

---

**(2018) 11 CAT CK 0047**

**In the Central Administrative Tribunal**

**Case No : Original Application No. 3783 Of 2013**

Kaushalya Devi

APPELLANT

Vs

Delhi Transport Corporation Through And Ors

RESPONDENT

---

**Date of Decision : 30-11-2018**

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16, 21

**Citation : (2018) 11 CAT CK 0047**

**Hon'ble Judges : Praveen Mahajan, Member (A)**

**Bench : Single Bench**

**Advocate : U. Srivastava, Karunesh Tandon**

**Final Decision : Dismissed**

---

## **Judgement**

1. Through the medium of this OA the applicant has claimed the following relief:

"(a) Directing the respondents to place the relevant records pertaining to the present OA before the Hon'ble Tribunal for the proper adjudication in the matter.

(b) Declaring the actions of the respondents ignoring the case of the applicant for extending the Pensionary benefit to the applicant in terms of vide their office order 16. Dt.27.11.92 in such a manner is an illegal, unjust arbitrary, malafide, unconstitutional, against the principles of natural justice, violative of articles 14, 16 & 21 of the Constitution of India and against the mandatory provisions of law.

(c) Directing the respondents to release the family pension to the applicant in terms of pension scheme introduced in their department vide its office order 16 dt.27.11.02 with all consequential benefits namely arrears thereof with interest, etc. admissible to the applicant in accordance with the relevant rules and instructions on the subject."

3. Briefly stated the facts of the case are that the husband of the applicant was working as Assistant Traffic Inspector in Delhi Transport Corporation (DTC). He died in harness 17.02.1990 while on duty after rendering 28 years of service.

4. The applicant states that after the death of her husband she had applied for appointment on compassionate grounds. She was asked to complete certain formalities vide order dated 2.5.1990. Though she completed the necessary formalities but neither the son of the applicant was given an appointment nor was she granted any pensionary benefits. Subsequently, the pension scheme in DTC was introduced by respondents' office Order No.16 dated 27.11.1992. The applicant came to know regarding introduction of the pension scheme through colleagues of her late husband in the year 1997 and on their insistence, she submitted a representation to the respondents requesting for family pension. No response was received from the respondents despite repeated reminders. The applicant has furnished a copy of her representation dated 26.12.2008 in which she has expressed her demand for grant of family pension as per pension scheme of 27.11.1992. In the aforesaid representation she has mentioned that her husband had completed his qualifying service for the pensionary benefits and was entitled for the aforesaid pension. However, since he expired two years prior to the date of issue of said circular he could not apply for the same.

5. Explaining the delay factor, the applicant avers that she had filed her case in the High Court through a counsel. However, he did not pursue her case properly and misled her. This resulted in delay for no fault of hers. The applicant has further mentioned that the said pension scheme is applicable to the employees who retired on or after 03.08.1981, hence she is also entitled for the pension scheme after refunding the CPF amount.

6. In support, reliance has been placed on the case of S.K. Mastan Bee vs. General Manager, South Central Railway and Another (2003) 1 SCC 184 in which it has been held that :

" Inasmuch it was an obligation of railway to have computed family pension and offered the same to the widow of its employees as soon as it became due to her and also in view of the fact that her husband was only a gangman in the railways who might have not left behind sufficient sources for the appellant to raise her rights and also in view of the fact that the appellant is an illiterate, the single judge was justified in granting the relief to the appellant from the date from which it became due to her, i.e. the date of the death of her husband."

7. In the counter reply the respondents state that husband of the applicant Sh. Raghubir Singh expired on 17.02.1990 and his name was struck off from the roll of DTC on 27.11.1992. The widow of the deceased employee did not exercise any option in favour of DTC pension, within the stipulated period. Her husband was appointed in DTC w.e.f. 15.03.1962 and was not a member of FPS 1971 which was later converted to EPS 95 w.e.f. 16.01.1995 hence petitioner is not entitled to pensionary benefit under EPS 95.

8.1 It is further stated that cause of action arose to the applicant in 1990 whereas she approached the Tribunal in the year 2013 hence the OA is hit by delay and laches. The pension scheme in DTC was introduced on 27.11.1992

which was widely published in the leading newspapers hence it cannot be believed that the same was not in the knowledge of the applicant.

8.2 The applicant's plea that her counsel misled her, lacks conviction coupled with the fact that if true, then why did she not take any coercive action against her lawyer ? In any case, negligence of the counsel cannot be a ground for grant of condonation of delay. It is contended that the applicant herself has acknowledged the fact that she got to know about introduction of pension scheme in the year 2003 whereas the alleged writ was filed by her as late as in 2009 through the counsel. This clearly show that she remained negligent in pursuing her case for many years. The respondents have relied upon a decision in the case of Esha Bhattarcharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. (Civil Appeal) No.8183-8184 of 2010) wherein it has been held that "the applicant's plea for condonation of delay cannot be accepted when there is gross negligence on the part of the applicant."

9. During the course of hearing, learned counsel for the applicant Shri U.Srivastava reiterated the issues already raised in the OA and submitted that the applicant is entitled for pension in terms of office order No.16 dated 27.11.1992. He argued that the applicant is an illiterate widow who was not aware of her legal rights and got to know about the remedies available to her only through the colleagues of her late husband in the year 2003 when the respondents invited option from the DTC employees through newspaper advertisement. Shri Srivastava emphasised that earlier counsel of the applicant had misled her and it was only on 17.07.2013 that the applicant discovered that though there was a case in the name of Kaushalya, but it was titled as Kaushalya Vs. Delhi Financial Corporation, and was not the case relating to the applicant. He prayed that due to peculiar circumstances of the case, the delay in filing the OA should be condoned.

10. Per contra, learned counsel for the respondents Shri Karunesh Tandon, argued that apart from the delay, even on merit, the case of the applicant is weak. He drew my attention to para 6 of the pension scheme dated 27.11.1992 which stipulates that:-

"6) The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the E.P.F. Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded by the retired employee/ existing employees would be the amount that would have accrued, had they not withdrawn the employer's share."

He argued that the applicant in the OA has not refunded the CPF amount nor did her husband opt for the pension scheme. Since the scheme was introduced after the death of the applicant's husband so in any case, the benefit of the said scheme was not available to the deceased employee. Hence, the provisions of the pension scheme are also not available to the applicant as well.

11. I have gone through the facts of the case and considered the rival submissions.

12. I find that by her own admission, the applicant came to know about the introduction of the pension scheme in the year 2003. She gave her option for DTC pension scheme after the stipulated period of 30 days - being unaware of legalities and repercussions of delay- being an illiterate. Be that as it may but after having made the representation/request for DTC pension scheme, she should have followed it up with the appropriate authorities. For almost a decade, the applicant kept silent. The only explanation for this delay is that she had approached a counsel to seek her claim before the Hon"ble High Court in the year 2009 who (allegedly) misled her and did not follow her case seriously. It is further contended that she only got to know that she was being duped as late as 2013. This contention of the applicant is not supported by any supporting documents, and has too many loopholes to merit credence. The facts of the relied upon citation S.K. Mastan Bee (supra) are different and are not applicable to the case in hand.

13. I am convinced that there has been gross negligence on part of the applicant for pursuing her claim seriously. Initially the applicant had sought compassionate appointment for herself or her son. When the request was not acceded to - the applicant has sought this recourse by putting forward a weak explanation as an attempt to cover the delay. The applicant's case is clearly covered by the decision of Esha Bhattarcharjee v. Managing Committee of Raghunathpur Nafar Academy and Ors. (supra). The OA is thus dismissed on the grounds of delay and laches. No order as to costs.