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

+ **WRIT PETITION (CIVIL) No. 918/2015**

Date of decision: 16th February, 2016

DELHI TRANSPORT CORPORATION & ANR.....Petitioners

Through Ms. Avnish Ahlawat, Ms. Latika
Chaudhury & Mr. Anuj Dewan, Advocates.

versus

NEM PAL

..... Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE NAJMI WAZIRI

SANJIV KHANNA, J. (ORAL):

We have heard learned counsel for the petitioners, but are not inclined to interfere with the impugned order passed by the Central Administrative Tribunal, Principal Bench (Tribunal, for short) dated 5th August, 2014 allowing the OA No. 61/2013 filed by Nem Pal and directing the petitioners to pay pension.

2. Learned counsel for the petitioners has submitted that the Delhi Transport Corporation has misplaced or lost a large number of option forms possibly because of connivance and malafides to help co-employees and, therefore, the service book of the respondent is the most authentic document. As per the service book, the respondent had opted for Contributory Provident Fund Scheme (CPF Scheme) and is not entitled to

pension. She relies upon a decision of this Court in Writ Petition (C) No. 13142/2009, *Manzoor Ahmed Khan versus Delhi Transport Corporation* dated 8th January, 2010, affirming the order of the Tribunal denying pension to the said employee. It is highlighted that the petitioner in this case as in Writ Petition (C) No. 13142/2009 had voluntarily contributed towards CPF scheme.

3. The facts of the present case are rather peculiar. Delhi Transport Corporation had introduced Pension Scheme for its employees on 27th November, 1992 applicable retrospectively w.e.f. 3.8.1981. It was stipulated that an employee not exercising any option within thirty days or quitting service or dying without exercising any option or whose option was incomplete, conditional or ambiguous, shall be deemed to have opted for the Pension Scheme. Time for exercise of option was extended till 1995. On default or on failure to specifically opt, the respondent like any other employee would be governed and entitled to the pension scheme.

4. The respondent was appointed as a daily rated driver on 18th August, 1979 and confirmed on 18th February, 1980. On 2nd July, 1993, the respondent was removed from service and his entitlement under CPF released. On this order of removal being set aside by the High Court vide order dated 19th September, 2001, the respondent was reinstated on 31st May, 2002 with full back wages and continuity of service. Thus, it is apparent to us that in the present case the respondent, during the relevant

period when he could have opted for the Pension Scheme, i.e., from 2nd July 1993 till 1995, was not in service. It is not the case of the petitioners that they had asked the respondent to opt for either Pension Scheme or CPF Scheme on rejoining after reinstatement on or after 31st May 2002. In the normal course, the respondent would be deemed to have opted for the pension scheme, unless he had specifically exercised his option to opt out.

5. Learned counsel for the petitioners submits that upon reinstatement, till retirement on 31st March, 2012, regularly some amount was deducted from the respondent's salary towards CPF contribution. The petitioner Corporation had also paid their share as employer's contribution. This may be correct. But the question of *estoppel* would arise, only if the respondent was aware and conscious that this deduction would deny him benefit under the pension scheme. The respondent was not informed about the choice to opt. Estoppel precludes a party from denying the truth of some statement previously made. The doctrine is based on equity and good conscience, and is enforced to prevent fraud and promote honesty and justice. There is no estoppel when truth of the matter is known to the parties or they had means of ascertaining the truth by pursuing enquiries. The respondent was working as a bus driver, and should have been informed of the choice "to opt" he had on rejoining on 31st May, 2002 and that any contribution to the provident fund, would disentitle him from receiving pension. What is, noticeable is that the respondent upon retirement did not accept the

employer's share. The petitioner-Corporation accepts and admits that the respondent was never paid the Corporation's share towards the CPF.

6. This being the factual position and in view of the relevant clauses incorporated in the Office Order No. 16 dated 27th November, 1992 and subsequent notification extending the period to exercise the option till 1995, we do not see any reason to upset the order passed by the Tribunal. By default the respondent would be covered by the pension scheme. The writ petition is accordingly dismissed.

(SANJIV KHANNA)
JUDGE

(NAJMI WAZIRI)
JUDGE

FEBRUARY 16, 2016
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