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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 7043/2015

Date of decision: 19th January, 2017

DELHI TRANSPORT CORPORATION & ORS Petitioner
Through Ms. Avnish Ahlawat and Ms. Latika
Chaudhary, Advocates.

versus

ZILE SINGH Respondent
Through Mr. U. Srivastava, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL)

Delhi Transport Corporation, in this writ petition, impugns the order dated 10th February, 2015, passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short), whereby OA No.883 of 2013 filed by Zile Singh, the respondent before us, has been allowed, holding that the respondent is entitled to pension under the pension scheme dated 27th November, 1992.

2. In order to appreciate the reasoning given by the Tribunal, we would like to reproduce paragraphs 7 and 8 of the impugned order dated 10th February, 2015, which read as under:-

“7. In my considered view, the aforesaid stand taken by the respondent is quite unfair. When the applicant has given his option for the pension scheme

of 2002 on the basis of the offer given by the respondent, the fact that he was not an optee for the earlier scheme has no relevance. In case the new Pension Scheme to which he has given his option was not carried through by the respondent, in all fairness, it had the responsibility to inform the applicant that the old Pension Scheme has been revived and since he was not an optee for the said scheme, he will not be entitled for pension.

8. In view of the above facts and circumstances of the case, I am of the considered view that the stand taken by the respondent in denying the pension to the applicant is not tenable. Accordingly, I allow this OA and direct the respondent - DTC to grant the pension and other admissible terminal benefits to the applicant on his retirement with effect from 30.06.2008. He shall also be paid interest on the arrears of Pension at 9% p.m. for the delay in payment of the pension till they are paid to him. However, they are at liberty to adjust the amounts already paid to him in lieu of Pension and the terminal dues with 9% p.m. interest against the dues payable to him. The aforesaid directions shall be complied with, within a period of two months from the date of receipt of a copy of this order. No costs.”

3. The accepted and admitted position is that the respondent, an employee of the petitioner Corporation had specifically opted out of the pension scheme dated 27th November, 1992 and had given his preference to be covered by the Employees Provident Fund Scheme. To this extent, there is no dispute or lis between the petitioner Corporation and the respondent employee. It is not the case of the respondent employee that he had remained silent and by default was a pension optee under the pension scheme dated 27th November, 1992. This is a crucial fact which we observe

and hold is the distinguishing factor between the case of the respondent and the employees in the judgments relied upon by the counsel for the respondent.

4. The petitioner Corporation vide letter/office note dated 20th October, 2002 had invited options from employees, who were not already covered under the pension scheme. This letter/office note dated 20th October, 2002 was not binding or conclusive offer. It was expressly stated that exercise of option by the employees was provisional and subject to exemption from the Regional Provident Fund Commissioner and refund of the amount held by them to the petitioner – Corporation. If exemption was not granted by the Regional Provident Fund Commissioner, the option exercised by the employee was redundant. In that event, the status of the employee would remain the same as before i.e. the employees would be covered by the Employees Provident Fund Scheme and not under the pension scheme.

5. It is an accepted and admitted case that the 2002 pension scheme was never operationalized. This fact is also noticed by the Tribunal in paragraph 7 of the impugned order. This finding is factually correct and accepted position.

6. The office order dated 20th October, 2002 had invited fresh option from the employees to be covered under the pension scheme. Albeit such employees were clearly told that the option was being entertained provisionally and would be operationalized only after and subject to satisfaction of specified conditions. The said stipulations were binding and sacrosanct. As the pension scheme pursuant to the office order dated 20th October, 2002 was never operationalized, no right accrued in favour of the respondent. This being the position, we do not think that the respondent is

entitled to pension under the pension scheme dated 27th November, 1992, read with the provisional offer under office order dated 20th October, 2002.

7. The view, we have taken, is in consonance with the decision of this Court dated 14th October, 2011 in W.P. (C) No. 7477/2011, ***Rati Bhan Vs. Delhi Transport Corporation***. In this case also, the writ petition filed by the petitioner therein was dismissed noticing the employee had opted out of the pension scheme dated 27th November, 1992. The employee had thereafter exercised provisional option under the office order dated 20th October, 2002, which was never implemented.

8. Counsel for the respondent has drawn our attention to a Division Bench judgment dated 14th September, 2016 in W.P. (C) 6630/2016, ***B.R. Khokha Vs. Delhi Transport Corporation***, wherein it has been held as under:-

“12. Although clause (iii) of the Office Order dated 28.10.2002 clearly stipulates that inviting option shall be provisional and subject to exemption from RPFC and in case no exemption was received from RPFC the said option would become redundant and the status of the said employee would be the same as was before; but para 9 of the Office Order dated 27.11.1992 clearly stipulates that the Pension Scheme was to apply even in the case of all such employees of the DTC who did not exercise their option within the prescribed period of 30 days or quits or dies without exercising his option, or whose option was incomplete or conditional or ambiguous, he would have deemed to have opted for the Pension Scheme Benefits.”

The aforesaid reasoning would indicate that the Division Bench had held that the employee in the said case was covered by paragraph 9 of the office order dated 27th November, 1992, which had stipulated that it would

apply to all employees including those, who do not exercise their option within 30 days, or quits or dies without exercising the option. By default, the employee in the said case was a pension optee. In the present case, the respondent pursuant to the office order dated 27th November, 1992, had clearly opted out of the pension scheme. Hence, the said ratio would not apply.

9. For the same reasoning, the decision dated 30th July, 2014 of this Court in W.P. (C) No. 4728/2014, ***Delhi Transport Corporation Vs. Raj Singh*** would not be applicable. In the case of Raj Singh (supra), the contention raised by the Corporation was that the employee's name did not figure in the list of pension optees and, therefore, it may be presumed that the employee was not a pension optee. This contention was rejected holding that the pension scheme dated 27th November, 1992 was applicable by default and would apply to an employee, except those who had opted out of the said pension scheme.

10. In the present case, the respondent employee had specifically opted out of the pension scheme dated 27th November, 1992 and, hence, he would not be covered by the same. Accordingly, we allow the present writ petition and set aside the impugned order dated 10th February, 2015. OA No.883 of 2013 filed by the respondent would be treated as dismissed. There would be no order as to costs.

SANJIV KHANNA, J.

JANUARY 19, 2017/NA

CHANDER SHEKHAR, J.