

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

OA-1547/2016

Reserved on : 21.05.2019.

Pronounced on : 28.05.2019.

Hon'ble Mr. R.N. Singh, Member (A)

1. Smt. Munni Devi, 69 years
W/o late Sh. Mahavir Prasad Gupta,
Conductor No. 20534, BBM-II,
R/o 1192/2, Master Colony,
Gali No. 5, Braham Puri,
Meerut (UP).

2. Sh. Amit Gupta,
S/o late Sh. Sh. Mahavir Prasad Gupta,
Conductor No. 20534, BBM-II,
R/o 1192/2, Master Colony,
Gali No. 5, Braham Puri,
Meerut (UP).

.... Applicants

(through Sh. Mohd. Parvez Debas, Advocate)

Versus

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

.... Respondent

(through Sh. Anurag Sharma for Ms. Ruchira Gupta and Sh. Sandeep Kumar, Advocates)

O R D E R

Heard learned counsel for the parties.

2. The applicant in the present Original Application has challenged the order dated 19.01.2010 (Annexure A-I) whereby the

respondent has not released the pension to the applicant under the DTC Pension Scheme after his retirement on attaining the age of superannuation on 30.06.2010 inspite of the fact that the applicant had exercised his option for release of the pension and pensionary benefits under the DTC Pension Scheme in pursuance to the Office Order dated 28.10.2002 (Annexure-A2) issued by the respondent. In the present O.A., the applicant is also aggrieved by the order dated 18.06.2015 (Annexure A-3) whereby the respondent has informed him that his request for grant of benefit of pension under the aforesaid Scheme has not been acceded to by the competent authority, however, the Government of NCT of Delhi had constituted a Committee to consider the demands of the workers including pension to all and after several meetings the Committee submitted its draft report to the Govt. of NCT of Delhi for approval and further action will be taken in the matter after receipt of the approval of the report of the Committee/decision of the Government is received.

3. In the aforesaid background, the applicant has prayed for 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.”

4. In response to the notice issued by this Tribunal, the respondent has filed counter affidavit and subsequently the applicant has filed rejoinder.

5. During the pendency of the O.A., the applicant expired on 21.09.2018 and, therefore, the legal heirs of the original applicant approached this Tribunal by filing MA-5323/2018 praying for substitution of their names and to claim the relief sought for by the applicant. The said M.A. was allowed by this Tribunal vide order dated 15.01.2019 and thus legal heirs of the original applicant have come on record.

6. The necessary facts to be considered for adjudication of the issue involved in the instant O.A. are that the applicant was appointed as Retainer Crew Conductor under the respondent on 01.04.1979 and he was brought on to monthly rates of pay for the post of Conductor on 01.10.1979. It is further stated that the respondent DTC introduced a Pension Scheme vide Order No. 16 dated 27.11.1992 (Annexure A-6) and invited option for Pension Scheme with retrospective effect i.e. w.e.f. 03.08.1981. The applicant though did not opt for the Pension Scheme in terms of the Scheme dated 27.11.1992, however, the same Scheme was modified vide Notification dated 31.10.1995 (Annexure A-12). It is further added that the respondent issued a fresh Order dated 28.10.2002 (Annexure

A-7) inviting fresh option for the Pension Scheme from the existing employees. It is claimed on behalf of the applicant that in pursuance to such order dated 28.10.2002, the applicant opted for the benefits under the DTC Pension Scheme i.e. for grant of pension to him along with commutation amount of pension. However, the same has not been acceded to by the respondent illegally and arbitrarily vide order dated 18.06.2015 (Annexure A-3).

7. The learned counsel for the applicant relied upon a Co-ordinate Bench judgment dated 12.09.2018 of this Tribunal in **OA-1276/2015** (Rajinder Kumar Modi Vs. The Chairman-cum-Managing Director), DTC wherein this Tribunal has considered the Pension Scheme dated 27.11.1992 and further modifications therein including dated 31.10.1995 and the order dated 28.10.2002 and also the various orders/judgments passed by this Tribunal as well as by the Hon'ble High Court of Delhi. Paras-21 and 22 of the said judgment reads as under:-

"21. In my view, the case of the applicant in OA is squarely covered by the order of the Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra) wherein the petitioner was similarly placed, as the applicant in OA. 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, in terms of 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, I adopt the same arguments, for sake of brevity and to avoid repetition.

22. 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. Before this, the applicant must refund the amount under CPF Scheme to the respondents in terms of the aforementioned office order. I am however not inclined to grant any interest on the arrears as claimed by the applicant. The respondents are granted three months time from the date of receipt of this order for implementation of directions contained in this order. OA is allowed. No costs."

He has also relied upon another judgment of a Co-ordinate Bench of this Tribunal dated 12.04.2019 in **OA-2042/2016** (Ram Chander Vs. DTC & Ors.). In the case of **Ram Chander** (supra), the Tribunal had relied upon the judgment of Hon'ble High Court of Delhi in the case of **B.R. Khokha Vs. DTC** [WP(C)-6630/2016] dated 14.09.2016 and also the judgment of this Tribunal in the case of **Rajinder Kumar Modi** (supra), paras-7 & 8 of the same read as under:-

"7. The applicant has retired from service and has been paid his retiral dues including the lump sum amount towards Contributory Provident Fund. The applicant has also prayed for interim order seeking directions to the respondents to release the provisional pension as the management share of Provident Fund has been retained by the Corporation for the

purpose of pension. He has reiterated that he is entitled for pension as he has opted for pension in pursuance to the Circular dated 28.10.2002. The learned counsel of the respondents has argued that all retiral benefits i.e. Gratuity, Contributory Provident Fund and employee's share etc. have already been released to the applicant as per procedure laid down. As the applicant had not opted for pension in reference to the Circular dated 28.10.2002, he is not entitled for pension. It is evident that the applicant did not opt for the pension after the Circular dated 28.10.2002 and has requested the respondents to consider him under Pension Scheme after his retirement vide his letter dated 12.05.2016. Cases of similarly placed employees had been decided earlier by the Tribunal and also by the Hon'ble High Court of Delhi. The respondents have cited the Tribunal's order dated 21.09.2015 in **OA-4365/2014** (Sh. Dayanand Vs. DTC) wherein the following order was passed:-

“11. In the present case, it has been found that the applicant was a deemed optee for the DTC Pension Scheme, but he voluntarily opted out of the DTC Pension Scheme in the year 1994. On his having voluntarily opted out of the DTC Pension Scheme in the year 1994, the respondent treated the applicant as a member of the CPF Scheme till the date of his retirement and paid him both the employer's and employee's contributions to CPF as well as other statutory dues as admissible to employees not covered by the DTC Pension Scheme. Therefore, the decision of the Tribunal in **Raj Singh v. Delhi Transport Corporation** (supra) is of no help to the case of the applicant in the present case.”

In this case, the Tribunal held that the employee is not entitled to the relief claimed by him. The facts in this O.A. are, however, different from the facts of present O.A.

7.1 The applicant in his arguments cited the judgment of Hon'ble High Court of Delhi in the case of **B.R. Khokha Vs. DTC** [WP(C)-6630/2016] dated 14.09.2016 wherein the following has been held:-

“20. In our view, the respondent being a State functionary has not acted fairly and in accordance with law. The respondent should have either complied with the order passed by the Tribunal in the case of **Raj Singh (supra)** or informed the petitioner as his case is different than that of **Raj Singh (supra)**. Further, the petitioner cannot be blamed for the delay as the decision in **Raj Singh (supra)** was rendered in the month of July, 2014, and immediately thereafter the petitioner filed the OA in the same year.

21. Accordingly, in view of above, Rule is made absolute. Present writ petition is allowed and the impugned orders dated 28.7.2015 and 2.11.2015 passed by the Tribunal are set aside. The respondent shall grant pension to the petitioner in terms of DTC Pension Scheme and the amount shall be released in terms of para 6 of the Office Order dated

27.11.1992. The petitioner shall refund the amount of Rs. 62,749/- under the CPF Scheme to the respondent in terms of para 6 of the Office Order dated 27.11.1992.

22. Writ petition stands disposed of."

8. In this case, the petitioner was not an earlier optee for the Pension Scheme but in response to the Office Order dated 28.10.2002, the petitioner opted for the DTC Pension Scheme. However, the same could not be finalized during the period and the petitioner superannuated and the pension has not been released, he has approached the Court. The Hon'ble Court decided that the petitioner should be treated under Pension Scheme. The Hon'ble Court also directed the petitioner to refund the amount received under the Contributory Provident Fund Scheme to the respondents. Another case that has been relied upon by the applicant is the order passed by this Tribunal in **OA-1276/2015** (Rajinder Kumar Modi Vs. DTC) dated 12.09.2018. The facts of this case are that the applicant opted for DTC Pension Scheme pursuant to Circular dated 28.10.2002 but he did not receive any favourable decision from the respondents. The respondents with a view that the applicant had not opted for pension, did not consider his request. In this case also, the decision of Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra) was relied upon and the following orders were passed:-

"21. In my view, the case of the applicant in OA is squarely covered by the order of the Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra) wherein the petitioner was similarly placed, as the applicant in OA. 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, in terms of 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. 16 Since the issue has already been decided by the Hon'ble High Court of Delhi, I adopt the same arguments, for sake of brevity and to avoid repetition.

22. 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. Before this, the applicant must refund the amount under CPF Scheme to the respondents in terms of the aforementioned office order. I am however not inclined to grant any interest on the arrears as claimed by the applicant. The respondents are granted three months time from the date of receipt of this order for implementation of directions contained in this order. OA is allowed. No costs."

This order of Tribunal is also for similarly placed applicant and is, therefore, relevant to the facts of the present O.A."

8. In the counter affidavit, the respondent has disputed and denied the claim of the applicant and have justified their action and order in the matter, though have not denied the basic facts. In the counter affidavit, the respondent has taken a preliminary objection that the O.A. is barred by limitation inasmuch as the applicant retired w.e.f. 30.06.2010 vide retirement Memo dated 19.01.2010 wherein it was stated that he is a pension non-optee and pursuant thereto he sought and was granted release of 90% of the Provident Fund vide Memo dated 20.04.2010 and the applicant did not raise a whisper of any objection from 2010 till 2016 when he filed the present O.A. In this background, the respondent claims that the Original Application is liable to be rejected being barred by limitation. Such objection is denied and disputed by the applicant in the rejoinder.

9. I have considered the preliminary objection raised by the respondent and find that the Pension Scheme dated 27.11.1992 was further modified in the year 1995 and a fresh Circular dated 28.10.2002 was issued by the respondent seeking fresh option from the existing employees of the respondent for opting the DTC Pension Scheme. Besides, the applicant is stated to have requested the respondent vide his application dated 08.06.2010 (Annexure A-5) not to release his management share of Provident Fund. Moreover, from the Communication dated 18.06.2015 (Annexure A-3) itself, it is evident that still a report regarding demands of the workers including pension is pending for approval of the Competent Authority. Moreover, from the pleadings, it is evident that the applicant has been pursuing his matter continuously since 2010. Besides, it is evident from the order dated 18.06.2015 of the respondent under reference that the claim of the applicant has been rejected only in the year 2015. Moreover, in similar circumstances, the Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra) has found the claim as not barred by delay. Accordingly, the objection of the respondent to the effect that the O.A. is barred by limitation is rejected.

10. On merits, the respondent through counter affidavit as well as through oral submissions submit that in pursuance to the Pension Scheme dated 27.11.1992 the applicant had not opted for the

Pension Scheme and, therefore, he was shown to be a pension non optee in the order dated 19.01.2010 about his retirement and the Circular dated 28.10.2002 inviting the fresh options of the DTC employees for the Pension Scheme is only provisional one and was not implemented. The learned counsel for the respondent has further relied upon the judgment of Hon'ble High Court of Delhi in **WP(C)-7477/2011** (Rati Bhan Vs. DTC), reported in 2011 SCC Online Del 4394 and he invited my attention to paras-4 to 6 of the same and submits that in view of such judgment of the Hon'ble High Court of Delhi, the claim of the applicant is devoid of any merit. He further relied upon a Co-ordinate Bench judgment dated 06.07.2018 of this Tribunal in **OA-739/2016** (Ranvir Singh Chhikara Vs. DTC & Ors.) wherein this Tribunal has dismissed the claim of the applicant therein in the O.A. by relying upon the judgment of Hon'ble High Court of Delhi in the case of **Rati Bhan** (supra).

11. I have perused the pleadings on record and have also considered the contentions of both the parties. I find that in the case of **Rajinder Kumar Modi** (supra) as well the respondent had raised the similar objection that the O.A. is barred by limitation as well as that the applicant had not opted for the DTC Pension Scheme in terms of Pension Scheme dated 27.11.1992 and also the fact that the Office Order/Circular dated 28.10.2002 issued by the respondent inviting option again to avail the benefit of the Pension

Scheme has been provisional and the same was never made operational. The respondent had also opposed the Pension Scheme relying upon the judgment of Hon'ble High Court of Delhi in the case of **Rati Bhan** (supra). However, after considering the facts in detail and by relying upon the order/judgment dated 14.09.2016 of Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra), this Tribunal has allowed the O.A. with directions. Similar issue has been considered by this Tribunal in the case of **Ram Chander** (supra) as well.

12. So far the judgment of this Tribunal in the case of **Ranvir Singh Chhikara** (supra) is concerned, I am of the view that the same will not help the respondent in view of the fact that therein this Tribunal has not considered the judgment of Hon'ble High Court of Delhi in the case of **B.R. Khokha** (supra) whereas in the case of **Rajinder Kumar Modi** (supra) as well as in the case of **Ram Chander** (supra). The facts were identical to the facts in hand and this Tribunal has considered the judgment of Hon'ble High Court of Delhi in the case of **Rati Bhan** (supra) and also few other judgments on the issue. Accordingly, in view of the aforesaid facts and discussion, I am of the view that the claim of the applicant is covered by the judgment of this Tribunal in the case of **Rajinder Kumar Modi** (supra) as well as **Ram Chander** (supra). Accordingly, the O.A. is partly allowed with following directions to the respondent:-

(i) To treat the applicant under the DTC Pension Scheme and grant the consequential benefits by passing order for grant of pension in favour of the applicant from the date of his retirement and subsequently to consider family pension in accordance with the relevant Rules and Scheme and to pay the arrears thereof within three months from the date of receipt of a certified copy of this order.

(ii) Before granting the aforesaid benefit, the respondent shall intimate the applicant(s) about the amount to be refunded by them, which the applicant has got under Contributory Fund Scheme and on receipt of such intimation, the applicant shall do the needful as intimated by the respondent within the time as stipulated by the respondent in such intimation.

(iii) However, the applicant shall not be entitled for interest on the arrears, if any, in view of the pension granted by the respondent under the DTC Pension Scheme.

(iv) No costs.

**(R.N. Singh)
Member (J)**

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