 61 years,
S/o Late Sh. P.L.Chawla,
Ex.-Dy. CGM, token No.36494, Category 'A',
R/o H.No.35-D, Citizen Enclave,
Sector-14, Extn. Rohini,
New Delhi-110085.

... Applicant

(By Advocate: Sh. Jagdish Chandra Kundlia)

Versus

1. Delhi Transport Corporation,
Govt. of NCT of Delhi,
Through its Chairman-cum-M.D.,
I.P.Estate,
New Delhi-110002.
2. The Regional Provident Fund Commissioner,
Employees Provident Fund Organization,
Bhavishya Nidhi Bhawan,
28, Wazirpur Industrial Area,
New Ashok Vihar,
New Delhi-110052.

... Respondents

(By Advocate: Ms. Mona Sinha for Ms. Ruchira Gupta for R-1
Sh. Keshav Mohan with Sh. Kabir Ghosh for R-2)

ORDER

Heard Sh. Jagdish Chandra Kundlia, learned counsel for applicant and Ms. Mona Sinha for Ms. Ruchira Gupta, learned counsel for Delhi Transport Corporation-respondents no.1 and Sh.

Keshav Mohan with Sh. Kabir Ghosh, learned counsel for Regional Provident Fund Commissioner- respondents no.2.

2. The applicant brought out that he joined DTC in the year 1982 and retired on 31.03.2015 on attaining the age of superannuation. In the year 1982 all DTC employees were covered under Contributory Provident Fund (CPF) Scheme. In this Scheme there is certain contribution by the employee and an equal contribution is made by the employer and both these contributions are thereafter transmitted to the Regional Provident Fund Commissioner in Employees Provident Fund Organisation (EPFO). Such of the employee's for whom full contribution is deposited in this manner, are also entitled for certain pension.

The applicant pleads that in the year 1992, vide office order no.16 dated 27.11.1992, a new DPC Pension Scheme was also brought on the picture with the following proviso:

“3. All the existing employees including those retired w.e.f. 3.8.1981 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 Govt. of India.

4. The Pension Scheme would be compulsory for all the new employees joining DTC w.e.f. 23.11.92, the date of sanction of the Scheme.

Xxx xxx xxx

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.”

3. The applicant pleads that he had not specifically opted for CPF Scheme and as such he is deemed to have come over to the new DTC Pension Scheme. However, the respondent-Corporation is not treating him to be covered under DTC Pension Scheme and that is the grievance in the instant OA.

4. In support of this contention, the applicant drew attention to the service record of the applicant which was annexed as Annexure A-5 to the OA. This has a stamp pasted “Pension Opted dated 06.04.1993”. However, on a subsequent date of 16.09.2011 entry has also been made to read “pension not opted”. The applicant pleads that this second entry of 2011 is not correct.

5. The applicant also brought out that he had gone on deputation in the year 1999 to Central Government and remained there up to the year 2002 and thereafter had come back and joined the parent department, namely DTC.

6. In support of his contention to be covered under DTC Pension Scheme, the applicant also drew attention to the file of MA No.1267/2018 which was also filed in this OA. In that MA, a list containing 190 names was annexed as Annexure R-2 under the caption “List of officers (on Roll) who have not opted pension as on 31.03.1996” and another list containing 24 names annexed as

Annexure R-3 under the caption “List of officers (on Rolls) who have opted pension as on 31.03.1996”. In this list containing 24 names, the applicant’s name appears at Sl. No.5.

In support of his contention, the applicant also drew attention to clause 16 (1) (c) of the Employees’ Provident Fund and Miscellaneous Provisions Act, 1952. This also came under adjudication in Hon’ble High Court of Delhi vide WP (C) no. 8173/2016 dated 21.03.2017.

7. In view of the above, the applicant pleaded that he should be treated as covered under DTC Pension Scheme.

8. The respondents pleaded that two lists of 190 officers and 24 officers as are mentioned by the applicant had come under adjudication in TA No.798/2009 which was decided on 10.08.2009 by the Tribunal. The observations made by the Tribunal in that case, vide para 7 and 8 of their judgment, are relevant. The same are reproduced below:

“7. According to the learned counsel for the respondents, it was obvious that lists had been drawn, where two groups, namely, (1) consisting of persons who had opted to come within the pension scheme and also (2) a second list which named the officers who had in definite terms indicated that they did not wish to opt for the pensions scheme. But the lists produced categorize one group alone, but by two documents, and this was obviously an absurdity. The applicant belongs to the latter group. In fact, the list was prepared on the basis of the letters submitted to the office, but some how the bundle of documents have become untraceable and the person concerned in the office had been subjected to

disciplinary action. The suggestion was that there was a group who had harboured an opinion that it would not have been in their interest to join pension scheme in preference to CPF Scheme. It might have been for their own reasons and numbers of this group were always being treated as person who were not eligible for pension. Applicant belonged to this group as item 148. Counsel had also submitted that more than 79 persons have retired whose names appeared in the relevant annexed and none of them had claimed and had been paid pension benefits, which, according to her, was a strong circumstance to show that the applicant, who was listed along was also similarly placed and could not have adopted a volte-face, coming to understand the benefits of the pension scheme in the long run.

8. The document relied on by the applicant does not inspire confidence for assuming that the applicant is to be treated as an optee for pension. Therefore, much reliance need be given on it and advantage if at all goes in favour of the DTC. Further, these are only lists which have come to importance only for the circumstance that the original requests are submitted as not available. Therefore, we may examine the justifiability of the claim of the applicant with the assistance of more fundamental records and situations, which may be reliable, and would speak for themselves.”

The respondents pleaded that the two lists, being relied upon by applicant, were held as doubtful by Tribunal and hence cannot be relied upon at present.

9. The respondents also brought out that both the said lists are a handwritten photocopy of certain documents and in respect of 24 names, the caption “List of officers (on Rolls) who have opted pension as on 31.03.1996” has a very big gap between the words “have” and “opted”. This list is, therefore, not reliable.

10. The respondents further brought out that the applicant was a senior officer, who has retired as Dy. CGM/Civil. He had been on deputation to Central Government from the year 1999 to 2002. The contributions, required under CPF Scheme were being made from his salary all along from 1992 to 1999 and thereafter with effect from the year 2002 that is when he joined back and continued until he retired. It was during the period of deputation from 1999 to 2002 that while employee's contribution was deducted there was no contribution made from the employer's side (during this time he was under Central Government).

11. The retirement notice in respect of applicant was issued on 15.10.2014 wherein it was clearly indicated that "He/she has not opted for pension". The respondents also brought out that the entry of "pension opted" was a mistake as the applicant has never opted for the new DTC Pension Scheme.

Towards this, the respondents also drew attention to a form, filled by the applicant himself on 21.01.2015 and in his own handwriting, wherein the applicant had made a request to release 90% of the CPF from his own as well as employer's contribution. Vide item-8 of this form which specifically sought reply from applicant in respect of "pension opted/not opted", the applicant had marked "dash" in his own handwriting. The applicant being a senior officer is not expected to indicate the incorrect status in

respect of option for pension at that time, which he now claims that he should be covered under. In view of this specific mention by applicant himself, the applicant cannot now be covered under DTC Pension Scheme.

12. Further, all the retiral dues including all contributions under CPF have since been paid to the applicant in two instalments, one towards 90% and thereafter the balance 10%. The same have been received by the applicant without any protest or demure.

13. The respondents also brought out that when the case of the applicant for communicating pension under CPF Scheme (EPF 95) was sent to the office of Regional Provident Fund Commissioner, it was advised that "his EPS'1995 deduction during the period 1999 to 2002 was not deposited" and accordingly he was advised to deposit a sum of Rs.83,300/- which the applicant did not deposit and it was only thereafter that he had filed an OA to claim that he is deemed to be covered under DTC Pension Scheme. This belated request cannot be entertained at this point of time, since he had already retired in the year 2015 and all due payments have since been released already.

14. The respondents also drew attention to the judgment in OA No.750/2016 pronounced on 23.12.2016 where a similar matter had come into adjudication and the claims were not agreed to.

15. Matter has been heard at length. The applicant was covered under CPF Scheme when he had joined the respondents-Corporation and accordingly the deductions from the employee as well as contributions from the employer were being made during the period 1982 until 1992 when the new DTC Pension Scheme is supposed to have kicked in. However, even thereafter such contribution from employer side as well as deduction from employee side had continued from the year 1992 to 1999 and thereafter the same situation prevailed during the period 2002 onwards till the applicant had retired.

At such a senior level to which the applicant was working in the respondent Corporation, it is inconceivable that he did not take note of the fact of such deductions from his monthly salary and that he was covered under CPF Scheme whereas he now claims to be deemed covered under DTC Pension Scheme.

This belated claim is not acceptable. This is further fortified from the fact that the applicant in his own handwriting had also submitted a form to claim 90% of the contribution wherein under column 8 (para 11 supra) he left the column marked with a “dash”. It is inconceivable that at the senior level at which applicant was working, he would not have indicated the correct position of his being covered under pension, had he actually opted for the same at that time, as he now claims or even under deemed covered case (as

per para 3 supra). Even otherwise, if he was being forced to the contrary, he would have raised some protest. In the event no such protest was made and infact a “dash” was marked in the said item no.8.

This sequence corroborates that the applicant at that point of time was very clear that he was covered under CPF Scheme only.

Even at the time of retirement, the retiral dues which were on the basis that he was covered under CPF Scheme were taken by the applicant without any demure or protest.

The applicant had also pleaded that the DTC is not covered under CPF Scheme even to start with under the Clause 16 (1)(c) and as such, the CPF Scheme itself is not applicable to the applicant. This belated contention can also not be accepted since the CPF Scheme had continued to be in force right from the time 1992 till applicant had retired and he had himself contributed towards the same all along and was fully aware of such deductions/contributions.

16. In view of the foregoing, the present OA has no merit. The averments and the pleadings of the applicant cannot be accepted. The OA is dismissed being devoid of merit. No order as to costs.

(Pradeep Kumar)
Member (A)

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