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

\+ W.P.(C) 3411/2017

DELHI TRANSPORT CORPORATION & ANR

..... Petitioners

Through: Ms. Avnish Ahlawat, Advocate.

versus

RAM PAL

..... Respondent

Through: Mr. Sudhanshu Tomar, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE DEEPA SHARMA

<u>O R D E R</u>

% **21.04.2017**

<u>Caveat No.380/2017</u>

Learned counsel for the respondent/ Caveator has appeared.

Accordingly, the caveat stands discharged.

<u>W.P.(C) 3411/2017 and C.M. No. 14912/2017</u>

Issue notice. Mr. Tomar accepts notice.

The petitioner DTC assails the order dated 04.10.2016 passed by the CAT in O.A. No.934/2015. The respondent's Original Application has been allowed by the CAT by directing the petitioner herein to treat the respondent applicant as having opted for the pension scheme in accordance with paragraph 9 of the scheme and grant him all consequential benefits as commutation, etc. as per the pension scheme.

The respondent was illegally dismissed from service in 1987. He was directed to be reinstated with 50% back wages in the year 2006. The writ petition preferred by the DTC was dismissed by this Court on 01.11.2010. Thereafter, the respondent was reinstated notionally and he was deemed to have retired on superannuation in the year 2003. The petitioner paid the share of the respondent's Contributory Provident Fund on 28.06.2011 and 20.01.2012. The share of DTC was paid sometime in the year 2014.

While the respondent remained dismissed, the DTC introduced a Pension Scheme vide Office Order No.16 dated 27.11.1992. Under the scheme, the employees were to give option to either opt for the Pension Scheme, or to continue to be covered by the pre-existing Employees Contributory Provident Fund scheme. Paragraph 9 of the Scheme provided that in case no option is given by the employee within 30 days, he shall be deemed to have opted for the Pension Scheme benefits. Obviously, since the petitioner was not in service in the year 1992 on account of his illegal dismissal, there was no question of his opting one way or another.

The respondent not having been considered as a Pension Scheme optee, approached the Tribunal. The only defence set up by the petitioner was that in his service book, it was recorded that he had not opted for the Pension Scheme. The Tribunal has not agreed with the petitioner's contention and, in our view, rightly so. The service book is maintained by the DTC. The right of the respondent to seek pension under the Pension Scheme could not be dictated by the unilateral action of the DTC. The default clause under the Pension Scheme was that in case of an option not been consciously exercised to remain covered by the Contributory Provident

Fund within 30 days, the employee shall be deemed to have opted for the Pension Scheme benefits. Since no option was taken from the respondent, or given by him to opt for the employees Contributory Provident Fund Scheme, under paragraph 9 of the Scheme, he was entitled to be considered as a Pension Scheme optee. Merely because the petitioner continued to retain in their service record relating to respondent that he had not opted for the pensionary benefits, he could not be denied benefit of the said scheme.

Ms. Ahlawat submits that the respondent had received contributory provident fund amount in the years 2011, 2012 and 2014. It goes without saying that the amounts already received by the respondent shall be liable to be accounted for as on the date of receipt of the amounts, while computing the arrears.

We do not find any merit in this petition. Dismissed.

Since the time granted by the CAT has long expired, we grant further one month's time to comply with the order of the Tribunal.

VIPIN SANGHI, J

DEEPA SHARMA, J

APRIL 21, 2017

B.S. Rohella