(2019) 08 CAT CK 0032

In the Central Administrative Tribunal

Case No : Original Application No. 523 Of 2015

Naresh Kumar — APPELLANT

Vs

Chairperson cum Managing Director And Anr — RESPONDENT

Date of Decision : 14-08-2019

Acts Referred:

Citation : (2019) 08 CAT CK 0032

Hon'ble Judges : Mohd. Jamshed, Member (A)

Bench : Single Bench

Advocate : Kitu Bajaj, Chandra Shekhar Goswami, Karunesh Tandon

Final Decision : Dismissed

Judgement

1. The applicant was appointed as Jr. Clerk in DTC on 06.09.1978 and thereafter promoted as Senior Clerk on 11.11.1985. He retired on 31.01.2014. It is stated in the OA that the DTC introduced the Pension Scheme vide Office Order No.16 dated 27.11.1992 and issued detailed guidelines. This Scheme was to be effected with retrospective effect from i.e. 3.8.1981. The relevant paras of the said Pension Scheme are reproduced below :-

"3. All the existing employees including those retired w.e.f.3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees Contributory Provident Fund as at present, within 30 days from the date of issue of this O.O. for the implementation of the Pension Scheme as approved by the Govt. of India.

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."

2. The applicant did not opt for the same. Later, the DTC issued Office Order dated 28.10.2002 seeking fresh option once again from the employees for opting

for DTC Pension Scheme. It is stated by the applicant that he exercised his option in favour of DTC Pension Scheme in terms of order dated 28.10.2002. The applicant contends that despite his option and also orders of the Tribunal and the Hon"ble High Court in earlier OAs and Writ Petitions, the respondents did not include his name for DTC Pension Scheme as per the impugned order dated 28.10.2013. It was also mentioned in the said letter dated 28.10.2013 that "he has not opted for DTC Pension. His nominee is Smt. Bimla (wife) as per record". The applicant superannuated on 31.01.2014.

3. The applicant in response to letter dated 28.10.2013, submitted that he had exercised his option in favour of DTC Pension Scheme dated 28.10.2002 within the stipulated time. However, no such remarks have been made in his retirement memo. He requested that a corrigendum may be issued mentioning that he has opted for DTC Pension Scheme in the year 2002, but there has been no response from the respondents. As the respondents did not consider the applicant for DTC Pension Scheme, he has filed the present OA, seeking following relief(s) :-

"(i) The respondent No.1 may be directed to grant the pension to the applicant under DTC Pension Scheme along with commutation amount of pension from the date of retirement on superannuation along with interest thereon at the same rate as applicable to EPF/GPF.

(ii) The respondent No.2 may be directed to refund the entire contribution towards EPS"95 (including FPS"71) with interest as applicable from time to time to the DTC which has been deposited by the Respondent No.2 inadvertently."

4. The applicant has further submitted that similar subject matter has been dealt with and decided in the OA No.4329/2012 on 17.02.2014 and that the applicant is entitled for Pension, as per Office Order No.16 dated 27.11.1992. The applicant has also relied upon the judgment of Hon"ble High Court of Delhi in Writ Petition (C) 4728/2014 decided on 30th July, 2015. The relevant ruling is as under :-

"10. Thereafter, 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.

11. Pertinently, despite repeatedly being asked whether the respondent had consciously and expressly opted out of the pension scheme in the year 1992 or thereafter, learned counsel for the petitioner has not been able to show that the

respondent had so opted out of the pension scheme. Merely because his name did not figure in the list of pension optees stated to have been prepared in 1992 cannot be a reason to deny the legitimate claim of the respondent.

12. In the light of the aforesaid discussion, there is no merit in the present petition and the same is dismissed."

5. The applicant has also relied upon the recent orders passed by this Tribunal in OA No.1276/2015 on 12.09.2018 and OA No.2042/2016 on 12.04.2019, wherein relief has been granted to similarly placed staff of DTC.

6. The respondents have opposed the OA. In the counter affidavit it is stated that the applicant joined DTC in the year 1978 and retired on 31.01.2014. He did not opt for the Pension Scheme initially but exercised option for DTC Pension pursuant to memo dated 28.10.2002 issued by Pension Department. The respondents have further submitted that order dated 28.10.2002 was only for inviting/exercising option, which was provisional and subject to exemption from RPFC and in case no exemption was received from RPFC, the option would become redundant. It is further stated in the counter reply filed by the respondents that the Central Provident Fund Commissioner rejected the request of the Management for exemption vide its letter dated 27.04.2007 communicated by the Regional Provident Fund Commissioner vide letter dated 02.08.2007.

7. Learned counsel of the applicant stated that the applicant has since expired and has been replaced by his wife as the applicant. The learned counsel also argued that the orders passed by this Tribunal and also by the Hon"ble High Court, in regard to the various similarly placed DTC employees have been relied upon and through these relief(s) has been granted in terms of provided Pension Scheme. This being a covered case, the applicant also deserves to be granted DTC pension. Since the original applicant passed away, the pensionary benefits in terms of Pension Rules should be allowed to his wife, who has replaced him in the Original Application.

8. The learned counsel for the respondents reiterated that the applicant had not given option for the Pension Scheme initally. It is only later and in response to the office order dated 28.10.2002 calling for fresh options that the applicant opted for Pension Scheme. He has however been receiving and contributing to CPF scheme all this time and never mentioned this aspect. He is therefore not entitled to be considered under the Pension Scheme. It is also stated that a lump sum amount has also paid to him at the time of his retirement. Respondent no.2 also filed a counter stating at length various developments that have taken place and stated that since the applicant is a member of EPS Pension Scheme he is entitled for benefits from respondent no.1 and, therefore, respondent no.2 do not have much role in this matter.

9. Heard the arguments of learned counsel for the applicant and the learned counsel for the respondents.

10. It is a fact that the applicant in this case did not opt for the Pension Scheme introduced by DTC vide office order No.16 dated 27.11.1992. Subsequently, as stated by the applicant, he opted for Pension Scheme under the DTC, in response to the Office Order dated 28.10.2002. This has not been denied by the respondents. The said Office Order is reproduced below :-

"Delhi Transport Corporation Govt. of N.C.T. of Delhi I.P.Estate:

New Delhi No.Pen.Cell/Option/2002/440 Dated 28.10.2002

OFFICE ORDER

In compliance of the orders conveyed by Sh. Abhijit Sarkar, Secretary to Minister (Transport), Tourism and Power, Govt. of N.C.T. of Delhi vide letter No.PA/MOTTP/2002/11117 Dated 4.10.2002, it has been decided that the option from all the existing employees including those who are covered under the RPFC Scheme may obtain in the following conditions :-

i) All the existing employees who are not covered under the existing DTC Pension Scheme may exercise their option in writing in case desire to opt DTC Pension Scheme.

ii) The employees who have drawn the employer"s share under the EPF Act, partly or wholly shall have to refund the same with interest in the event of their opting for the DTC Pension Scheme. The total amount to be refunded by the employees would be the amount that would have accrued, had they not withdrawn the employer"s Share.

iii) Inviting/exercising option shall be provisional and subject to exemption from the RPFC and refund of the amount held with them. In case, no exemption is received from RPFC, this option shall become redundant, and the status of an employee shall be the same as is before the issue of these orders.

iv) The Unit Officers/Depot Managers, after receiving the Options, shall send the list of existing employees who exercised their option in favour of DTC Pension Scheme to the Pension Cell within a week of closing the date of option.

v) All employees who are roll of the Corporation on the date of issue of this Office Order shall be eligible to opt DTC Pension Scheme and to exercise their option within 30 days from the date of issue of this Circular.

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

Sd/-

(Ramesh Chander)

Addl. Chief Accounts Officer"

11. The Tribunal and the Hon"ble High Court have dealt with certain cases of similar nature. Two cases, namely, WP (C) No.4728/2014 (DTC Vs. Raj Singh) passed and WP (C) No.6630/2016 (Shri B.R. Khokha Vs. Delhi Transport Corporation) passed by Hon"ble High Court of Delhi are relevant. These cases have also been quoted in the OA No.1276/2015. The relevant portions are 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."

12. The Tribunal vide order dated 12.04.2019 passed in OA No.2042/2016 has also granted relief(s) to similarly placed employees of DTC. It is evident that although the applicant did not opt for the Pension Scheme vide Office Order

No.16 dated 27.11.1992, he did exercise his option in terms of Office Order dated 28.10.2002. Further, before his retirement on 28.10.2013, he made a representation to the respondents that he should be granted Pension on his retirement from 31.01.2014 under DTC Pension Scheme. However, no action has been taken by the respondents. No satisfactory answer has also been given in the counter filed by the respondents, as to why, the necessary corrections have not been made in the retirement memo despite the fact that they have accepted that the applicant had opted for DTC Pension Scheme subsequently in the year 2002.

13. In view of the above mentioned, it is evident that the original applicant should have been considered for grant of pension. However, as the original applicant has passed away, and has been replaced in the OA by the legal heir i.e. his widow, it would not be admissible to grant any family pension under the DTC Pension Scheme to the legal heir as the same had been claimed by the original applicant in lieu of EPS. This is not a case where the pension is to be converted into family pension for which the widow of the original applicant could be entitled. The provision of pension, as claimed by the applicant could be considered only if the applicant was alive and had given an undertaking of refunding the entire lump-sum amount paid to him under the EPS. Since no pension was granted to the original applicant and he had also received the entire lump-sum amount, no claim can be made for conversion to a pension scheme by the legal heir i.e. widow of the original applicant. At the same time, whereas the widow has been replaced as the original applicant in the OA, this alone does not have any basis for awarding of family pension for which she is not entitled and at the same time no such undertaking regarding refunding the EPS lump-sum amount received by the original applicant has been made in the OA.

14. In view of the above, I do not find any merit in the OA and the same is accordingly dismissed. There shall be no order as to costs.

