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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 11600/2016

Date of decision: 9th December, 2016

DELHI TRANSPORT CORPORATION Petitioner
Through Mr. Sarfarz Khan and Mr. Ataur
Rahman, Advocates.

Versus

RAJVIR SINGH Respondent
Through Ms. Kittu Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

The order under challenge passed by the Principal Bench of the Central Administrative Tribunal dated 12th July, 2016 allows OA No. 4230/2011 filed by Rajvir Singh, the respondent before us with a direction that he should be paid pension and other retirement benefits within 60 days from the date of receipt of a copy of the order. Delhi Transport Corporation, the petitioner has been also directed to pay interest as applicable to General Provident Fund on the arrears

from the date of retirement i.e. 30th November, 2010, till actual payment.

2. It is an accepted case that employees of the petitioner Corporation were governed by the Contributory Provident Fund Scheme prior to 27th November, 1992. By office order No. 16 dated 27th November, 1992, pension scheme by default became applicable to all employees with effect from 3rd August, 1981. Existing employees, including those who retired with effect from 3rd August, 1981, had to make specific request within the stipulated time to opt out of the pension scheme and to be governed by the Contributory Provident Fund Scheme.

3. The short question raised before us is whether the respondent had opted out of the pension scheme to be governed by the Contributory Provident Fund Scheme and, therefore, is not eligible for pension.

4. The petitioner Corporation does not have and would not rely upon any written request by the respondent-Rajvir Singh to opt out of the pension scheme and to be governed by the Contributory Provident Fund Scheme. The petitioner Corporation, on the other hand, relies upon an indirect evidence in the form of recordings in the service

book that the respondent had not opted for pension wherein alphabet 'N' instead of alphabet 'S' was written/recorded. Alphabet 'N', it is stated, means none and 'S' means pension optee.

5. The Tribunal in the impugned order records dual or conflicting entries in the service book on whether the respondent had opted out of pension scheme. At another place in the service book it is recorded that the respondent had opted for pension scheme. The respondent has been protesting that he had never opted out of the pension scheme. He had written representations in 2004 i.e. nearly 5-6 years before his retirement. In response to the said representations, the Depot Manager (Rohini-II) had issued memorandum dated 1st June, 2007 that the respondent was covered by the pension scheme. Before the retirement of the respondent, the petitioner Corporation had written the letter dated 3rd June, 2010 recording that the respondent had opted for pension. Similar assertion is to be found in the second letter of the petitioner Corporation dated 24th November, 2011, while making payment of gratuity.

6. In view of the aforesaid conflicting position and noticing the fact that an employee had to opt out of the pension and by default

pension was payable, we are not inclined to interfere with the impugned order.

7. The petitioner Corporation is required to maintain its records. They have failed to file even a single communication or letter by the respondent to show that he had opted out of the pension scheme. It will be wrong and incorrect to deny pension to the respondent on any assumption. There is contradiction in the service book and hence, benefit must go to the respondent. The petitioner Corporation must realize that being the custodian of the records, they are required and should have maintained their records properly and were it so, this complication or difficulty would not have arisen.

8. The writ petition has no merit and is accordingly dismissed.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

DECEMBER 09, 2016
NA