

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.7477/2011**

% **Date of Decision: 14.10.2011**

Rati Bhan Petitioner

Through Mr.Kedar Nath Tripathy, Advocate.

Versus

Delhi Transport Corporation Respondent

Through Mrs.Avnish Ahlawat, Ms.Urvashi
Malhotra and Ms.Latika Chaudhary,
Advocates.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | YES |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, has challenged the order dated 26th July, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A No.3787/2010 titled as 'Sh.Rati Bhan v. Delhi Transport Corporation', dismissing the original application of the petitioner under Section 19 of the Administrative Tribunals Act, 1985 and thereby declining the relief to quash the order dated 17th September, 2010, wherein it was stipulated that the respondent had come to the decision that it lacked the resources to implement any pension scheme which

could have been formulated pursuant to the option exercised by the petitioner in its offer dated 28th October, 2002 and the Press Note of the year 2003.

2. Before the Tribunal no one had appeared on behalf of the petitioner, however, the Tribunal had not dismissed the original application of the petitioner in default of appearance of the petitioner and his counsel, and instead, it proceeded on the basis of the pleadings available on record in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987. Before this court, the learned counsel for the respondent, Ms.Avnish Ahlawat who appears on advance notice and counsel for the petitioner contend that the writ petition may be heard and disposed of finally in the facts and circumstances of the case on the basis of the copies of the record of the Tribunal filed along with the writ petition.

3. Relevant facts to appreciate the disputes between the parties are that the petitioner was appointed as Assistant Foreman with the respondent on 18th September, 1965 on regular basis and was allotted Pay Token No.24055. The petitioner was promoted from time to time up to the post of Manager (Mechanical).

4. The respondent/DTC had introduced a pension scheme for its employees retiring on or after 3rd August, 1981 by virtue of its office

order No.16 dated 27th November, 1992. The pension scheme introduced by the respondent was on the same pattern as is applicable in case of Central Government employees. The employees of the DTC in order to avail the pension scheme had to exercise option within 30 days from the date of the office order dated 27th November, 1992.

5. However, the petitioner did not opt for the scheme for pension in the year 1992. Thereafter, before the petitioner attained the age of superannuation, i.e., 60 years and he had to retire from the service of the respondent with effect from 31st March, 2003 in accordance with clause 10 of the DRTA (Conditions of Appointment and Service) Regulations, 1952 read with the office order No.PLD-2479 dated 7th March, 1974, a communication reference No.PLD-I/PF/2002/975 dated 17th October, 2002 was issued. The said communication stipulated that the petitioner had not opted for pension and that his nominees as per the record were Sh.Ashok Kumar and Sh.Sanjay.

6. According to the petitioner, the respondent had issued another office order dated 28th October, 2002 inviting option from all the employees of DTC who wanted to opt for DTC Pension. The option was to be exercised within 30 days. The petitioner pleaded that he exercised his option under office order dated 28th October, 2002 on 11th November, 2002.

7. The averment of the petitioner was also that he had not opted for a family pension of RPFC as stipulated in para 3 of office order dated 28th October, 2002. The letter dated 17th October, 2002 was issued prior to 28th October, 2002 when the office order was issued under which he had opted, and prior to the said letter, the petitioner had not exercised his option under the scheme dated 27th November, 1992, which is why in the communication dated 17th October, 2002 it was stated that the petitioner had not opted for the pension scheme.

8. After attaining the age of superannuation and retiring on 31st March, 2003, the petitioner by his letter dated 4th April, 2003 demanded release of his pension and other benefits except EPF as according to him he had opted for the pension scheme dated 27th November, 1992 under the order dated 28th October, 2002 on 11th November, 2002. However, the EPF benefits of the petitioner were released by the respondent Corporation, by letter dated 10th September, 2003 which was, however, returned by the petitioner on the premise that he has opted for pension. In spite of this, the cheque of the petitioner's was again returned by the respondent to the petitioner.

9. Since the respondent had not granted the pension to the petitioner, he filed a writ petition being W.P(C) No.13206-07/2004,

which was later on transferred to the Central Administrative Tribunal and was re-numbered as T.A No.632/2009. The Central Administrative Tribunal by its order dated 4th June, 2010 disposed of T.A No.632/2009 by directing the respondent to consider the claim of the petitioner in terms of the official policy and on account of option exercised by the petitioner on 11th November, 2002. The respondent, thereafter, rejected the claim of the petitioner by the order dated 17th September, 2010 observing that so far as the office order dated 28th October, 2002 and note of September, 2003 are concerned, they were provisional and were in the nature of intimation of intents and did not involve a commitment in any manner. In any case the order dated 28th October, 2002 categorically stipulated that the respondent had to examine the matter after receiving the option from different employees and the decision of the respondent in this regard was final. Even the press note dated September, 2003 stipulated that the final decision would be taken by the respondent and that the decision would be binding on the employees including the petitioner. Reliance was also placed on the writ petition being CWP No.13211 & 15215 of 2004 titled as 'Shyam Lal & Anr. v. DTC' which was disposed of by an order dated 28th February, 2007 wherein the plea of the respondent that the office order dated 28th October, 2002 and note dated September, 2003 were not final and were only intendment was upheld and the decision of the respondent in 2005 that it lacked the resources to implement the pension scheme which could be formulated pursuant to the office order dated 28th October,

2002 and press note of September, 2003 was also upheld and, therefore, the order categorically stated that the petitioner is not entitled for any benefit under the pension scheme.

10. Aggrieved by the rejection of the request of the petitioner to avail the benefits of the pension scheme of 27th November, 1992 pursuant to the option exercised on 11th November, 2002 under the office order dated 28th October, 2002 the petitioner filed an original application being O.A No.3787/2010 contending, inter-alia, that the respondent was estopped from going back on its promise for extending the benefit of pension to the petitioner as he had opted for the pension scheme on 11th November, 2002 under the office order dated 28th October, 2002. The petitioner contended that the pension is not a bounty given by the State but is a very valuable right of the employee and is in the form of deferred payment and denying the pension to the petitioner was against the orders of the Supreme Court and the High Court.

11. The plea of the respondent to grant pension on account of option exercised on 11th November, 2002 under the office order dated 28th October, 2002 and not under the pension scheme dated 27th November, 1992 was contested by the respondent contending, inter-alia, that the petitioner had not exercised the option under the Office Order No.16 dated 27th November, 1992 and had thus opted out of the pension. It was further contended that he is not entitled for deemed option under

Clause 9 of the said scheme as office order dated 13th May, 1996 was issued by the respondent giving details of the employees who had opted for the pension and those who had not opted for the pension and the name of the petitioner was included in the list of those who had not opted for the pension which fact has not been controverted by the petitioner and also not challenged by him. It was further asserted that the pension scheme could not be implemented on account of financial difficulties and the pension was disbursed to those retired employees who had opted for pension with effect from 1st November, 1995. Regarding the office order dated 28th October, 2002 it was contended that it was issued only to assess the financial implication and the said order specifically incorporated that “after receiving the list of employees exercising their option in favour of DTC Pension Scheme, the matter would be examined. The decision of the management shall be final.” Therefore, the office order dated 28th October, 2002 was only an intendment of the respondent to estimate the financial implication and, therefore, the option exercised by the petitioner on 11th November, 2002 does not entitle him for pension under the scheme which was promulgated by the office order dated 27th November, 1992. Reliance was also placed by the respondent on Civil Writ Petition No.48/2001 titled as ‘DTC Workers Union v. DTC’ intimating the Court about its inability to introduce intended pension scheme as per the office order dated 28th October, 2002. The press note dated 23rd September, 2003 was also the subject matter of another writ petition being CWP

No.13211 & 15215 of 2004 titled as 'Shyam Lal Goel & Subey Singh v. DTC' wherein the High Court by its order dated 28th February, 2007 had held that it was a misconception on the part of the employees to claim that they had a vested legal right or that any legal right had accrued in their favour in terms of the notice published pursuant to the office order dated 28th October, 2002 as the office order did not give any commitment on behalf of the respondent to introduce any other pension scheme. In the circumstances it was contended that the petitioner is not entitled for pension under the pension scheme dated 27th November, 1992. The Tribunal after considering the pleas and contentions of the parties and the material on record held that in the case of Shyam Lal (Supra) it had been held that the office order dated 28th October, 2002 and the press note dated 23rd September, 2003 were only about the intension of the respondent to consider the feasibility of introducing another pension scheme. Since the petitioner had not exercised option under the office order dated 27th November, 1992, merely because the petitioner had exercised option under the order dated 28th October, 2002 on 11th November, 2002, no right could accrue to the petitioner to claim pension under the scheme of 27th November, 1992 and the petitioner cannot even invoke clause 9 of the said scheme claiming deemed option since the list of officers who had not opted for the pension had been brought out on 13th May, 1996 and in spite of this the petitioner had not contested the said list in 1996. The Tribunal held in paras 5.1 to 5.3 of the impugned order as under:-

“5.1 There was pressure on the DTC Management to extend the benefit to DTC employees who retired from 03.08.1981 onwards. Therefore, the order dated 28.10.2002 and the Press Notice of 23.09.2003 were issued to examine the feasibility of extending Pension Scheme to such employee. It was only a Notice about the intension but not the final Policy decision of the Corporation. This issue was decided by Hon’ble High Court of Delhi in its order dated 28.02.2007 in the Writ Petitions Nos. 13211 & 15215/2004, which reads as under:-

20. Thus it is misconceived on the part of the petitioners to claim that any vested legal right had accrued in their favour and against the respondent in terms of the general notice published in the newspapers, for the petitioners to seek implementation thereof in the present writ petitions.

5.2 TA-632/2009 relating to the claims of the applicant was decided by this Tribunal on 04.06.2010. The respondents submit that the applicant cannot be permitted to re-agitate the same issue again in the present O.A. In the earlier TA, the respondents were directed to consider the claim of the applicant in the light of the final policy decision taken with regard to their circular dated 28.10.2002 and the Notice in the Press dated 23.09.2003 by passing a speaking and reasoned order.

5.3 It is further stated that both the order dated 28.10.2002 as well as the Press Notice of 23.09.2003 only express the intension of the Management. It says very clearly, “after receiving the list of employees exercising their option in favour of DTC Pension Scheme, the matter would be examined. The decision of the management shall be final.” The Management had informed Hon’ble High Court of Delhi in an application filed in CW-48/2001, DTC Workers Union Vs. DTC about its inability to introduce the proposed Pension Scheme after examination of the whole issue and financial liability of the Corporation. It was finally decided not to implement the Pension Scheme of 2002 as the Corporation did not have resources to support it.”

12. The order of the Tribunal is impugned by the petitioner contending, inter-alia, the same pleas and contentions which were raised before the Tribunal, which is that he had opted pursuant to the office order dated 28th October, 2002 on 11th November, 2002 and so he has become entitled for pension scheme which was introduced on 27th November, 1992 under which option had to be exercised within 30 days. The petitioner contended that in his letter of retirement dated 17th October, 2002 it was wrongly mentioned that the petitioner had not opted for the pension scheme as the office order dated 28th October, 2002 under which the option was exercised was issued after the letter dated 17th October, 2002 had already been issued by the respondent. According to the petitioner, he was a deemed optee for the pension scheme in terms of clause 9 of the office order dated 27th November, 1992 and in any case he had exercised the option under the scheme dated 28th October, 2002.

13. This Court has heard the learned counsel for the parties in detail. This has not been disputed that another bench of this Court in the case of Shyam Lal (Supra) had held that the office order dated 28th October, 2002 and press note dated September, 2003 were only about the intention of the respondent, to ascertain the financial implication and feasibility of extending the benefit of the pension scheme and after considering the option of the employees it was found that the

introduction of the pension scheme was not feasible and, therefore, it was not introduced. The relevant portion of the judgment is as follows:

“18. Mere issuance of a notice by the respondent calling upon a certain category of applicants to furnish relevant information as to whether or not the retired employees were willing to avail of the DTC pension scheme cannot be termed to be in the nature of an offer, acceptance of which would bind the respondent in any manner.

19. The terminology used in the general notice is itself a clear indicator in this direction. The notice stated in no uncertain terms that only information was being solicited from the surviving retired employees who retired between 3rd August, 1981 and 27th October, 2002, without any commitment, and further, that the said information received from the applicant was only an intimation of intent to the DTC which did not involve any commitment in any manner. Thus it is not a case where pursuant to an offer and an acceptance, a solemn promise was made by the respondent to the petitioners committing itself to extend the benefits of the pension scheme to the petitioners or for that matter, to any other retired employees of the respondent in terms of the general notice. In this case, the principles of promissory estoppel cannot be invoked. The advertisement issued was only exploratory in nature and not a firm offer which could be termed as final and binding on the respondent. Nor can the advertisement be held to be extending the period stipulated in the earlier scheme of 27th November, 1992 floated by the respondent. Any such interpretation given, shall amount to rendering nugatory, the judgment of the Supreme Court in DTC Retired Employees' case (supra).

20. Thus it is misconceived on the part of the petitioners to claim that any vested legal right had accrued in their favor and against the respondent in terms of the general notice published in the newspapers, for the petitioners to seek implementation thereof in the present writ petitions. The writ petitions are, therefore, dismissed as being devoid of merits, leaving the parties to bear their own costs.”

Therefore, the option exercised under the office order dated 28th October, 2002 and press note dated 23rd September, 2003 does not give any crystallized right to the employees including the petitioner to claim pension under the scheme of 27th November, 1992.

14. The learned counsel for the petitioner has not shown any precedent of the High Court or the Supreme Court contrary to the decision in the case of Shyam Lal (Supra) or holding that the office order dated 28th October, 2002 and the option obtained under it entitled an employee to claim pension under the scheme of 27th November, 1992. This is also being not disputed by the learned counsel for the petitioner that pursuant to the option exercised under the scheme by office order on 27th November, 1992 a list of those employees who had exercised the option and who had become entitled for pension was released in 1996 wherein the name of the petitioner had not appeared and the petitioner had not objected to the same. In any case a perusal of the order dated 28th October, 2002 clearly reflects that the option exercised under the said office order dated 28th October, 2002 did not per se entitled a person for pension under the pension scheme of 27th November, 1992. Therefore, the petitioner is not entitled to claim that on account of him being a deemed optee under the scheme of 27th November, 1992, he is entitled for the benefits under the order dated 28th October, 2002 as well. The order dated 17th September, 2010 rejecting the claim of the petitioner is also reproduced as under:-

“The Hon’ble CAT vide judgment dated 4.6.2010 passed the following directions:

“Reference of pension as per rules option exercised on 28-10-2002 and press note of 2003.”

The case has been admitted in detail and it had been found that the claim of pension by the applicant is not justified on the following grounds.

- (i) It has been admitted in the writ petition filed in the Hon'ble Delhi High Court that the ex-employee originally not opted for pension Scheme dated 27-11-1992. Therefore, the employer's share of provident fund, gratuity etc. were released to and withdrawn by the ex.Employee. Thus, the ex.Employee has neither any right nor he has claimed any which back to the Pension Scheme of 27-11-1992.
- (ii) In so far office order dated 28-10-2002 and note of September, 2003 are concerned, the option exercised were provisional and were in the nature of "intimation of Intents" and did not involve commitment in any manner. The office order dated 28-10-2002 itself stated the provisional nature of the scheme and that the management was to examine the options and to take a final decision in this regard. It provided that:-

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

- (iii) To the same effect was the language used in press note 2003. It also stated that the offers received from ex.Employees would be examined and the management would take final decision, which would be binding.
- (iv) The management in an application filed in C.W.48/2001 DTC Workers' Union Vs. informed the Delhi High Court to record its inability to introduce the intended pension scheme as per office order dated 28-10-2002.
- (v) In so far as press note of 2003 is concerned, it was also in the nature of intendment and nothing more. The Hon'ble Delhi High Court in a batch of writ petitions viz. CW.132/11/04, Shyam Lal and other writ petitions Vs. DTC vide order dated 27-2-2007 upheld the contention of the management that Press Note of 2003 was only intendment.
- (vi) In addition to the above, the Corporation had in the year 2005 come to decision that it lacked resources to implement any pension scheme which might be formulated

pursuant to its offer dated 28-10-2002 and Press Note of 2003.”

15. In the circumstances, the learned counsel for the petitioner has failed to show any illegality, irregularity or any such perversity in the order of the respondent dated 17th September, 2010 and the order of the Tribunal dated 26th July, 2011 dismissing the original application of the petitioner which will entitle the petitioner for interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The petitioner has failed to establish his right to get the pension under the scheme of pension dated 27th November, 1992 and consequently, the petitioner is not entitled for pension under the same scheme. The order of the Tribunal dismissing the original application of the petitioner, in the facts and circumstances cannot be faulted on any of the grounds raised by the petitioner in the writ petition.

16. The writ petition is, therefore, without any merit and it is dismissed. Parties are, however, left to bear their own cost.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

OCTOBER 14, 2011.

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