

**Central Administrative Tribunal
Principal Bench, New Delhi.**

**OA-462/2011
MA-2961/2016**

Reserved on : 12.11.2018.

Pronounced on : 05.12.2018.

Hon'ble Ms. Praveen Mahajan, Member (A)

Sh. Nepal Singh,
S/o Sh. Nayader Singh,
C.B.8A, Mansarovar Park,
Shahdara, Delhi-32.
T.No.22393

.... Applicant

(through Ms. Kittu Bajaj, Advocate)

Versus

Delhi Transport Corporation
Through its Chairman,
I.P. Estate, New Delhi.

.... Respondents

(through Mrs. Arati Mahajan Shedha, Advocate)

O R D E R

Briefly stated, the facts of the current O.A. are that the applicant was appointed as Ticket Inspector with Delhi Transport Corporation (DTC) on 01.11.1969. He retired on 31.10.2008.

2. The DTC, vide Office Order No. 16 introduced a Pension Scheme for its employees on 27.11.1992. Prior to introduction of the Scheme, the DTC was governed by the Contributory Provident Fund Scheme. As per the Pension Scheme dated 27.11.1992, option for

pension was to be exercised within thirty days from the date of office order or as extended from time to time.

3. On attaining the age of superannuation on 01.11.2008, the applicant was released his leave encashment, gratuity and the provident fund but his pension was withheld.

3.1 The applicant submitted a representation dated 25.11.2010 to the Public Information Officer of DTC seeking benefit of DTC Pension Scheme.

4. The applicant avers that Hon'ble High Court of Delhi in the case of **Satyabir Singh Vs. D.T.C.**, 2005 (84) DRJ 237 has held that pension is neither a bounty nor a matter of grace, but a deferred portion of salary earned as payment of compensation for service rendered.

5. Getting no favourable response from the respondents, the applicant has filed the current O.A. seeking the following reliefs:-

- “(A) Direct the Respondent to release the pension of the Applicant with effect from 1.11.2008 and all other pensionary benefits with interest @12% p.a., compounded annually.
- (B) Direct the Respondent to provide complete due and drawn statement to reflect the correct and exact amount of arrears payable to the Applicant whilst giving him the benefit of commutation, with compound interest @12% p.a., compounded monthly.
- (C) Direct Respondent to pay pension to the Applicant month by month.”

6. In reply, the respondents contend that though the applicant was in service of the Corporation but till his retirement on 01.11.2008, he had never applied for Pension Scheme. All his retiral benefits were released to him on 01.12.2008 so there is no question of arrears or any other pensionary benefits with interest.

7. Respondents mention that earlier the applicant had filed a petition before the Tribunal on 10.01.2011 simply stating that he was a DTC pension optee and hence entitled to pension. In the said petition, his retirement order dated 11.04.2008 was not annexed. Only the Retirement Scheme order dated 27.11.1992 and his representations dated 25.11.2010 were annexed with the OA. Thus, based on these limited facts, the Tribunal on 11.07.2011, directed the respondents to grant pensionary dues to the applicant from due date, along with arrears of pension at simple interest of 8%.

7.1 Against this order, the respondents filed WP(C)-1307/2012 before the Hon'ble High Court of Delhi wherein on 14.03.2013 the following order was passed:-

"1. Noting that pleadings in the writ petition go beyond the pleadings in the reply filed before the Tribunal; noting further that documents annexed as Annexures along with the writ petition were not placed before the Tribunal; noting further that contents of the documents now sought to be relied upon contain facts which require them to be prima facie established and considered for inferences to be drawn, learned counsel for the petitioner seeks leave to withdraw the writ petition stating that the applicant shall seek review of the order impugned before the Tribunal.

2. Needless to state, if the petitioner were to file an application seeking review of the impugned order dated July 11, 2011, the said

application shall be decided by the Tribunal as per its review jurisdiction.

3. As regards the delay in seeking review, the application seeking condonation of delay to be filed by the petitioner shall be decided by the Tribunal, taking cognizance of the fact that notice was issued in the instant writ petition and it came up for hearing today, when the aforesaid deficiency in the pleadings before the Tribunal were noted.

4. The petition is accordingly dismissed as not pressed.

5. No costs."

7.2 In pursuance to the order of Hon'ble High Court of Delhi, respondents filed RA-85/2013 seeking review of the Tribunal's order dated 11.07.2011. Vide order dated 08.10.2014, the Tribunal allowed the RA and restored the OA for fresh hearing.

7.3 The respondents submit that vide Pension Scheme dated 27.11.1992, the employees of DTC, who had already retired, and, the existing employees, were to give their consent whether they want to opt for the Pension Scheme. At that time, the applicant did not opt for the Pension Scheme, rather, he specifically opted out of the Scheme vide his letter dated 11.03.1994 (Annexure-1).

7.4 On receipt of the requests from the applicant, along with other DTC employees, who opted out of the Pension Scheme, a Circular dated 16.02.1994 (Annexure-B) was issued. It was mentioned that:-

"Requests from a few employees have been received for treating them not opted pension category. The matter has been considered and it has been decided that the employees covered under the pension scheme, who are not interested now to be covered under it, may continue to be covered by contributory Provident Fund Scheme. Such employees may,

therefore, submit their requests to the Manager (A) Pension, D.T.C. Head Quarter, I.P. Estate, New Delhi by 15.3.1994 through their Unit Officers. Any request received thereafter will not be considered."

7.5 It was decided by the Corporation that the non-optee employees, for the Pension Scheme will be covered by Contributory Provident Scheme (CPF). Such employees were directed to submit their request to Manager Pension, DTC Headquarter by 15.03.1994.

7.6 Vide letter dated 16.03.1994, list of all the persons, who had not opted for the Pension Scheme benefits, was sent to the Pension Cell for necessary entries in their service record. In the said list, name of the applicant appeared at S.No.7 (Annexure-C of counter). Later, a master list was prepared in respect of all the employees, who specifically opted out of the Pension Scheme. Here too name of the applicant is at S.No.796 of the list (Annexure-D of counter).

7.7 Consequently, vide order dated 24.03.1994, all the employees, who did not opt for the Pension Scheme were allowed to be treated as members of the C.P.F. Scheme. The respondents submit that even in the service record of the applicant these entries were made showing 'N' in the computerized salary slip, which stands for "not opted for pension" and in the same slip, the share of C.P.F. of the employer and employee is indicated in detail (Annexures-E & F). This fact was also mentioned in the superannuation order of the applicant stating that the applicant is not a pension optee and his

nominee is his wife (Annexure-G of counter). The applicant accepted all his retiral dues on 01.02.2008, including his C.P.F., gratuity etc, without demur at that time not raising any claim to the contrary.

8. The respondents aver that similar petitions were filed by **Sh. M.A. Khan Vs. DTC, TA-798/2009**, and dismissed by the Tribunal on 10.08.2009, Writ Petition-13142/2009 filed in the Hon'ble High Court was also dismissed and SLP filed in Hon'ble Supreme Court met the same fate. Also OA-4060/2010 filed by **Sh. Gynander Kumar Sabharwal Vs. DTC** was dismissed on 12.08.2011 as also the RA-352/2011 on 24.01.2012.

8.1 The respondents have also raised an objection about the OA being hit by limitation and placed reliance on the judgment dated 10.08.2010 of Hon'ble High Court in the case of **DTC Vs. Madhu Bhusan Anand** in which the following has been held:-

"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 of thought why not take the benefit of few who likewise went to Court and obtained relief...."

Similarly in the case of **DCS Negi Vs. UOI and Ors.** (Civil Appeal No. 7956/2011) decided on 07.03.2011, the Hon'ble Apex Court held that:-

"Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An

application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under section 21(3)."

The respondents argue that the issue whether a pension optee under the 27.11.1992 Scheme, who had not opted for the Pension Scheme, and, received all retiral dues as per the Contributory Provident Fund Scheme, would still be entitled to pension is no more *res integra*. It stands settled by the Hon'ble Apex Court and Hon'ble High Court in the matter of **DTC Retired Employees Association Vs. DTC, DTC Vs. Madhu Bhushan Anand** and Full Bench judgment of Hon'ble Delhi High Court in the case of **R.D. Gupta Vs. DTC**. Even, in **LPA-330/2002**, it was held that after having **withdrawn the option of pension and having been granted the CPF retiral dues, there was "no right to switch back the pension scheme."** Hence, the applicant has no case and the OA needs to be dismissed.

9. On 29.09.2016, the applicant filed an MA-2916/2016 in OA-462/2011 seeking permission to place additional facts on record. It was submitted that the applicant has had no opportunity to refute the contention of the respondents that he had opted out of the Pension Scheme on 11.03.1994. A letter dated 17.03.1994 was also enclosed with the said MA stating that subsequently the applicant had withdrawn his earlier letter dated 11.03.1994.

9.1 As per the order sheet dated 03.04.2017, the respondents were directed to file an affidavit and inform the Bench as to what action was taken by the respondents on the applicant's withdrawal letter dated 17.03.1994 brought on record through MA-2961/2016.

9.2 On 26.07.2017, the learned counsel for applicant Ms. Kittu Bajaj informed the Court that another MA-2698/2017 dated 26.07.2017 has been filed on behalf of the applicant requesting permission to summon the then dak clerk Sh. Sohak Pal, who had duly received the withdrawal letter dated 17.05.1994 (17.03.1994) of the applicant. On 03.10.2017, the learned counsel for the respondents Ms. Arati Mahajan Shedha informed the Bench that the reply to the aforementioned MA has not been filed by the respondents but they have no objection in case Sh. Sohan Pal (dealing dak clerk) is summoned by the Tribunal. Accordingly, the M.A. of the applicant was allowed.

9.3 It was orally submitted by the learned counsel for the applicant that in case the permission to summon Sh. Sohal Pal was denied, she may be allowed to file an interrogatory to Sh. Sohan Pal to confront him with his signatures on the withdrawal letter.

9.4 Under a mistaken inference of the order dated 03.10.2017 the applicants filed an interrogatory to Sh. Sohan Pal. The same was strongly objected to by the learned counsel for the applicant by

way of an affidavit dated 13.04.2018. In the said affidavit, the respondents contend that the letter dated 17.03.1994 vide which the applicant withdrew the earlier letter dated 11.03.1994 (Annexure-I) is not available in the office record of DTC. Nor does the aforesaid letter bear the stamp of DTC or of the relevant Depot and perhaps, a fake diary number has been mentioned to mislead the Court raising doubts about its genuineness.

9.5 The respondents add that the letter has been filed as late as September, 2016 i.e. after a gap of almost 5 ½ years of filing of the O.A., clearly showing that the purported withdrawal letter is an after thought and was never really submitted to the DTC by the applicant.

10. I have gone through the facts of the case and heard the learned counsel for the parties.

11. The entire case/claim of the applicant hinges on the fact that the letter dated 11.03.1994 opting out of Pension Scheme was withdrawn by him on 17.03.1994, hence the respondents are mandated to grant him the pensionary benefits due under the Pension Scheme of 27.11.1992.

12. The claim of the applicant lacks credence on account of numerous reasons, enumerated in detail by the respondents in their counter affidavit. To briefly recapitulate, it is not disputed by either side that in response to the Circular dated 16.02.1994 a large number

of employees of the Corporation opted out of the Pension Scheme of DTC and the applicant was one of them. It is also a fact that vide his letter dated 11.03.1994 (Annexure-I), the applicant opted out of the Pension Scheme. Hence, in the list circulated on 16.03.1994, the name of the applicant figured at Serial No. 7. In the master list prepared in respect of all the employees who had specifically opted out of the Pension Scheme, the name of the applicant again appears at Serial No.796 (Annexure-D). There are entries in this regard in the applicant's service record. The applicant's salary slips also show/indicate 'N', which stands for not opted for pension. The share of CPF details pertaining to the employer and employees share is mentioned in the pay slip in Annexures-E & F respectively. On attaining the age of superannuation 31.10.2008 the applicant received all his dues, which accrued to him including his share of CPF. All these facts prove unequivocally that the applicant had consciously opted out of the Pension Scheme, and never raised the issue of withdrawal of his request at the time of receipt of his CPF share in 2008, till September, 2016.

13. The respondents have placed reliance upon various judgments of the Hon'ble High Court and the Hon'ble Apex Court. Citing the decision of the Hon'ble Apex Court in CWP-499/2000, they submit that:-

"The pension scheme was implemented on the basis of certain guidelines; it is not for the court to interfere with the same."

Similarly, in the LPA-330/2002, it was held that after having withdrawn the option of pension and having been granted the CPF retiral dues, there was no automatic right given to the applicant to switch back to the pension scheme.

14. The learned counsel for the applicant has made an attempt to bring in the statement of a clerk Sh. Sohan Lal, a Dak Clerk in 1994 who allegedly received the withdrawal letter dated 17.03.1994, vide his statement dated 14.12.2017.

15. Keeping in view the overall facts of the case, this statement cannot possibly be relied upon. Reasons are manifold. Had the letter been written at all, the applicant would have tried to claim the benefit of such withdrawal right from inception rather than producing this letter as a last resort to retrieve the lost ground. Strangely enough, this so called evidence has been introduced after the respondents stated that records pertaining to the said period have been destroyed/not available. Thus, there is no way of corroborating the veracity of this statement.

16. The letter dated 17.03.1994, was the sole and extremely relevant document, which should have been mentioned by the applicant while emphasizing his claim for pension. Surprisingly, however, there is no mention of the purported withdrawal letter of

17.03.1994 in the body of the OA. It is absolutely impossible to accept that a relevant & important document, like the alleged letter of withdrawal of 17.03.1994 could have missed a mention in various pleading before the Tribunal and the Hon'ble High Court if this evidence indeed existed. Though this fact was available with the applicant since inception, he never raised it at any given time. I am, therefore, convinced that statement of Sh. Sohal Pal (after a period of more than two decades) is nothing but an attempt at misleading the Court. The authenticity of the letter dated 17.03.1994 conveniently produced after a lapse of 5 ½ years along with a week alibi lacks credibility and is rejected accordingly. I also impose a cost of Rs.5,000/- on the applicant for wasting the time of the Court by trying to produce an alibi which is evidently unreliable. The cost of Rs.5,000/- may be paid to Kerala Chief Minister's Fund.

17. In view of the specific option dated 11.03.1994 given by the applicant opting out of Pension Scheme, and other evidence discussed in aforementioned paras, the claim of the applicant for grant of pension under the Pension Scheme dated 27.11.1992 is absolutely devoid of merit.

18. O.A. is accordingly dismissed. No costs.

(Praveen Mahajan)
Member (A)

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