

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.2029 of 2016

This the 7th day of December, 2018

Hon'ble Ms. Nita Chowdhury, Member (A)

Sh. Puran Chand, 66 years
S/o Sh. Paras Ram,
Ex. Driver, B.No.4727,
Token No.13243,
R/o 21/4, Indra Vikas Colony,
Delhi-110009.

....Applicant

(By Advocate : Shri Hari Kishan)

VERSUS

Delhi Transport Corporation
Through its Chairman-cum-M.D.,
I.P. Estate
New Delhi-110002.

.....Respondent

(By Advocate : Ms. Mona Sinha for Ms. Ruchira Gupta)

ORDER (Oral)

The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- “i) The respondent may be directed to grant the pension to the applicant under DTC Pension Scheme along with commutation amount of pension with interest @ 18% p.a. from the date of retirement on superannuation as the applicant has exercised his option in favour of DTC Pension Scheme.
- ii) Any other relief/s, the Hon'ble Tribunal deems fit.”

2. Brief facts of the case as stated in the OA are that the applicant appointed in DTC as Retainer Crew Driver w.e.f. 23.11.1971 and later brought on to monthly rates of pay w.e.f.

23.5.1973. The applicant retired from the services of the Corporation w.e.f. 30.6.2010 vide letter dated 19.1.2010.

2.1 Applicant averred that he opted/exercised his option within the stipulated time in favour of DTC Pension Scheme in response to Circular dated 28.10.2002 (Annexure A-2). The applicant has requested vide his application dated 8.6.2010 that he is going to retire on 30.6.2010, since the matter regarding extension of pensionary benefits to the employees is pending before the Court, therefore, his management share of provident, in lieu of pension is given, may not be released and the same may be retained till the final decision is taken regarding the extension of pensionary benefits to the remaining employees (Annexure A-5).

2.2 However, the respondent released his retiral dues treating him as non-optee of pension scheme in 2010.

2.3 Being aggrieved by the same, the applicant has filed this OA seeking the reliefs as quoted above.

3. In response to notice, respondent has filed reply in which it is specifically stated that the applicant retired from the service of respondent w.e.f. 31.3.2010 vide retirement memo dated 6.10.2009 wherein it is stated that he is a pension non-optee. Pursuant thereto, he sought and was granted release of 90% of Provident Fund vide Memo dated 27.10.2009 (employee's own share and the employer's share) being Rs.10,37,720/-. The remaining 10% Management share and employee's share of Provident Fund was also released to the applicant vide circular

dated 2.6.2010. The entire gratuity amount of Rs.3,50,000/- was also released to the applicant vide letter dated 29.3.2010. The applicant has not raised a whisper of any allegation against the aforesaid actions of the respondent from 2009-10 till June 2016 when he filed the instant OA.

3.1 It is further stated that applicant did not disclose the factum of having opted out of the DTC Pension Scheme vide Memo dated 28.12.1992 and further did not disclose of seeking and being granted 90% release of his own and employer's share of Provident Fund vide Memo dated 27.10.2009, i.e., before attaining superannuation.

3.2 It is further stated that applicant filed this OA on the basis of judgment dated 17.2.2014 rendered by the Hon'ble Tribunal in ***Raj Singh vs. DTC and another*** being OA 329/2012 which has been upheld by Hon'ble Delhi High Court vide order dated 30.7.2014 in Writ Petition No.4728/2014. However, the same is not applicable in the case of the applicant as in the said case the plea of the applicant therein was that he had opted for pension scheme, however, his name was not featuring in the list of pension optees and the facts of the present case are entirely different from the facts of Raj Singh's case (supra) and as such the present OA cannot be disposed of in terms of the decision passed by this Tribunal in the said case.

3.3 It is specifically averred by the respondent that the applicant was a pension non-optee and sought and was granted

90% withdrawal of his CPF (own share and employer's share) on 21.10.2009 itself. Thus, having withdrawn 90% of his CPF, there was no occasion for the applicant to send the alleged application dated 8.6.2010. Even subsequent thereto, the applicant was released and accepted the balance CPF without any protest or demur. Thus, the applicant is stopped from alleging to the contrary.

3.4 Lastly, it is stated that the OA is liable to be dismissed on merits as well as on the ground of delay and laches by this Tribunal.

4. Heard learned counsel for the parties and perused the material placed on record.

5. During the course of arguments, both the counsel reiterated the averments made by them in their respective pleadings.

6. For properly adjudicate the issue involved in this case, it is relevant to refer to the provisions of Office Order No.16 vide which DTC introduced a Pension Scheme with retrospective effect w.e.f. 3.8.1991, which reads as under:-

“DELHI TRANSPORT CORPORATION
(A GOVT OF INDIA UNDERTAKING)

I.P.ESTATE: NEW DELHI

No.Adm-I-5(4)/92

Dated 27.11.92

Office Order No.16

Sub: Introduction of Pension Scheme in DTC as applicable
to the Central Govt. Employees.

The introduction of Pension Scheme for the employees of the DTC has been sanctioned by the Central Govt. and conveyed by the M.O.S.T. vide letter No.RT-12019/21/88-TAG dated 23.11.92 on the same pattern as for the Central Govt. employees subject to the following conditions :

1. The pension scheme would be operated by the LIC on behalf of DTC.
2. The date of effect of Pension Scheme would be 3.8.1981.
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 the 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.
5. 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 the Pension Scheme on behalf of DTC and the amount deposited in the Central Govt./State Govt./Guaranteed Securities would be encashed on maturity.
6. The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employees/existing employees would be the amount that would have accrued had they not withdrawn the employer's share.
7. Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the Pension Scheme, will have to be refunded by them before any benefit under the Scheme, is granted to them.
8. A due and drawn statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded, would be worked out by the concerned unit, wherefrom the employee had retired from service.
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.

Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise option, should do so with the Unit of their present working/wherefrom they retired, within a period of 30 days from the date of issue of this Office Order.

The Unit Officers, after receiving the options from the ex-employees, will take further necessary action for getting the necessary forms completed, which will be supplied to them by LIC for pension, etc. They will also ensure the recovery of EPF and Gratuity from the ex-employees before forwarding their applications as mentioned above. The cases of all officers will be dealt with at Headquarters.

The options received from the existing employees for not opting Pension may be kept in their Personal file and entry made in their Service Book.

Sd/-
(L.C.Goyal)
Dy. Chief General Manager (P)

CHIEF GENERAL MANAGERS
ALL GENERAL MANAGERS
ALL UNIT OFFICERS
ALL NOTICE BOARDS.

COPY TO: The Under Secretary to the Government of India (MOST) – for information.”

From Clause 9 of the said Scheme, it is quite clear that 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. However, in the present case, the applicant had not denied the fact that he had exercised his option for opting out from pension scheme rather it is categorical stand of the respondents that vide his application dated 28.12.1992

(Annexure R-4), the applicant had exercised for opting out from Pension Scheme and accordingly, his name was not included in the list of employees who opted for Pension Scheme.

7. Contention of the applicant is that in pursuance of Office Order bearing No.Pen.Cell/Option/2002/440 dated 28.10.2002 inviting fresh option from the employees, including those who had earlier not opted for DTC Pension Scheme, the applicant exercised his option in favour of DTC Pension Scheme and vide his application dated 8.6.2010, applicant requested therein not to release his management share of provident fund after his retirement on 30.6.2010 till the finalization of decision on the option exercised in pursuant to Circular dated 28.10.2002. But, however, for giving effect to the Office Order dated 28.10.2002, exemption is required from the RPFC and in case the exemption is not granted by the said RPFC, the option would become redundant. The relevant portion of the said order is extracted below:-

“DELHI TRANSPORT CORPORATION
GOVT. OF N.C.T. OF DELHI.
I.P.ESTATE: NEW DELHI.

No.Pen. Cell/Option/2002/440

Dated 28.10.2002

OFFICE ORDER

In compliance of the orders conveyed by Sh. Abhijit Sarkar, Secretary to Minister (Transport), Tourism and Power, Govt. of N.C.T.of Delhi vide letter No.PA/MOTTP/2002/11117 Dated 4.10.2002, it has been decided that the option from all the existing employees including those who are covered under the RPFC Scheme may obtain in the following condition:

- i) xxx xxx
- ii) xxx xxx
- iii) Inviting/exercising option shall be provisional and subject to exemption from the RPFC and refund of the amount held by them. In case, no exemption is received from RPFC, this option shall become redundant, and the status of an employee shall be the same as is before the issue of these orders.
- iv) xxx xxx
- v) xxx xxx

Sd/-
(Ramesh Chander)
Addl. Chief Accounts Officer”

Though in view of the above order, provisional option was sought and was given by the applicant but because no exemption has been granted, the option became redundant and the Scheme did not materialize.

8. The counsel for the applicant strenuously urged that as the applicant had submitted the provisional option in 2002 and his option was forwarded by the Depot Manager, the respondents should be directed to bring him on DTC Pension Scheme. Identical cases came up and they attained finality by the judgment of Hon'ble Delhi High Court in the case of **Rati Bhan Vs. Delhi Transport Corporation**, reported in 2011SCC OnLine Del 4394. The said Office Order of 2002 was discussed and held that the applicant therein was not entitled to be brought on DTC Pension Scheme. Again in **DTC Vs Shri Jagdish Chandra and Ors** decided on 32.03.2017 in Writ Petition (Civil) No. 8173/2016, in para 16 it is further held that if no exemption is

received from the Regional Provident Fund Commissioner, the option expressed shall become redundant. The para 16 of the said judgment is extracted below:

“The decision in **Rati Bhan** (supra) had interpreted clause (iii) of the Office Order dated 28th October, 2002 in two parts. First, exercise of inviting options was provisional, i.e. subject to examination of feasibility of implementing the DTC Pension Scheme dated 27th November, 1992 to those who had expressed their desire to be covered by the said Scheme. Secondly, this was subject to exemption from the Regional Provisional Fund Commissioner and refund of the amount held with them. It was clarified that if no exemption was received from the Regional Provident Fund Commissioner, the option express shall become redundant. The 2 stipulation were independent of one another, as has been held and decided in **Rati Bhan's** case (supra).”

9. In view of the above position, this Court does not find that the case of the applicant is covered by the decision of the Hon'ble Delhi High Court in **Raj Singh's** case supra as the case of the applicant is not that he has not gave any option. Rather it is evidently proved that he has given option for opting out from Pension Scheme on 28.12.1992 and even received the payments of 90% of Provident Fund vide Memo dated 27.10.2009 (employee's own share and the employer's share) being Rs.10,37,720/-, the remaining 10% Management share and employee's share of Provident Fund was also released to him vide circular dated 2.6.2010 and the entire gratuity amount of Rs.3,50,000/- was also released to the applicant vide letter dated 29.3.2010 before filing of this OA. This is not a matter in which pension has been denied rather CPF, as opted for, has been granted to him, which is another mode of pension.

10. In view of the above, this Court does not find any merit in this case and the same is accordingly dismissed. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

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