(2019) 07 CAT CK 0066

In the Central Administrative Tribunal

Case No : Original Application No. 66 Of 2018

Dayawati APPELLANT

Vs

Delhi Transport Corporation RESPONDENT

Date of Decision : 25-07-2019

Acts Referred:

Citation : (2019) 07 CAT CK 0066

Hon'ble Judges : Aradhana Johri, Member (A)

Bench : Single Bench

Advocate : Dr. N. Gautam, Swati Gautam, Delhi Transport Corporation

Final Decision : Allowed

Judgement

1. The applicant Smt. Dayawati is widow of Shri Mahender Singh Yadav, a deceased employee of Delhi Transport Corporation (DTC). Her husband expired on 07.01.1991 without giving any option for the new pension scheme, which was introduced in DTC vide Office Order No.16 dated 27.11.1992. The applicant gave option for the pension scheme on 20.01.1993 after all unpaid dues i.e. both share of EPF and Gratuity had been released by the respondent organization. She kept on pursuing the matter and on 13.04.2013 gave a representation, which was rejected by the respondent organization vide order No.WPD/ Settlement/14/665 dated 27.03.2014.

2. This OA has been filed seeking the relief of quashing orders dated 27.03.2014 (Annexure A-3) and 27.05.2014 [Annexure A-1 (Colly.)] issued by Depot Manager conveying decision of the competent authority rejecting the claim for grant of family pension to the applicant, and order dated 02.09.2014 (Annexure A-13) issued by Deputy Manager (Admn.) Pension. She has also sought that respondents be directed for granting pension to the applicant with 18% interest on the pensionary arrears from the date of death of her husband i.e. 07.01.1991, and to continue to pay her future pension and direct the respondent organization to adjust the received amount of EPF and gratuity as per clauses 6, 7 & 8 of the

Office Order dated 27.11.1992.

3. The applicant has contended that she is eligible for grant of family pension vide Office Order dated 27.11.1992, which clearly states that if an employee does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising any option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme Benefits. Clause (2) of the Office Order dated 27.11.1992 states that the date of effect of pension scheme would be 03.08.1981. All the existing employees including those retired w.e.f. 03.08.1981 onwards would have the option to opt for the Pension Scheme or the Employment Contributory Provident Fund within 30 days from the date of issue of this Office Order. Provision has also been made for refund of the amount drawn partly or wholly by an employee as employer share under the EPF Act and gratuity in case of opting for pension scheme.

4. The applicant has contended that she was widowed and had small children and was not educated, therefore there was some delay in filing the Option Form. According to her, a letter was issued on 05.09.2014 [Annexure A-2 (Colly)] by which her deceased husband's name was listed as one of the employees covered under the DTC Pension Scheme. She has also filed a copy of Service Sheet which bears the stamp "Opted for Pension" (Annexure A-6). She has stated that the respondents were directed by the Public Grievance Commission on 24.07.2014 to look into the pleas taken by the complainant (applicant). They were also directed in light of the decision of the Hon'ble High Court of Delhi in a similar case of Krishna Rani Chopra [WP(C) No.5164/2000] to find out whether the complainant's case is of similar nature and, if so, action for payment of family pension may be taken by them.

5. The applicant has also cited the decision in the case of S.K. Mastan Bee vs. The General Manager, South Central Railway & Anr. [Appeal (Civil) No.8089 of 2002] wherein the Hon'ble Apex Court upheld that the family pension should be sanctioned despite delay in applying and also that family pension would be payable to the applicant according to the rules with effect from the date of death of appellant's husband.

6. These are the grounds taken by the applicant to buttress her claim for grant of family pension.

7. The respondents have denied the claim of the applicant. According to them, she had applied for grant of family pension six years after both share of EPF and gratuity had been released to the employee in 1991 itself. Therefore, they have contended that the applicant's claim for family pension has been rejected.

8. Heard Dr. N. Gautam, learned counsel for the applicant and Sh. Rohit Sehrawat, learned counsel on behalf of the respondents.

9. It is an admitted fact that the applicant's husband expired on 07.01.1991 without exercising any option for pension. The applicant gave her option for

pension scheme on 20.01.1993. Clause (9) of the Office Order dated 27.11.1992 becomes very relevant, which specifically reads as follows:-

"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."

It is clear from reading of this clause that if no option is exercised then the employee shall be deemed to have opted for pension scheme benefits. Further, the applicant applied on 20.01.1993 for the pension scheme, albeit with some delay. This was clearly acknowledged vide the DTC Pension Cell letter dated 05.09.1994 wherein the case of the applicant's husband was referred to as one of the cases covered under the DTC Pension Scheme as well as the Service Sheet that bears the stamp of "Opted for Pension". This matter is squarely covered by the decision of the Hon'ble Supreme Court in the case of S.K. Mastan Bee (supra).

11. Circumstances of the two cases, referred to above, are similar wherein husbands of the applicants died without exercising any option for family pension and the widows/applicants themselves applied for the pension scheme though with some delay. The Hon'ble Apex Court in case of S.K. Mastan Bee (supra) upheld that the appellant had a legal right to receive family pension and further the pension was payable to her from the date of death of her husband.

12. In light of the above, the impugned orders dated 27.03.2014, 27.05.2014 and 02.09.2014 are quashed. The respondents are directed to grant family pension to the applicant from the date of death of her husband i.e. 07.01.1991 and to pay her future pension as per rules. The respondents would also adjust the dues already paid as per clauses 6, 7 & 8 of the Office Order dated 27.11.1992.

13. With the above directions, the instant OA is allowed. There shall be no order as to costs.

