

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

+ **W.P.(C) 5648/2013**

KRISHAN

..... Petitioner

Through **Mr. Anil Mittal & Mr. Zishan
Khan, Advocates**

versus

DELHI TRANSPORT CORPORATION

..... Respondent

Through **Mrs. Avnish Ahlawat & Ms.
Latika Choudhary, Advocates**

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

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20.02.2015

KAILASH GAMBHIR, J. (ORAL)

By this present Writ Petition, the petitioner seeks to question the tenability of the orders dated 10.05.2012 and 01.08.2012 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (*hereinafter referred to as the 'CAT'*) whereby it dismissed T.A. No.1276/2009 and R.A. No.213/2012 respectively.

The main grievance raised by the petitioner is that the learned CAT has failed to appreciate the fact that the petitioner had opted for pension after taking voluntary retirement after having served the respondent-Corporation for about 15 years, but his request was not acceded to by the respondent- Corporation.

Mr. Anil Mittal, the learned counsel for the petitioner submits that the respondent- Corporation has failed to pay pension to the petitioner in terms of the pension scheme. Counsel further submits that the petitioner had to marry off his daughter in the month of May, 1995 and therefore, he made a request to the respondent- Corporation on 14.02.1995 to release its share of the Provident Fund as he was in urgent need of money, but the respondent never released its share of the Provident Fund to the petitioner and he had to take the help of his friends and relatives to arrange for funds to get his daughter married. In these circumstances, the petitioner made a request vide letter dated 17.11.1995 for the grant of pension, the extracts of which are reproduced as under:

“It is submitted that I was working as a conductor with Rohini Depot. I had taken Voluntary Retirement w.e.f 30.04.1993. I had opted for pension. Marriage of my daughter was fixed for 7.05.1995. I had sent a letter dated 2.03.1995 for payment of my fund but the fund was not given to me in time. I somehow managed funds for my daughter’s marriage and performed her marriage. Now it is requested that instead of refunding my fund, I may be given pension, as on account of circumstances I need pension.”

The learned counsel for the petitioner submits that it is a settled legal position that pension is not a bounty given by the employer but is a valuable right of the employee. The counsel further submits that before

the petitioner withdrew his option for pension, he had taken VRS w.e.f 30.04.1993 and had opted for pension , since Respondent-Corporation failed to pay pension in terms of the pension scheme and he had to get his daughter married in the month of May, 1995 he requested for the Employer's share of provident fund as he was in need of money, but the Respondent Corporation failed to do so and therefore, it cannot be said that he could not have retracted from his earlier decision particularly when the respondent- Corporation had never released its contribution in his favour. The learned counsel also submits that even till date, the respondent- Corporation has not made any payment towards its share of the Provident Fund.

This petition is strongly opposed by Mrs. Avnish Ahlawat, the learned counsel for the respondent- Corporation. She submits that in the year 1993 the respondent- Corporation had announced a VRS scheme in which its employees who were of 40 years of age or had put in more than 10 years of service, could seek voluntary retirement in case they fulfilled certain conditions and the petitioner opted for the voluntary retirement scheme and stood retired from service w.e.f. 30.04.1993. The learned counsel also submits that on his retirement, the petitioner was paid all his

retirement dues, such as, Terminal benefits, Ex-gratia, Leave Encashment, Gratuity and his own share of Provident Fund. The learned counsel also submits that the petitioner himself had exercised the positive option of opting out of the pension scheme and this is how, he made a request vide his letter dated 14.02.1995 for release of Employer's share of Provident Fund and accordingly, the respondent- Corporation vide letter dated 21.08.1995 informed the petitioner that since he has withdrawn from the pension scheme, therefore, as per his request, the Employer's share of Provident Fund was being released in his favour. The learned counsel thus submits that once having opted out of the pension scheme, the petitioner was not entitled to pension and he continued to remain a member of the Contributory Provident Fund Scheme. The learned counsel also submits that vide letter dated 21.08.1995, the petitioner was requested to report to the Account Officer to collect the cheque of employer's share of Contributory Provident Fund but the petitioner failed to approach the Account Officer to collect the cheque amount. The learned counsel also submits that the amount of Rs.26,835.84/- was payable to the petitioner as on 21.08.1995, which amount the respondent- Corporation is still prepared to pay to the petitioner alongwith 12%

Simple Interest within a period of four weeks from the date of this order.

The learned counsel submits that the legal position in this regard is well settled by the judgment of the Supreme Court in the case of ***DTC Retired Employees' Association. v. DTC, (2001) 6 SCC 61*** the relevant paras of which are as under:

“24. Learned counsel for the petitioners in Writ Petition No. 499 of 2000 contended that the petitioners had initially opted for the Pension Scheme in 1992, but as they were apprehensive regarding DTC's ability to implement the Pension Scheme, they were compelled to opt out of the Pension Scheme. It is submitted that in 1995 only under the threat of contempt notice from this Court, DTC came forward to implement the Pension Scheme, but no fresh option was given to the employees. It is also argued that DTC had not communicated to all its employees that they were going to implement the Scheme. It is also submitted that pension is neither a bounty nor a charity. Therefore, all the retired employees should have been given the benefit of the Pension Scheme.

25. It is true that there was some delay in implementing the Scheme, but all the retired employees were given sufficient opportunity to exercise their option. In paragraph 9 of the counter affidavit filed on behalf of DTC it is stated that as far as the time to fill up pension option form is concerned, the letter dated 23.11.1992 conveyed by the Govt. of India, Ministry of Surface Transport, contained that the DTC shall obtain option from its employees within 30 days from the date of issue of circular. However, the DTC, in fact, extended the time twice, namely, firstly upto 15th January, 1993, and secondly upto 1st February, 1993. Therefore, the retired employees had, in fact, more than one month's time to exercise their option. We do not think that sufficient time was not given to the employees to exercise their option for the Pension Scheme. Those employees who had received the benefit of employer's provident fund scheme failed to exercise their option and thus disentitled themselves from getting

the Pension benefit. The Pension Scheme was implemented on the basis of certain guidelines; it is not for the Court to interfere with the same. The Division Bench has rightly taken the view that those who had not exercised their option are not entitled to get Pension. The appeals and the writ petition are without any merit and these are dismissed without, however, any order as to costs.”

We have heard the counsel for the parties and perused the record. We may briefly reiterate the facts of the present case.

The petitioner was employed as a driver in the DTC in the year 1978. The Respondent- Corporation, vide its Office Order No. 16 dated 27.11.92 introduced a pension scheme for its employees retiring on or after 3.08.1981. The option of pension was to be exercised within the stipulated period of 30 days from the date of the office order. And if any employee did not opt for pension, as per rule 9 of the pension rules, he would be deemed a pension optee. The petitioner opted for the pension scheme. The Respondent- Corporation announced a VRS scheme, in which the employees, who had put in 10 years or more of service, could seek VRS in case they fulfilled certain conditions. The petitioner sought VRS and stood retired on 30. 04.1993 and on retirement his terminal benefits viz. Ex- gratia, leave encashment, gratuity and his own share of EPF were paid to him, but he was not paid the employer's share of EPF because he had opted for pension. Since the Respondent- Corporation

failed to pay pension to the petitioner in terms of the pension scheme and as he had to get his daughter married in May, 1995, he requested the Respondent to release his EPF as he was in need of money. Vide letter dated 21.08.1995 the respondent informed the petitioner that since he had withdrawn from the pension scheme his EPF was being released to him. The petitioner vide letter dated 17.11.95 informed the respondent that he had decided to withdraw his EPF because the respondent had failed to pay pension and his daughter's marriage was fixed for May, 1995 and he was in need of money. Since he did not get timely help he was not interested in his EPF anymore and he should be paid his monthly pension instead.

The question whether having withdrawn his option for pension scheme in the year 1995; the petitioner can perform a swift volte-face and seek benefit of such a scheme has been settled by the judgment of the Supreme Court in *DTC Retired Employees' Association case (supra)* wherein it was held that although there was a delay in implementing the scheme, but an opportunity to exercise their option was given to the retired employees. The letter of the Ministry of Surface Transport, Govt. of India, dated 23.11.92 contained that the employees of the DTC would

have to exercise their option within 30 days from the date of issuance of circular. And it can't be stated that sufficient time was not given to the employees to exercise their option for the scheme as the DTC had extended the time twice. Employees who had received the benefit of EPF, failed to exercise their option and therefore disentitled themselves from deriving the benefit of the pension scheme. The court also went onto hold that since the pension scheme was implemented on the basis of certain principles; therefore, it could not have interfered with the same. And also took a view that all those who had not exercised their option for the scheme, were disentitled from the pension benefit.

Therefore, the petitioner having exercised a positive option to continue to be retained as member under the Contributory Provident Fund Scheme could not claim benefit under the pension scheme. As the petitioner having once opted out of the pension scheme had no right to switch back to the pension scheme and therefore was not entitled to seek pension.

We allow the petition to the limited extent that the petitioner was entitled to a sum of Rs. 26,835.84/- as on 21.08.95, which amount the respondent is still prepared to pay to the petitioner within a period of 4

weeks from the date of this order.

We direct the respondents to pay to the petitioner the sum of Rs. 26,835.84 with 12% Simple interest within four weeks from the date of this order.

With the above observations, the present writ petition is disposed of. With no orders as to costs.

KAILASH GAMBHIR, J.

I.S.MEHTA, J.

FEBRUARY 20, 2015

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