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**(2018) 03 CAT CK 0018**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 127 Of 2016, Miscellaneous Application No. 460 Of 2017

Ram Niwas

APPELLANT

Vs

Delhi Transport Corporation And Ors

RESPONDENT

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**Date of Decision :** 21-03-2018

**Acts Referred:**

Administrative Tribunals Act, 1985 — Section 19

**Citation :** (2018) 03 CAT CK 0018

**Hon'ble Judges :** Jasmine Ahmed, J

**Bench :** Single Bench

**Advocate :** S.N. Sharma, Ruchira Gupta, Keshav Mohan

**Final Decision :** Dismissed

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**Judgement**

Jasmine Ahmed, J

1. In this OA filed under Section 19 of the Administrative Tribunals Act 1985, the applicant has prayed for the following reliefs:

"i) The respondent no.1 may be directed to treat the applicant as DTC Pension opted and to ensure that the applicant shall receive pension from the next date of retirement i.e. w.e.f. 1.9.2016.

ii) The respondent no.1 may be directed to grant the commutation value of pension on the last date of retirement.

iii) The respondent no.1 may be directed to produce the service book and restore the entry "OPTED FOR DTC PENSION SCHEME" and also make the amendment in records that the applicant opted for DTC Pension Scheme as per Office Order No.16 dated 27.11.1992.

iv) The respondent no.1 may be directed to get the management share of provident fund of the applicant refunded back from RPFC and transfer the same to the Pension Trust.

v) The respondent No.2 - RPFC may be directed to refund the entire management share of provident fund with interest, which has been accepted inadvertently as contribution towards EPS"95.

vi) The cost of the proceedings may also be awarded in favour of the applicant."

2. The short issue involved in this case is whether the applicant who joined Delhi Transport Corporation (DTC) as a Retainer Crew Driver (RCD) on 10.09.1998 and was brought on monthly rates of pay for the post of Driver with effect from 1.06.2004, is entitled for the benefit of DTC Pension Scheme or not.

3. The brief factual matrix of the case is that the applicant joined DTC-respondent Corporation on 10.09.1998 as a RCD and was brought on monthly rates of pay for the post of Driver with effect from 1.06.2004. The applicant remained with DTC all through his service career and ultimately retired on 31.08.2016 on attaining the age of superannuation. After having retired, the applicant is demanding pension from the respondent department. It is the contention of the learned counsel for the applicant that the DTC introduced Pension Scheme vide Office Order No.16 dated 27.11.1992 with the condition that it would be compulsory to all the employees who joined the Corporation after 23.11.1992. On this basis, the applicant claims that he is covered under the DTC Pension Scheme as he joined the respondent corporation on 10.09.1998, which is much after 23.11.1992.

4. To substantiate his contention that the applicant is covered under the DTC Pension Scheme, the learned counsel for the applicant drew my attention to page no.39 of the paper book which is pay slip of the applicant for the month of June 2008. Through this pay slip, he has tried to show that the nomenclature of 'S' in the pay slip means that the employee has opted for DTC Pension Scheme. Attention was further drawn to page no.21 of the paper book which is pay slip for the month of July 2008 to show that Rs.541/- has been deducted towards Employees Pension Scheme (EPS), stating that the respondents suddenly changed the nomenclature to 'E' meaning thereby that he was covered under EPS, 1995. Similarly, in the pay slip for the month of December, 2009 (page 40 of the paper book) also, the respondents allegedly showed the nomenclature against the applicant as 'E', to mean that he was covered under EPS, 1995. When it came to his notice that the nomenclature of the post in the pay slip has been shown as 'E' in place of 'S', the applicant gave a representation dated 19.08.2008 for making necessary correction in his pay slips and to ensure that no deduction towards EPS, 1995 is made and further the amount deducted i.e. Rs.541/- is refunded and transferred to his management share of Provident Fund.

5. The main thrust of the argument of the learned counsel for the applicant is that as per Pension Scheme introduced vide Office Order No.16 dated 27.11.1992, the applicant is automatically covered under the said Scheme as he joined the respondent-corporation much before the cut-off date i.e. 23.11.1992. He also contended that the name of the applicant appeared in the computerised

list of DTC employees who opted for the Pension Scheme and in this regard, he vehemently argued that the pay slip of the applicant for the month of June, 2008 shows the nomenclature of the post held by the applicant as 'S', meaning thereby he had opted for Pension Scheme. The learned counsel for the applicant stated that as per DTC Pension Scheme of 27.11.1992, the applicant is undisputedly covered under the said Scheme and necessary entry for having opted for DTC Pension Scheme has been made on the first page of the Service Book. It is further contended by the learned counsel for the applicant that the Pension Scheme in DTC is self-sustained and the Government is not providing any budgetary support, which is clear from the letter dated 31.10.1995.

6. Placing reliance on the judgment of the Hon"ble Apex Court in Deokinandan Prasad Vs. State of Bihar, (1971) 2 SCC 330, the learned counsel for the applicant stated that pension is a right of an employee by dint of his long service rendered and the payment of pension does not depend upon the discretion of the government but is governed under the rules. The employee coming within those rules is entitled to claim pension. The applicant herein is covered within the rules made and circulated by the respondents on introduction of Pension Scheme vide office order No.16 dated 27.11.1992. Reliance was also placed on Purnendu Mukhopadhyay and others Vs. V.K. Kapoor and another, (2008) 14 SCC 403, stating that the Hon"ble Apex Court has laid down the ratio that DTC is not permitted to treat similarly situated employees differently and to implement the orders for some employees and refusing to do so for others.

7. Both the respondents have filed their counter affidavit and contested the case.

8. Learned counsel for respondent no.1 stated that it is not a disputed fact that the applicant joined as RCD with effect from 10.09.1998 and brought on monthly rates of pay with effect from 1.06.2004. For employees appointed on or after 1.01.2004, the new Restructured Defined Contributory Pension Scheme which was introduced by the Central Government and considering the changed scenario, the DTC Board vide resolution No.86/2007 considered the matter and held that new Restructured Defined Contributory Pension Scheme was not desirable for the employees of DTC and, therefore, decided that new recruits in DTC who were appointed on or after 1.01.2004 will remain with the RPFC Pension Scheme i.e. EPS, 1995. Learned counsel for the respondent no.1 further stated that the Board had also decided vide Resolution No.55/2008 as follows:

"In view of the details brought out in the agenda note and after detailed deliberations, the Board decided to extend/grant RPFC Pension Scheme i.e. EPS" 95 to newly recruited Drivers and all employees recruited/appointed on or after 1.01.2004 in DTC."

9. It was also stated by the learned counsel for respondent no.1 that as the applicant joined the respondent-corporation on 10.09.1998 on purely temporary basis and was brought on monthly rates of pay with effect from 1.06.2004, accordingly in accordance with the Govt. of India, Ministry of Finance Notification

dated 22.12.2003 and DTC Circular dated 13.05.2008, he was not covered under DTC Pension Scheme and was brought under the Pension Scheme of RPFC i.e. EPS"95.

10. Learned counsel for respondent no.1 vehemently argued that the case of the applicant is barred by limitation as the applicant came to know about the change of nomenclature in his pay slip from `S" to `E" in July, 2008 and if he was aggrieved by this change, he should have approached this Tribunal long back and not in the year 2016. Thus, the case of the applicant is hit by limitation and only on this count, the OA deserves to be dismissed. She also stated that as it was well within the knowledge of the applicant since 2008, it is wrong on his part to state that he is covered under the DTC Pension Scheme and on the basis of this false claim, filing of an OA is nothing but gross abuse of the process of law.

11. Learned counsel for respondent no.1 also stated that the applicant retired with effect from 31.08.2016 and subsequently provident fund and gratuity was released to him. She further stated that change in Pension Scheme is a policy decision and, therefore, the Court may not interfere in it. She contended that the applicant has not challenged the action of respondent no.2 i.e. the Regional Provident Fund Commissioner, Employees Provident Fund Organization and placing reliance on OA No.3955/2011 decided on 28.08.2015, Nand Kishore and others Vs. DTC, stated that the Tribunal laid down the ratio in its judgement as follows:

"10. The learned counsel for the respondents also relied on the judgments of the Hon"ble High Court of Delhi in W.P. (C) No.20037/2005, Vijay Pal & ors. Vs. Delhi Transport Corporation & ors. and W.P. (C) No.4154/2000, Om Prakash Vs. The DTC, which also relate to regularization and formulation of appropriate seniority list of RCC. Both these matters were disposed of with direction to DTC to proceed in accordance with law and existing policy. In view of these judgments, the learned counsel for the respondents argued that since the applicants have come on to the regular establishment of the DTC only in October/November 2008, they would be treated as regular employees from that date alone and not from the date they were appointed as RCC in 1998. For that reason, the Pension Scheme of 1992 will not apply in their cases and they will be governed by the Pension Scheme introduced for the employees appointed on or after 1.01.2004." (emphasis supplied)

12. Reliance was also placed on behalf of respondent no.2 on the judgment of the Tribunal in OA No.414/2016 decided on 30.05.2017, Chattar Pal Vs. DTC, relevant extracts whereof are quoted as under where the issue of DTC Pension Scheme has been discussed in detail and also whether an employee is entitled for pension as per 1972 Rules automatically or not:

"9. Per contra, learned proxy counsel for respondents stated that undoubtedly the applicant was a pension optee. Unfortunately, the pension funds ran into

severe financial crises. Consequently, financial support was sought from GNCTD. Accordingly, a meeting was held under the chairmanship of Transport Minister of GNCTD on 05.06.2015, the minutes of which are at Annexure A-7. The meeting took the following decisions:-

"a) DTC may provide the total number of existing pensioners as on 31.5.2015 specifically indicating the pension optees, non-pension optees and the employees covered under EPS" 95.

b) It was, further, decided that pension payable in each case to the pensioners may be freezed as being paid on 31.5.2015 at the quantum paid as under:

i) Withholding of commutation of pension of the pensioners, retirees on or after Oct., 2013 onwards.

ii) Non release of Dearness Relief to pensioners w.e.f. July, 2014 i.e. DA before July, 2014 will continue.

c) It was decided that existing optees who are yet to be retired after 31.5.2015 may be brought under EPS" 95. The Govt. of NCT of Delhi will recoup the employer"s share of such employees up to 31.5.2015 and, thereafter, DTC would remit their employer"s share to PF trust like as is being done in respect of non-pension optees.

d) Non-pension optee whether existing or retired will not be considered for pension.

e) Total financial implication in respect of existing pensioners i.e. about 12,200 pensioners up to 31.5.2015 may be quantified through actuarial valuation to enable DTC to get funds released on this account from the Government.

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15. Admittedly, the applicant is an optee of the Pension Scheme introduced by the DTC vide Annexure A-2 order dated 27.11.1992. It was a contributory Scheme, to which contributions were made by the employees and employer. It was a self-sustaining Scheme. Unfortunately, the Scheme ran into severe financial crisis and consequently, the DTC had to seek assistance of GNCTD for discharging its pension liabilities towards the retired employees. Some intermittent subvention was provided by GNCTD but that was not adequate. Finally, in two meetings held between DTC and GNCTD under the chairmanship of Transport Minister, GNCTD on 05.06.2015 and 19.02.2016, certain decisions were taken. The gist of these decisions is at paragraph (9) of this order. It is seen from these decisions that due to the financial crunch, the respondents have tried to indulge into some balancing act. While on one side they have decided not to deprive the pensionary benefits to the retired DTC employees but on the other hand have applied some restrictions, so as to manage the financial implications within the available funds. The decisions taken have been implemented in respect of all the retired/retiring employees of DTC. The applicant is a beneficiary

of these decisions and has received the pensionary benefits. The restrictions imposed on the ground of pensionary benefits have been applied to all the retired/retiring employees of DTC. As such, the applicant cannot complain of discrimination."

13. Learned counsel for respondent no.1 thus stated that on the basis of above quoted two judgments, it is pretty clear that the respondent-corporation has acted as per rules and nothing illegal has been caused to the applicant. Accordingly, the claim of the applicant is not sustainable in the eyes of law.

14. Heard the learned counsel for the parties and perused the documents on record.

15. It is not in dispute that the applicant joined as RCD on 10.09.1998 purely on temporary basis and ultimately brought on monthly rates of pay as Driver with effect from 1.06.2004. It is the contention of the learned counsel for the applicant that since the applicant joined DTC in 1998, therefore, the Pension Scheme introduced vide Office Order No.16 dated 27.11.1992 is applicable to him as there was a clause therein that it would be compulsory to all the employees who joined the Corporation after 23.11.1992, the date of sanction of the Scheme.

16. The issue in hand has already been discussed in Nand Kishore (supra). Though the Central Government had introduced a Pension Scheme with the nomenclature Restructured Defined Contribution Pension Scheme for its employees in 2004 but the DTC decided that they would not adopt the Central Government Scheme and extend/grant RPFC Pension Scheme i.e. EPS, 1995 to newly recruited Drivers and employees recruited/appointed on or after 1.01.2004. Here, it is seen that the applicant was brought on monthly rates of pay with effect from 1.06.2004 and, therefore, he cannot be covered under 1992 Pension Scheme. It is well settled law that if a policy is sought to be implemented, it cannot make out a case of discrimination as there is always a cut-off date maintained in such cases and accordingly the employees who are within the cut-off date and beyond the cut-off date cannot be treated equally and cannot complain about discrimination.

17. It is also true that the applicant came to know about the change in nomenclature through his pay slip in the year 2008 itself but he chose to challenge the action of the respondents only in the year 2016 and that also without challenging the policy adopted by the DTC. Thus, the claim of the applicant that since he joined in 1998, he is covered under the Pension Scheme of 1992 does not hold good.

18. Learned counsel for the applicant placed reliance on the minutes of the meeting of the DTC Employees Superannuation Pension Trust held on 28.03.2008, as forwarded to all the members of the Trust and tried to show the discrimination caused to the applicant as in the case of one Shri Nand Ram who was also appointed as RCD with effect from 8.10.1998 and brought on monthly

rates of pay with effect from 1.06.2004, was granted pension under 1992 Pension Scheme. However, the case of Shri Nand Ram is found to be distinguishable as Shri Nand Ram expired on 9.06.2007 and as per Office Order No.16 dated 27.11.1992, he was an optee for Pension Scheme and the decision taken by the respondent-corporation was that his family may be allowed family pension. It is, however, not clear from the documents provided by the applicant whether family pension was actually granted to the family of Shri Nand Ram or not.

19. Here, in this case, the applicant retired with effect from 31.08.2016 and as discussed in *Chattar Pal* (supra) in detail, it was decided by the respondent-corporation as follows:

".....existing optees who are yet to be retired after 31.5.2015 may be brought under EPS" 95. The Govt. of NCT of Delhi will recoup the employer"s share of such employees up to 31.5.2015 and, thereafter, DTC would remit their employer"s share to PF trust like as is being done in respect of non-pension optees."

Accordingly, the applicant who has retired on 31.08.2016, as per the decision taken by the DTC, is not entitled or covered under DTC Pension Scheme of 1992. Thus, the argument of discrimination raised by the applicant does not hold good.

20. Taking into consideration the facts and circumstances of the case and the policy decision taken by the DTC, the claim of the applicant that he is covered under 1992 Pension Scheme does not seem to be justified. Accordingly, the prayer of the applicant cannot be entertained. The OA is, therefore, dismissed.