

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

OA-3972/2016

Reserved on : 24.10.2018.

Pronounced on : 30.11.2018.

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

Sh. Madan Gopal, 72 years
S/o Late Sh. Chhaju Ram Sharma,
Ex-Dy.Manager (A),
Pay Token No.184, DTC, HQrs.
R/o M-28, Naveen Shahadra,
Delhi-110032. Applicant

(through Sh. Hari Kishan, Advocate)

Versus

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

(through Ms. Ruchira Gupta, Advocate)

O R D E R

The applicant in the O.A. was appointed in Delhi Transport Corporation (DTC) on 23.10.1964 and retired as Office Supdt. on 31.01.2004.

2. The applicant submits that DTC introduced a Pension Scheme vide Office Order No. 16 dated 27.11.1992.

3. This Pension Scheme was to be operated by the LIC on behalf of DTC. There being some dis-agreement between LIC and DTC, the LIC refused to operate the Pension Scheme on behalf of DTC. The

respondents then approached the Ministry of Surface Transport, Govt. of India for getting fresh approval, which was conveyed on 31.10.1995, for operationalizing the Pension Scheme by DTC itself. Vide letter dated 31.01.1995, the DTC commenced the disbursement of pension w.e.f. 01.11.1995 to the eligible employees, and framed the DTC Pension Fund Regulations, 1995. Options were called for from the employees who had not opted for DTC Pension Scheme earlier vide Office Circular dated 27.10.2002.

4. It is submitted that the applicant exercised his option in favour of Pension Scheme. But the DTC did not grant him pension on his retirement on 31.01.2004. The applicant submits that he had given his option for the Pension Scheme in 2002 on the basis of the offer given by the respondent, thus the fact that he was not an optee of the earlier Scheme has no relevance.

5. The management of DTC vide their letter dated 05.06.2015 informed the applicant's advocate that as per Inter-Ministerial meeting's decision held on 05.06.2015 between the officers of DTC and GNCTD, it has been decided that only non-pension opted employees, whether existing or retired, will not be considered for pension.

6. The applicant submits that as per the decision of the Constitutional Bench of Hon'ble Supreme Court in the case of

Deokinandan Vs. State of Bihar, 1971(2)SCC 330 it has been held that pension is a right and the payment of pension does not depend upon the discretion of the government but is governed by the rules, and any government servant coming within those rules is entitled to claim pension. It was further held that grant of pension does not depend upon any one's discretion. This view was reaffirmed in the case of **State of Punjab Vs. Iqbal Singh**. The applicant has also relied upon a recent decision of the Division Bench of the Hon'ble High Court of Delhi in the case of **B.R. Khokha v. DTC**, [W.P. (C) No.6630/2016, decided on 14.09.2016] whereby the decision of this Tribunal in the case of **B.R. Khokha v. Delhi Transport Corporation** (OA No.4464/2014) has been affirmed. In similar circumstances the Hon'ble High Court has observed that as soon as the decision of the Hon'ble Court is announced, the action should be taken not only in the case of Sheri B.R. Khokha but in case of all existing retired employees who exercised the option in response to the circular issued on 28.10.2002.

7. The applicant states that since he has opted for the pension scheme in pursuance to office circular dated 28.10.2002, he cannot be treated differently from other employees – similarly situated.

8. The applicant has filed the current O.A. seeking the following reliefs:-

"(A) The Hon'ble Tribunal may direct to the respondents to release the pension to the applicant from the next date of his retirement.

(B) The Hon'ble Tribunal may direct to the respondent to pay interest on delay payment of arrears of pension @12% compounded yearly

(C) The cost of the proceedings may also be awarded in favour of the applicant."

9. The respondents in their counter-affidavit state that the OA is barred by limitation and suffers from gross delay. The applicant retired from the services of the respondent-corporation w.e.f. 31.01.2004 vide retirement memo dated 06.08.2003 wherein it was stated that he is a pension non-optee under the 1992 circular. Pursuant thereto, he sought and was granted release of 90% of the Provident Fund vide memo dated 09.09.2003 (employee's own share and the employer's share. The entire gratuity amount of Rs.2,08,576.50, Rs.217751 and Rs.220489.50 was released to the applicant vide letters dated 28.01.2004, 29.01.2004 and 17.06.2004 respectively, which were received by the applicants without any protest. The present OA has been filed after more than a decade of his retirement. It has been held by the Hon'ble High Court of Delhi in its judgment dated 10.08.2010 in W.P. (C) No.14027/2009 and related cases – **D.T.C. v. Madhu Bhushan & 20 others**, as under:

"In our opinion these respondents have no claim whatsoever to receive pension. They novated the contract by volition when they subsequently opted out of the pension scheme and DTC accepted the same and paid to them even the management's share in the CPF account. 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. If the management forces down the gullet of an employee payment under the CPF Scheme and the employee desires pension he has to approach the Court or the Tribunal within a maximum period of 3 years being the limitation prescribed to file a suit."

It has been further held by this Hon'ble Tribunal vide order dated 22.03.2012 in the case of **Lal Singh v. Government of NCT, OA No.4293 of 2011** as under:

"that the applicants are also not entitled to plead that their right to receive pension is a continuous cause of action, because of the reason that in law, either the pension can be received, or benefit of the CPF amount at their credit can be received, and after having received the benefit under CPF scheme, the applicants have already forfeited any claim to their request for belated change over to the Pension Scheme."

Further, it has been held by the Hon'ble Apex Court in **All India Reserve Bank Retired Officers' Association and others v. Union of India and another**, 1992 Supp. (1) SCC 664 while drawing distinction between the pension scheme and the CPF scheme that the employees who had received benefits of Employer's contribution under the CPF Scheme, did not have a vested right to claim coverage under the Pension Scheme.

10. The applicant is estopped from claiming benefit under the DTC Pension Scheme in as much as the applicant did not opt for DTC Pension Scheme in 1992 when it was introduced in the Respondent Corporation and chose to remain covered and be governed by the CPF Scheme. Hence, the present OA is squarely covered and is liable to be dismissed outrightly in the light of a recent judgment

dated 21.03.2017 of Hon'ble High Court of Delhi in W.P. (C) No.8173/2016 – **DTC v. Sh. Jagdish Chandra & Ors.**, wherein the Hon'ble High court held that the employees who had previously not opted the pension scheme of 1992 and chose to be member of CPF Scheme cannot later claim benefit of the 1992 pension scheme. They have further referred to the decision of the Hon'ble High Court of Delhi in W.P. (C)7043/15 – **DTC v. Zile Singh**, wherein it is held that it is an accepted position that the 2002 pension scheme was never operationalized and the employees who specifically opted out of the 1992 pension scheme, cannot be covered under the same. In the light of the above submissions, the respondents submit that the present OA is liable to be dismissed with costs as the applicant is not entitled to any relief.

11. I have heard learned counsel for the parties and have also gone through the pleadings on record. During the course of argument, learned counsel for the applicant has also relied on a decision of this Tribunal in OA No.1276/2015 – **Rajinder Kumar Modi v. DTC**, decided on 12.09.2018 in support of his contention that applicant's case is squarely covered by the said decision.

12. In the case of **Rajinder Kumar Modi** (supra) claim of the applicant was considered, and allowed, based on the decision of the Tribunal which has been affirmed by the Hon'ble High Court of

Delhi in the case of **B.R. Khokha** (supra), wherein the petitioner was similarly placed as the applicant herein. He was not a 'pension optee– not having opted for the pension scheme of the respondent in terms of office order dated 27.11.1992. In OA No.4464/2014 Shri B.R. Khokha had sought similar benefit (as the present applicant in OA), which was rejected by the Tribunal in its order dated 28.07.2015. The petitioner however succeeded in the Hon'ble High Court wherein the order of the Tribunal was set aside and the respondents were directed to grant pension to the petitioner in terms of DTC Pension Scheme, para 9 of the Office order dated 27.11.1992. Their Lordships held that the office order dated 27.11.1992 does not expressly mandate that the optees were obliged to exercise an option to get covered under the scheme. In para 10, it was held that:

"10. Therefore, merely because the respondent did not respond in terms of the office order/pension scheme dated 27.11.1992 to give his positive option to be covered by the pension scheme, it cannot be inferred or interpreted that the respondent had opted out of the pension scheme. The language used in para 9 of the office order No. 16 dated 27.11.1992 is plain and clear and does not, even remotely, support the submission of the petitioner that the respondent was obliged to exercise the option positively and expressly to get covered by the pension scheme. In the light of the aforesaid, the petitioners submission that the circular of 2002 calling for options was issued without any authority, and that the respondent opted for the pension Scheme only in pursuance of the said circular, is of no avail."

Since the issue has already been decided by the Hon'ble High Court of Delhi and followed in OA No1276/2015, I adopt the same arguments, for sake of brevity and to avoid repetition.

13. The learned counsel for the applicant has also filed a copy of the order of the Hon'ble Supreme Court in the case of **DTC v. B.R. Khokha**, SLP (C) No.1986/2017, decided on 14.09.2017 whereby the appeal filed by the DTC against the decision of the Hon'ble High Court in the case of **B.R. Khokha** (supra) has been dismissed. Hence, the decision of this Tribunal in that case has attained finality.

14. The respondents are directed to grant pension as well as arrears of pension to the applicant under DTC Pension Scheme of 27.11.1992 from the date of his retirement on superannuation. However, the applicant must first refund the amount received under the CPF Scheme to the respondents in terms of the aforementioned office order. However, in view of the facts of the case, I am not inclined to grant any interest on the arrears as claimed by the applicant.

15. The respondents are granted three months time from the date of receipt of certified copy of this order for implementation of directions contained in this order. OA is allowed. No costs.

(Praveen Mahajan)
Member (A)

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