

(2019) 09 CAT CK 0030

In the Central Administrative Tribunal

Case No : Original Application No. 3135 Of 2017

Ram Avtar Vashist

APPELLANT

Vs

Delhi Transport Corporation

RESPONDENT

Date of Decision : 12-09-2019

Acts Referred:

Citation : (2019) 09 CAT CK 0030

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

Bench : Single Bench

Advocate : Ram Kanwar, Divya Jyoti Singh

Final Decision : Allowed

Judgement

1. The applicant Ram Avtar Vashist was appointed as Retainer Crew Conductor in the respondent organization- Delhi Transport Corporation (DTC). After being promoted from time to time, he retired as Office Superintendent on 31.08.2015. The respondent organization-DTC introduced a Pension Scheme for its employees vide letter No.RT- 120/9/21/88-TAG dated 27.11.1992 (hereinafter referred to as 1992 Order) on the same pattern as for Central Government employees. The applicant did not opt for the said Scheme at that point of time. Subsequently vide Order No.Pen.Cell/Option/2002/440 dated 28.10.2002 (hereinafter referred to as 2002 Order), DTC invited fresh options (albeit provisional) at which point of time the applicant exercised his option in favour of DTC Pension Scheme. However, when a release letter dated 06.07.2016 was issued, the applicant accepted the remaining 10% CPF from his own share as well as employer's share of 90%. His entire dues were released accordingly, which included both the employee's share as well as the employer's share. These facts are admitted by both the parties.

2. The applicant has filed this OA praying that pension be paid to him under the DTC Pension Scheme w.e.f. 01.09.2015 along with arrears of pension and interest thereon.

3. The contention of the applicant is that since he did not exercise any option under 1992 Order, therefore, under the deeming clause he is covered under the Pension Scheme. Further, since he exercised his option under 2002 Order, the same should be accepted. He has claimed that he took final settlement of dues of his contribution as well as employer's contribution under duress.

4. The respondents have controverted the claim of the applicant and have stated that since he did not exercise any option for the Pension Scheme under 1992 Order, he cannot be given the benefit of the Pension Scheme. Further, office order dated 28.10.2002 stated that exercising of option shall be provisional and subject to exemption from RPFC and in case no exemption is received from RPFC, the option shall become redundant and the status of an employee shall be the same as was before the issue of these orders. They have further stated that these options were not accepted by the RPFC, therefore, being provisional, no rights can accrue to the applicant.

5. Heard Sh.Ram Kanwar, learned counsel for the applicant and Sh. Divya Jyoti Singh, learned counsel for the respondents.

6. There are two issues which need to be decided. The first is whether the applicant can derive any benefit from para 9 of the 1992 Order. The second is regarding the right that may accrue to the applicant as per 2002 Order.

7. On the first point, the applicant has placed reliance on para 9 of 1992 Order by which the Pension Scheme was introduced in DTC. This para 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 quit 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."

8. The applicant has claimed that since he did not exercise any option under 1992 Order, he is covered by this deeming clause and shall be deemed to have opted for Pension Scheme Benefits. He has cited several rulings including the decision of Hon'ble High Court of Delhi in the case of B.R. Khokha vs. Delhi Transport Corporation [WP (C) No.6630/2016 decided on 14th September, 2016]. The facts of the two cases are almost similar to the extent that in both these cases the applicants did not give any option under 1992 Order, but subsequently gave option under 2002 Order. In the said ruling, the Hon'ble Court held that due to para 9, that is the deeming clause, all such employees who did not give their option within the prescribed period of 30 days were to be covered under the Pension Scheme. The Hon'ble High Court also held that the fact that the petitioner had accepted CPF at the time of his retirement also could not held against him. The applicant has also informed that SLP No.001986/2017 filed in Hon'ble Apex Court against the order of the Hon'ble High Court in B.R. Khokha's case has also been dismissed.

9. The respondents have cited the decision of the Hon'ble High Court of Delhi in

the case of Delhi Transport Corporation vs. Shri Jagdish Chandra & Ors. [WP(C) No.8173/2016 decided on 21.03.2017] wherein it has been held that any option given as per 2002 Order, the same was provisional and the respondent-DTC was not under any obligation to accept the same. The Hon'ble High Court in this matter dismissed the case of the applicants - Jagdish Chandra and others.

10. It has been pointed out that the case of Jagdish Chandra and others is different to the matter in this OA since they had opted to remain out of the Pension Scheme of 1992 as they wanted to remain covered and governed by the CPF Scheme. This option to remain covered under the CPF Scheme was exercised in writing. Therefore, para 9 of 1992 Order did not apply to them. They applied under the 2002 Order but since the Hon'ble High Court held that Pension Order of 2002 was only provisional, the claims of the petitioners were not allowed.

11. What emerges from perusal of these rulings is that where no specific option had been exercised as was in the present OA, para no.9 of the Pension Scheme of 1992 applies and, therefore, the employees shall be deemed to have opted for the Pension Scheme Benefit. This is the case in the present OA.

12. On the second point, whether the employees can claim rights simply on the basis of an option given as per 2002 Order, the Hon'ble High Court in Shri Jagdish Chandra's case (supra) has clearly stated that the option asked for are provisional and no rights could accrue on this basis. In this ruling, the Hon'ble High Court placed reliance on the decision of Rati Bhan vs. Delhi Transport Corporation [WP(C) No.7477/2011 decided on 14.10.2011].

13. It has been contended by the respondents that the applicant gave tacit approval by accepting the payment of his own share as well as the share of employer under the CPF Scheme. But this situation is taken care in 1992 Order, which provides for recovery of certain amounts that have already been paid, which were not due under the Pension Scheme adopted by the 1992 Order.

14. In the conspectus of things and in light of the decision of Hon'ble High Court in B. R. Khokha's case (supra), I find that the applicant is entitled to the Pension Scheme Benefits and the respondents are directed to grant these benefits under the DTC Pension Scheme of 1992 from the date following his superannuation. Before this, the applicant must refund the amount received by him under the CPF Scheme to the respondents on the terms given in the aforementioned office order. However, I am 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 certified copy of this order for implementation of directions contained in this order. The OA is accordingly allowed. There shall be no order as to costs.