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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **WRIT PETITION(CIVIL) NO. 10812/2016**

Date of decision: 16th November, 2016

DELHI TRANSPORT CORPORATION Petitioner

Through Ms. Manisha Tyagi, Advocate.

versus

BALBIR SINGH Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

CM No. 42312/2016

Exemption application is allowed, subject to all just exceptions.

WRIT PETITION(CIVIL) NO. 10812/2016

We have heard counsel for the petitioner and also perused the additional documents filed with the application CM No. 42311/2016.

2. The writ petition filed by the Delhi Transport Corporation has to be dismissed for the reason that the Tribunal has taken a reasonable view. The factual matrix also reveals that the petitioner Corporation has failed to maintain sanctity and purity of service records as is required and mandated by law. The petitioner has to, therefore, suffer the consequences of their lapses and faults.

3. The respondent, a Conductor in the Delhi Transport Corporation, had retired on 31st July, 2013 after about 30 years of service. In accordance with the service records, the petitioner Corporation had written letters dated 4th March, 2013 and 29th August, 2013 acknowledging and accepting that the respondent was entitled to pension. As per the pension scheme floated by the petitioner-Corporation, an employee had to specifically opt out of the pension scheme, as the pension scheme was applicable by default. The order dated 17th February, 2015 allowing O.A. No. 1466/2014 reproduces the letters dated 4th March, 2013 and 29th August, 2013 written by the petitioner Corporation accepting and admitting that the respondent was entitled to pension.

4. Subsequently, the petitioner-Corporation had reversed their position asserting that the respondent had specifically opted out of the pension scheme. They had relied upon the list issued by the Manager (Administration), Pension (HQ) circulated vide letter No. PC/HQ/94/231 dated 24th March, 1994. The respondent's name was included in the said list at serial No. 1321.

5. The stand of the petitioner-Corporation was that due to oversight, wrong and incorrect entry was made in the service book of the respondent.

6. The Tribunal after considering factual matrix held that the factum that the respondent's name was included in the list circulated vide letter dated 24th March, 1994 could not *ipso facto* show that the respondent had

opted out of the pension scheme. The Tribunal emphasised on the failure to produce a single communication or letter written by the respondent to show that he had opted out of the pension scheme. The contradiction in the service record and the list circulated vide letter dated 24th March, 1994 was apparent. In the given circumstances, insofar as the petitioner Corporation was the custodian of the records and unless contrary was established, the Tribunal has held that the respondent by default is a pensioner. We would completely agree and affirm the said finding.

7. Subsequently, the petitioner Corporation filed a review application enclosing therewith a letter, which it is submitted, was written by the respondent and received in the office of the petitioner Corporation on 16th March, 1994. There is a typed letter, which is badly mutilated and torn from the bottom and is signed as “Bal”. Thus, the signature on the said letter is incomplete. Name of the author cannot be ascertained.

8. The Tribunal, dismissing the review application, has held that the said letter as produced would not sufficiently establish and show that the respondent was the author who had written the said letter.

9. We have also examined the partial signatures as visible in the photocopy of the said letter, which is placed at page 49. It is not possible for anybody to decipher and form a firm opinion whether the letter was in fact signed by the respondent or by some other person.

10. The petitioner Corporation alongwith the application for additional

documents has filed letters written by Balwant Singh and Balwan Singh. It is submitted that the letter received on 16th March, 1994 would not have been written by either Balwant Singh or Balwan Singh. It will be difficult to accept the said submission for a person/employee can write multiple letters affirming that he does not want to join pension scheme. Someone else who has been given benefit of the pension with the first alphabets “Bal” could have also written the said letter. Thus, it cannot be affirmatively held that the respondent was the author, who had written the letter dated 24th March, 1994. We cannot proceed on the basis of this assumption to deny pension to the retired employee. As noted above, the petitioner Corporation being the custodian of the records ought to have maintained their records and were it so, this complication and difficulty would not have arisen.

11. For the reasons aforesaid, the writ petition has no merit and is dismissed.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

NOVEMBER 16, 2016
VKR/NA