

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

O.A.No.336/2017

Order reserved on 13th February 2018

Order pronounced on 7th May 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Krishan Gopal (Aged about 61 years)
s/o Sh. Shiv Prasad
r/o H.No.2732, Gali No.204
Onkar Nagar-Tri Nagar
Delhi, - 110 035

..Applicant

(Mr. Ram Kanwar, Advocate)

Versus

Delhi Transport Corporation
Through its Chairman-cum-M.D
I P Estate, New Delhi
Pin – 110 002

..Respondent

(Ms. Swati Jain, Advocate for Ms. Ruchira Gupta, Advocate)

O R D E R

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“i) Direct the respondents to pay pension to the applicant under DTC Pension Scheme with effect from 01.05.2015 the date following the date of his retirement, along with arrears of pension and interest thereon interest at the same rate as applicable to EPF/GPF, within a time bound period.

ii) Further direct the Respondents to release the pension of the applicant for each and every month as and when it becomes due.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant joined Delhi Transport Corporation (DTC) as R.C. Conductor on 25.08.1978. He retired from service on 30.04.2015.

2.2 The DTC, vide its office order No.16 dated 27.11.1992 (Annexure A-1), introduced Pension Scheme for its employees, which was optional. The employees had option of continuing with the Employees Contributory Provident Fund (ECPF) or opt for the Pension Scheme. The Scheme envisaged that all existing employees, including those retired w.e.f. 03.08.1981 onwards, would have the option to opt for the Pension Scheme, whereas for the new employees joining DTC w.e.f. 23.11.1992, i.e., date of sanction of the Scheme, the Pension Scheme would be compulsory.

2.3 The applicant claims that he opted for the Pension Scheme on 06.11.2002. He has stated that the Unit Officer of DTC Rohini Depot-II had wrongly mentioned in the letter of retirement dated 24.11.2014 that he had not opted for the Pension Scheme.

2.4 The applicant submitted a representation dated __.04.2015 (Annexure A-6 (colly.)) to the Depot Manager, Rohini Depot-II seeking grant of pension to him. It is further stated in the said representation that till clearance from the Regional Provident Fund Commissioner (RPFC) comes in his case, he should be sanctioned the provisional pension.

Since his request has not been considered, the applicant has approached this Tribunal in the instant O.A. praying for the reliefs as indicated in paragraph (1) above.

3. In support of his claim, the applicant has stated that he had applied for the Pension Scheme and kept waiting for the implementation of the Pension Scheme. He submitted another representation dated 23.06.2015 (Annexure A-8) to the Depot Manager, DTC Rohini Depot-II seeking grant of pension. He had also stated in the said representation that the amount of CPF of employer's share has been kept intact by him in his FD account with the bank, which he will deposit in DTC whenever he is asked for. He has stated that in reply to his RTI query, the respondent has informed, vide its Annexure A-11 (colly.) letter dated 24.08.2016, that the list of employees, who had exercised option for the Pension Scheme, is not traceable in the Office. The applicant has relied upon the following judgments of Hon'ble Delhi High Court:-

- i) **B R Khokha v. Delhi Transport Corporation** (W.P. (C) No.6630/2016) decided on 14.09.2016; and
- ii) **Delhi Transport Corporation v. Raj Singh & another** (W.P. (C) No.4728/2014) decided on 30.07.2014.

The applicant claims that identically situated employees of DTC have been granted the benefits of Pension Scheme by the Hon'ble Delhi High Court by the above judgments.

4. Pursuant to the notice issued, the respondent entered appearance and filed its reply, to which a rejoinder has been filed by the applicant. The respondent, in its reply, has broadly stated as under:-

4.1 The applicant never applied for the Pension Scheme; a copy of his option form at Annexure R-1 is a testimony to it.

4.2 Placing reliance on the following judgments of the Hon'ble Delhi High Court, it is stated that the applicant does not have vested legal right to seek grant of pension to him:

- i) **Shyam Lal Goel v. Delhi Transport Corporation** (W.P. (C) No.13211/2004) decided on 28.02.2007,
- ii) **Rati Bhan v. Delhi Transport Corporation** (W.P. (C) No.7477/2011) decided on 14.10.2011; and
- iii) **Delhi Transport Corporation v. Madhu Bhushan Anand** (W.P. (C) No.14027/2009 with connected petitions) decided on 10.08.2010.

4.3 The judgments of Hon'ble High Court in **Raj Singh** and **B R Khokha** (supra), relied upon by the applicant, have no applicability to his case.

5. Arguments of learned counsel for the parties were heard on 13.02.2018. I have considered the arguments of learned counsel for the parties and perused the materials placed on record.

6. The respondent has produced a photocopy of the option form of the applicant (Annexure R-1), which clearly indicates that the applicant had chosen not to opt for the Pension Scheme introduced by the DTC vide order dated 27.11.1992. The office order dated 28.10.2002, whereby the fresh options were invited for the Pension Scheme, as stated by the respondent, was not acted upon. The applicant has claimed that in response to the office order dated 28.10.2002, he had opted for the Pension Scheme on 06.11.2002 (Annexure A-3). Since his purported exercising of the option for the Pension Scheme on 06.11.2002 and till he retired from service on 30.04.2015, the applicant never questioned his continued coverage under the ECPF Scheme. On his retirement, he has been paid the employer's contribution towards ECPF, and so also all other retiral benefits, including gratuity. The applicant, much belatedly on 23.06.2015 (Annexure A-8), had started claiming the pensionary benefits. All these developments cast doubt over his claim.

7. I have perused the judgments relied upon by the applicant. In **Raj Singh** (supra), the DTC could not satisfactorily answer the query of the Court as to whether the respondent therein (Raj Singh) had consciously and expressly opted for the Pension Scheme in the year 1992. The employee was being denied pensionary benefits solely on the ground that his name did not figure in the list of pension optees stated to have been prepared in 1992. In view of this, the Court held that Raj Singh was not entitled for getting pension. The Hon'ble High Court granted the relief in **B R Khokha** (supra) based on the judgment in **Raj Singh**.

8. In **Rati Bhan** (supra), the Hon'ble High Court has noted the fact that the petitioner therein had not opted for the Pension Scheme. From the judgment of the Tribunal in O.A. No.3787/2010 dated 26.07.2011 *titled Sh. Rati Bhan v. Delhi Transport Corporation*, the Court noted as under:-

"The Hon'ble CAT vide judgment dated 4.6.2010 passed the following directions:

"Reference of pension as per rules option exercised on 28-10-2002 and press note of 2003."

The case has been admitted in detail and it had been found that the claim of pension by the applicant is not justified on the following grounds.

(i) It has been admitted in the writ petition filed in the Hon'ble Delhi High Court that the ex-employee originally not opted for pension Scheme dated 27-11-1992. Therefore, the employer's share of provident fund, gratuity etc. were released to and withdrawn by the ex. Employee. Thus, the ex. Employee has neither any right nor he has claimed any which back to the Pension Scheme of 27-11-1992.

(ii) In so far office order dated 28-10-2002 and note of September, 2003 are concerned, the option exercised were provisional and were in the nature of "intimation of Intents" and did not involve commitment in any manner. The office order dated 28-10-2002 itself stated the provisional nature of the scheme and that the management was to examine the options and to take a final decision in this regard. It provided that:-

"After receiving the list employees exercising their option in favour of DTC Pension Scheme, the matter would be examined. The decision of the management shall be final."

(iii) To the same effect was the language used in press note 2003. It also stated that the offers received from ex. Employees would be examined and the management would take final decision, which would be binding.

(iv) The management in an application filed in C.W.48/2001 DTC Workers' Union Vs. informed the Delhi High Court to record its inability to introduce the intended pension scheme as per office order dated 28-10-2002.

(v) In so far as press note of 2003 is concerned, it was also in the nature of intendment and nothing more. The Hon'ble Delhi High

Court in a batch of writ petitions viz. CW.132/11/04, Shyam Lal and other writ petitions Vs. DTC vide order dated 27-2-2007 upheld the contention of the management that Press Note of 2003 was only intendment.

(vi) In addition to the above, the Corporation had in the year 2005 come to decision that it lacked resources to implement any pension scheme which might be formulated pursuant to its offer dated 28-10-2002 and Press Note of 2003."

The Hon'ble High Court adjudicated the matter and dismissed the said Writ Petition in the following terms:

"15. In the circumstances, the learned counsel for the petitioner has failed to show any illegality, irregularity or any such perversity in the order of the respondent dated 17th September, 2010 and the order of the Tribunal dated 26th July, 2011 dismissing the original application of the petitioner which will entitle the petitioner for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioner has failed to establish his right to get the pension under the scheme of pension dated 27th November, 1992 and consequently, the petitioner is not entitled for pension under the same scheme. The order of the Tribunal dismissing the original application of the petitioner, in the facts and circumstances cannot be faulted on any of the grounds raised by the petitioner in the writ petition."

9. In **Madhu Bhushan Anand** (supra), the Hon'ble High Court had noted that an employee can either receive pension or get the benefits of CPF, and after having received the benefits under the CPF Scheme, the employee's claim for getting pension or purportedly switching over to Pension Scheme cannot be considered.

10. The records clearly indicate that the applicant did not opt for the 1992 Pension Scheme (Annexure A-1). Even after his opting for the pension in pursuance of office order dated 28.10.2002, the applicant continued to remained covered under the EPF Scheme and he never protested. Such

coverage was indicated in his monthly salary slip. Not only that, after his retirement, he received the employer's contribution towards ECPF and all other retiral benefits, including gratuity. Taking these facts into account, I am of the view that the judgments of Hon'ble High Court in **Shyam Lal Goel, Rati Bhan** and **Madhu Bhushan Anand** (supra) aptly apply to the case of applicant and not the other two judgments of Hon'ble High Court relied upon by him.

11. In the conspectus of the discussions, I do not find any merit in this O.A. It is accordingly dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

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