

Rajinder Kumar Modi Vs Chairperson-Cum-Managing Director

Court: Central Administrative Tribunal Principal Bench, New Delhi

Date of Decision: Sept. 12, 2018

Hon'ble Judges: Praveen Mahajan, Member (A)

Bench: Single Bench

Advocate: Hari Kishan, Naresh Kumar, Swati Jain, Ruchira Gupta

Final Decision: Allowed

Judgement

1. The applicant in the OA was appointed in Delhi Transport Corporation on 19.11.1966 and superannuated as Labour Welfare Inspector on

31.05.2004.

2. It is stated that DTC introduced a Pension Scheme vide office order No.16 dated 27.11.1992 and invited options for pension scheme with

retrospective effect w.e.f.03.08.1981. The said pension scheme stipulated that

“DELHI TRANSPORT CORPORATION

(A GOVT OF INDIA UNDERTAKING)

I.P.ESTATE: NEW DELHI

No.Adm-I-5(4)/92, Dated 27.11.92

Office Order No.16

Sub: Introduction of Pension Scheme in DTC as applicable to the Central Govt. Employees.

The introduction of Pension Scheme for the employees of the DTC has been sanctioned by the Central Govt. and conveyed by the M.O.S.T. vide

letter No.RT-12019/21/88-TAG dated 23.11.92 on the same pattern as for the Central Govt. employees subject to the following conditions :

1. The pension scheme would be operated by the LIC on behalf of DTC.
2. The date of effect of Pension Scheme would be 3.8.1981.
3. All the existing employees including those retired w.e.f.3.8.1981 onwards would have the option to opt for the Pension Scheme or the Employees

Contributory Provident Fund as at present, within 30 days from the date of issue of the O.O. for the implementation of the Pension Scheme as

approved by the Govt. of India.

4. The Pension Scheme would be compulsory for all the new employees joining DTC w.e.f.23.11.92, the date of sanction of the Scheme.

5. The Pension Scheme would be operated by the LIC on behalf of DTC. The employees share in the EPF A/c of the DTC employees, who opt for

Pension Scheme, would be transferred to the LIC, for operating the Pension Scheme on behalf of DTC and the amount deposited in the Central

Govt./State Govt./Guaranteed Securities would be encashed on maturity.

6. The employees who have retired on or after 3rd August 1981 and the existing employees, who have drawn the employer's share, under the EPF

Act, partly or wholly shall have to refund the same with interest in the event of their opting for the Pension Scheme. The total amount to be refunded

by the retired employees/existing employees would be the amount that would have accrued had they not withdrawn the employer's share.

7. Excess amount of gratuity, if already paid to ex-employees and which is not admissible under the Pension Scheme, will have to be refunded by them

before any benefit under the Scheme, is granted to them.

8. A due and drawn statement would be prepared in respect of retired employees opting for Pension Scheme and the amount to be paid/refunded,

would be worked out by the concerned unit, wherefrom the employee had retired from service.

9. If any of the employee of DTC, who does not exercise any option within the prescribed period of 30 days or quits service or dies without exercising

an option or whose option is incomplete or conditional or ambiguous, he shall be deemed to have opted the Pension Scheme Benefits.

Application forms for exercising option would be available with the Unit Officers and all employees including retired employees wishing to exercise

option, should do so with the Unit of their present working/wherefrom they retired, within a period of 30 days from the date of issue of this Office

Order.

The Unit Officers, after receiving the options from the ex-employees, will take further necessary action for getting the necessary forms completed,

which will be supplied to them by LIC for pension, etc. They will also ensure the recovery of EPF and Gratuity from the ex-employees before

forwarding their applications as mentioned above. The cases of all officers will be dealt with at Headquarters.

The options received from the existing employees for not opting Pension may be kept in their Personal file and entry made in their Service Book.

Sd/-

(L.C.Goyal)

Dy. Chief General Manager (P)

CHIEF GENERAL MANAGERS

ALL GENERAL MANAGERS

ALL UNIT OFFICERS

ALL NOTICE BOARDS.

COPY TO: The Under Secretary to the Government of India (MOST) for information.

3. This pension scheme was to be operated by the LIC on behalf of DTC. There being some dis-agreement between the Life Insurance Corporation

of India (LIC) and Delhi Transport Corporation the LIC refused to operate the Pension Scheme on behalf of DTC. The respondents then approached

the Ministry of Surface Transport, Govt. of India for getting fresh approval which was conveyed on 31.10.1995, for operationalizing the pension

scheme by DTC itself. This was done in partial modification of its earlier sanction dated 23.11.1992

4. The applicant states that the DTC started disbursement of pension to the employees as per letter dated 31.10.1995 of Govt. of India (Annexure A-

5) without considering the fact that the fresh approval received vide letter dated 31.10.1995 was a new scheme and should have been applicable to

every employee of the Delhi Transport Corporation. The DTC did not apply the scheme to the applicant and other employees who had not opted for

the earlier scheme dated 27.11.1992 (office order No.16). He submits that there were quite a few other employees, who were affected by this stand

of the respondents. When their representations in this regard did not yield any result, the applicant, along with other employees (who had also not

opted for the earlier Pension Scheme of 27.11.1992) filed a Writ Petition (Civil) No.48/2001 in the Hon'ble High Court to allow them to avail of the

modified Pension Scheme, which was brought into force by notification No.RT-12019/24/93-TAG dated 31.10.1995.

5. While the same was pending, an agreement was reached between the Hon'ble Minister of Transport of Delhi Government and the Union of the

Workers wherein it was decided that :

2. Pension to all employees It was decided that there are three categories of employees in DTC. The first one is covered under DTC Pension

Scheme.

Second category is covered under the RPFC and there are about 1400 employees who are not covered under any of the Schemes. After detailed

discussion, it was decided that option from the existing employees may be obtained and thereafter the matter may be examined and put up.

Pursuant to the aforesaid agreement dated 26.09.2002, the DTC issued an order dated 28.10.2002 for obtaining fresh options to the pension scheme

from the existing employees.

6. In the meantime, the Writ Petition No.48/2001 of the DTC Workers Union & Ors. was disposed of by the Hon'ble High Court on 03.11.2004.

The learned Single Judge passed the following order :-

“Mr. Vibhu Shanker, Learned Counsel for respondent No.1 on instructions from Mr. Naresh Kumar, Assistant Incharge of Pension, submits that

case of the petitioners and other eligible persons for pension in terms of office order No.Pen./Cell/Option/2002/440 dated 28.10.2002 and the

subsequent orders on the subject is being processed and respondent No.1 has submitted data and details to the Life Insurance Corporation for working

out actuarial value. This is likely to take four weeks. Respondents are hopeful of communicating the entitlement and benefits payable within two

months from today.

Petition stand disposed of with liberty to the petitioners to approach the court if they have any grievance, which remains unredressed after eight

weeks.”

7. The applicant states that the DTC did not implement the assurance given to the court based on which the Writ Petition No.48/2001 was disposed of

by the Hon’ble High Court. The case was transferred to the Central Administrative Tribunal, Principal Bench, New Delhi along with the application

of the DTC Workers’ Union and was registered as Transfer Application (TA) No.770/2009. The same was heard and disposed of by the CAT with

the direction that DTC Workers’ Union may make a substantive application in the matter.

8. Accordingly, the DTC Workers’ Union filed a fresh OA No.1157/2010 praying for the implementation of the office order

No.Pen.Cell/Option/2002/440 dated 28.10.2002 issued by the DTC. The said OA was disposed of on 07.03.2011 by directing the respondents that :-

“In the circumstances, we would direct the respondents to examine the issue afresh after taking note of the submissions made by the applicants in

respect of Object. This is required in view of the fact that fresh options had been obtained by the respondents themselves.”

9. The applicant avers that the Delhi Transport Corporation had not complied with the order dated 07.03.2011 of the Hon’ble Central Administrative

Tribunal till date, and have merely informed the applicant vide letter dated 27.02.2015 that no decision has been taken on the options exercised by the

employees in pursuant of Office Order dated 28.10.2002.

10. The applicant submits that he opted for the DTC Pension Scheme during his tenure of service pursuant to circular dated 28.10.2002. He has relied

upon the case of DTC Vs. Raj Singh W.P.(Civil) No.4728/2014 decided on 30.07.2014 and Shri Zile Singh Vs. DTC OA No.883/2014 decided on

10.02.2015. He avers that these were similarly placed persons like the applicant who had not opted for the earlier Pension Scheme of 27.11.1992, but

subsequently opted in favour of the Employees Pension Scheme, 1995.

11. In the matter of Zile Singh Vs. DTC in OA No.883/2014, CAT in its order dated 10.02.2015 allowed pension to the applicant. Similar was the

decision in OA No.4329/2012 in Raj Singh Vs. DTC (Supra) which was also upheld by the Hon'ble High Court in WP(C) No.4728/2014 vide order

dated 30.07.2014

12. Despite these orders, the applicant did not receive any favourable decision from the respondents and has filed this OA seeking the following reliefs

:-

“(i) The respondent may be directed to grant the pension & its arrears of pension to the applicant under DTC Pension Scheme along with

commutation amount of pension from the date of retirement on superannuation along with interest thereon at the same rate & pattern as applicable to

EPF/GPF.

(ii) The cost of the proceedings may also be awarded in favour of the applicant.

(iii) Any other relief(s), which the Hon'ble Tribunal deems fit and proper in the circumstances of the case and in the interest of the justice.”

13. The respondents in their counter state that the OA is barred by limitation and suffers from gross delay. They contend that after the order of

C.A.T. dated 07.03.2011 in OA No.1157/2010, the applicant has been sleeping over his rights till he filed the present OA.

14. The respondents submit that in the case of Lal Singh Vs. Government of NCT, OA No.4293/2011 it has been held by this Hon'ble Tribunal that:

“that the applicants are also not entitled to plead that their right to receive pension is a continuous cause of action, because of the reason that in

law, either the pension can be received, or benefit of the CPF amount at their credit can be received, and after having received the benefit under CPF

scheme, the applicants have already forfeited any claim to their request for belated change over to the Pension Scheme.”

Similarly, in the case of Shri B.R. Khokha Vs. Delhi Transport Corporation (OA No.4464/2014), this Hon'ble Tribunal held that :

“6. ... the Applicant is not entitled to plead that the right to receive pension is a continuous cause of action because either pension can be received

or the benefit received under the CPF account. As held in these two judgments, the applicant has forfeited his claim to his request for switching over

to the pension scheme.”

15. The respondents contend that the current application is also barred by principle of res judicata. The applicant was one of the applicants who had

filed the Writ Petition No.48/2001, which was disposed of on 03.11.2004. Thereafter the applicant filed an OA No.1157/2010 praying for

implementation of the office order dated 28.10.2002, which has also been disposed of vide order dated 07.03.2011. The present OA has been filed

seeking the same relief as in OA No1157/2010 which is barred by res judicata. In the order of the Tribunal dated 07.03.2011 in OA No.1157/2010, it

was held that :-

“7. It is true that options were invited through Office Order dated 28.10.2002, but they were provisional in nature. The final decision lay with the

management which was supposed to work out the full details keeping in view the financial burden on the Corporation. It was also subject to obtaining

exemption and refund from RPFC. It has been clarified by the RPFC that exemption for a particular class or group of employees could not be granted

under the PF Act. The exemption could be sought for and given to an establishment. Besides, in view of an amendment to the PF Act, the exemption

will be granted by the appropriate Government. It is for the respondent authorities to consider whether it would apply to the appropriate Government

as provided in the amended Act. They have to take a view that the scheme should encompass all the workers and should be better than the scheme

available under the PF Act. It is true that the Central Government have done away with the old Pension Scheme since 01.04.2004 in respect of new

entrants who are supposed to be governed by a new contributory Pension Scheme.

7.1 From the materials on record, we do not find that any serious attempt had been made to work out the details of the provisional scheme, assess the

financial requirement for the initial corpus to be created as well as the extent of extra resources which could be raised through higher contributions.

No doubt, LIC has assessed during 2004 the fund requirement as Rs.702 Crore. This figure will undergo further revision in view of the pay revision.

We also take note of the fact that no direction could be given to the respondents to implement a scheme which is beyond its financial capability.

8. However, we find some force in the contention of the learned counsel for the applicants that the matter should have been examined thoroughly and

an informed decision should have been taken. In the circumstances, we would direct the respondents to examine the issue afresh after taking note of

the submissions made by the applicants in respect of availability of extra resources including refund from RPFC (if it is possible) and take appropriate

decision in the subject. This is required in view of the fact that fresh options had been obtained by the respondents themselves. The O.A. is disposed

of with the above observations. No costs.

16. It is further contended by the respondents that one of the case relied upon by the applicant i.e. of Zile Singh (supra) is different from the current

case and the order dated 10.02.2015 passed in Zile Singh's case is under challenge before the Hon'ble High Court in WP No.7043/2015.

17. The respondents submit that from 01.11.1995 onwards, DTC started disbursement of pension to the employees who were eligible for pensionary

benefits in reference to office order dated 27.11.1992. The letter dated 31.10.1995 received from Surface Transport Ministry was not a new pension

scheme but was a continuance of the earlier pension scheme. Since the applicant had not opted for pension under the earlier scheme, he was not a

pension optee and hence is not entitled for any pension. He has however been given benefit of payment of gratuity after taking into account the

formula as applicable in the case of Pension Non Optee employee and not pension optee as alleged.

18. During the course of hearing, the learned counsel for the respondents, Ms. Swati Jain pointed out that the office order dated 28.10.2002 for the

second pension scheme on 28.10.2002 was provisional. The matter had to be examined after receiving options from DTC employees and the

Circular/Scheme was never made operational.

19. Reiterating the contentions raised in the counter affidavit the learned counsel relied upon the judgment of Rati Bhan Vs. Delhi Transport

Corporation in WP (C) No.7477/2011 delivered on 14.10.2011 wherein the same issue has been lucidly discussed in the following paragraphs :-

"4. The respondent/DTC had introduced a pension scheme for its employees retiring on or after 3rd August, 1981 by virtue of its office order

No.16 dated 27th November, 1992. The pension scheme introduced by the respondent was on the same pattern as is applicable in case of Central

Government employees. The employees of the DTC in order to avail the pension scheme had to exercise option within 30 days from the date of the

office order dated 27th November, 1992.

5. However, the petitioner did not opt for the scheme for pension in the year 1992. Thereafter, before the petitioner attained the age of

superannuation, i.e., 60 years and he had to retire from the service of the respondent with effect from 31st March, 2003 in accordance with clause 10

of the DRTA (Conditions of Appointment and Service) Regulations, 1952 read with the office order No.PLD-2479 dated 7th March, 1974, a

communication reference No.PLD-I/PF/2002/975 dated 17th October, 2002 was issued. The said communication stipulated that the petitioner had not

opted for pension and that his nominees as per the record were Sh.Ashok Kumar and Sh.Sanjay.

6. According to the petitioner, the respondent had issued another office order dated 28th October, 2002 inviting option from all the employees of DTC

who wanted to opt for DTC Pension. The option was to be exercised within 30 days. The petitioner pleaded that he exercised his option under office

order dated 28th October, 2002 on 11th November, 2002.

While concluding, the Hon'ble High Court held that :-

“13. This Court has heard the learned counsel for the parties in detail. This has not been disputed that another bench of this Court in the case of

Shyam Lal (Supra) had held that the office order dated 28th October, 2002 and press note dated September, 2003 were only about the intention of the

respondent, to ascertain the financial implication and feasibility of extending the benefit of the pension scheme and after considering the option of the

employees it was found that the introduction of the pension scheme was not feasible and, therefore, it was not introduced. The relevant portion of the

judgment is as follows:

18. Mere issuance of a notice by the respondent calling upon a certain category of applicants to furnish relevant information as to whether or not the

retired employees were willing to avail of the DTC pension scheme cannot be termed to be in the nature of an offer, acceptance of which would bind

the respondent in any manner.

19. The terminology used in the general notice is itself a clear indicator in this direction. The notice stated in no uncertain terms that only information

was being solicited from the surviving retired employees who retired between 3rd August, 1981 and 27th October, 2002, without any commitment, and

further, that the said information received from the applicant was only an intimation of intent to the DTC which did not involve any commitment in any

manner. Thus it is not a case where pursuant to an offer and an acceptance, a solemn promise was made by the respondent to the petitioners

committing itself to extend the benefits of the pension scheme to the petitioners or for that matter, to any other retired employees of the respondent in

terms of the general notice. In this case, the principles of promissory estoppel cannot be invoked. The advertisement issued was only exploratory in

nature and not a firm offer which could be termed as final and binding on the respondent. Nor can the advertisement be held to be extending the

period stipulated in the earlier scheme of 27th November, 1992 floated by the respondent. Any such interpretation given, shall amount to rendering

nugatory, the judgment of the Supreme Court in DTC Retired Employees' case (supra).

20. Thus it is misconceived on the part of the petitioners to claim that any vested legal right had accrued in their favor and against the respondent in

terms of the general notice published in the newspapers, for the petitioners to seek implementation thereof in the present writ petitions. The writ

petitions are, therefore, dismissed as being devoid of merits, leaving the parties to bear their own costs.

Therefore, the option exercised under the office order dated 28th October, 2002 and press note dated 23rd September, 2003 does not give any

crystallized right to the employees including the petitioner to claim pension under the scheme of 27th November, 1992.

14. The learned counsel for the petitioner has not shown any precedent of the High Court or the Supreme Court contrary to the decision in the case of

Shyam Lal (Supra) or holding that the office order dated 28th October, 2002 and the option obtained under it entitled an employee to claim pension

under the scheme of 27th November, 1992. This is also being not disputed by the learned counsel for the petitioner that pursuant to the option

exercised under the scheme by office order on 27th November, 1992 a list of those employees who had exercised the option and who had become

entitled for pension was released in 1996 wherein the name of the petitioner had not appeared and the petitioner had not objected to the same. In any

case a perusal of the order dated 28th October, 2002 clearly reflects that the option exercised under the said office order dated 28th October, 2002 did

not per se entitled a person for pension under the pension scheme of 27th November, 1992. Therefore, the petitioner is not entitled to claim that on

account of him being a deemed optee under the scheme of 27th November, 1992, he is entitled for the benefits under the order dated 28th October,

2002 as well. The order dated 17th September, 2010 rejecting the claim of the petitioner is also reproduced as under:-

The Hon'ble CAT vide judgment dated 4.6.2010 passed the following directions:

Reference of pension as per rules option exercised on 28-10-2002 and press note of 2003.

The case has been admitted in detail and it had been found that the claim of pension by the applicant is not justified on the following grounds.

(i) It has been admitted in the writ petition filed in the Hon'ble Delhi High Court that the ex-employee originally not opted for pension Scheme dated

27-11-1992. Therefore, the employer's share of provident fund, gratuity etc. were released to and withdrawn by the ex.Employee. Thus, the

ex.Employee has neither any right nor he has claimed any which back to the Pension Scheme of 27-11-1992.

(ii) In so far office order dated 28-10-2002 and note of September, 2003 are concerned, the option exercised were provisional and were in the nature

of "intimation of Intent" and did not involve commitment in any manner. The office order dated 28-10-2002 itself stated the provisional nature of the

scheme and that the management was to examine the options and to take a final decision in this regard. It provided that:-

After receiving the list employees exercising their option in favour of DTC Pension Scheme, the matter would be examined. The decision of the

management shall be final.

(iii) To the same effect was the language used in press note 2003. It also stated that the offers received from ex.Employees would be examined and

the management would take final decision, which would be binding.

(iv) The management in an application filed in C.W.48/2001 DTC Workers' Union Vs. informed the Delhi High Court to record its inability to

introduce the intended pension scheme as per office order dated 28-10-2002.

(v) In so far as press note of 2003 is concerned, it was also in the nature of intendment and nothing more. The Hon'ble Delhi High Court in a batch

of writ petitions viz. CW.132/11/04, Shyam Lal and other writ petitions Vs. DTC vide order dated 27-2-2007 upheld the contention of the management

that Press Note of 2003 was only intendment.

(vi) In addition to the above, the Corporation had in the year 2005 come to decision that it lacked resources to implement any pension scheme which

might be formulated pursuant to its offer dated 28-10-2002 and Press Note of 2003.

The learned counsel argued that the case of the applicant being similar to the one discussed above, his claim for pension, has no legs to stand on.

20. Rebutting these arguments forcefully, the learned counsel for the applicant, Shri Hari Kishan informed the bench that the judgment of Rati Bhan

(supra) relied upon by the respondents has been considered and set aside in WP(C) No.6630/2016 in the case of B.R. Khokha Vs. Delhi Transport

Corporation delivered on 14.09.2016. Drawing my attention to para 14 of the aforementioned WP (C) he read out that :-

"14. In view thereof, the judgment relied upon by the counsel for the respondent in the case of Rati Bhan (supra) would not be applicable to the

facts of the present case as in the said case the Division Bench of this Court was persuaded with the view that the retiring employee had accepted the

Central Provident Fund without any protest. Even W.P.(C).6630/2016 Page 11 of 15 otherwise, the Office Order dated 27.11.1992, more particularly

para 6 thereof, deals with the situation where a person has accepted the provident fund. As per para 6 of the said Office Order, the amount is to be

returned with interest.

15. In our view, the present case is fully covered by the decision rendered in the case of DTC v. Raj Singh, W.P. (C) 4728/2014, relevant paragraphs

of which read as under:

"3. It appears that in the year 2002, a circular was issued by the DTC calling upon the existing employees who had not opted for the pension

scheme, to exercise fresh option for pension. The respondent-applicant had exercised his option to be covered by the pension scheme. Despite the

aforesaid, the respondent-applicant was denied pension upon his superannuation. Consequently, the respondent preferred the aforesaid Original

Application before the Tribunal to seek release of pension with effect from 01.12.2004 along with interest. The respondent relied upon the documents

of the petitioner, namely, a communication dated 01.07.2004 issued by the Depot Manager which stated, he has opted DTC pension and the order

dated 29.11.2004 on the subject of payment of gratuity which also showed at serial No. 12 that the respondent had opted for pension.

6. Before us, the submission of Ms. Ahlawat, learned counsel for the petitioner is on the same lines as advanced before the Tribunal. Ms. Ahlawat

submits that the name of the respondent did not figure in the list of pension optees prepared in 1992 since the respondent did not opt for the pension

scheme. She further submits that so far as the 2002 Circular is concerned, the same was issued without authority of law and exercise of option in

pursuance thereof by the respondent is of no avail. She further submits that even in his legal notice, the respondent had not claimed that he had opted

for the pension scheme in the year 1992. W.P.(C).6630/2016 Page 12 of 15

8. As observed by the Supreme Court in DTC Retired Employees Association and Ors. (supra) and by this Court in Madhu Bhushan Anand (supra),

para 9 of the Pension Scheme of 27.11.1992 makes it clear that the said pension scheme applied to all the existing employees of the DTC, except

those who consciously opted not to get covered by the said pension scheme. The option had to be exercised by the existing employees to opt out of the

pension scheme. Otherwise, by default, all the existing employees got covered by the pension scheme. The Supreme Court in DTC Retired Employees

Association and Ors. (supra), inter alia, observed:

14. It is to be noted that those who had retired by the time the Pension Scheme was introduced must have definitely availed of the benefit under the

Provident Fund Scheme and as per the Pension Scheme they were liable to refund the employer's share of provident fund with interest thereon, if they

wanted to opt for the Pension Scheme. On the contrary, some such retired employees might not have been interested in refunding the money received

by them and having utilized such amount would also find it difficult to raise the funds for repayment. It cannot be assumed that they are bound by the

Scheme and would automatically come under the purview. The Pension Scheme cannot be thrust upon such employees even if it may, prima facie, be

beneficial to them. As regards the existing employees as on 27.11.1992, the employer could always ask them to exercise their option within a

stipulated period and if they failed to exercise their option, the deeming provision can be invoked and it could be said that they are covered by the

Scheme. It is also important to note that as per Clause 4 of the Scheme, those employees who joined DTC with effect from 23.11.1992 are

compulsorily covered by the Scheme. Therefore, the Division Bench is perfectly justified in holding that the employees who retired on or after

3.8.1981 but before 27.11.1992 and had not exercised their option within the stipulated period or within the extended period, are not entitled to pension

under the Scheme.

21. In my view, the case of the applicant in OA is squarely covered by the order of the Hon'ble High Court of Delhi in the case of B.R. Khokha

(supra) wherein the petitioner was similarly placed, as the applicant in OA. He was not a pension optee, "not having opted for the pension

scheme of the respondent in terms of office order dated 27.11.1992. In OA No.4464/2014 Shri B.R. Khokha had sought similar benefit (as the present

applicant in OA), which was rejected by the Tribunal in its order dated 28.07.2015. The petitioner however succeeded in the Hon'ble High Court

wherein the order of the Tribunal was set aside and the respondents were directed to grant pension to the petitioner in terms of DTC Pension Scheme,

in terms of para 9 of the Office order dated 27.11.1992. Their Lordships held that the office order dated 27.11.1992 does not expressly mandate that

the optees were obliged to exercise an option to get covered under the scheme. In para 10, it was held that

10. Therefore, merely because the respondent did not respond in terms of the office order/pension scheme dated 27.11.1992 to give his positive option

to be covered by the pension scheme, it cannot be inferred or interpreted that the respondent had opted out of the pension scheme. The language used

in para 9 of the office order No. 16 dated 27.11.1992 is plain and clear and does not, even remotely, support the submission of the petitioner that the

respondent was obliged to exercise the option positively and expressly to get covered by the pension scheme. In the light of the aforesaid, the

petitioner's submission that the circular of 2002 calling for options was issued without any authority, and that the respondent opted for the pension

Scheme only in pursuance of the said circular, is of no avail.

Since the issue has already been decided by the Hon'ble High Court of Delhi, I adopt the same arguments, for sake of brevity and to avoid

repetition.

22. The respondents are directed to grant pension as well as arrears of pension to the applicant under DTC Pension Scheme of 27.11.1992 from the

date of his retirement on superannuation. Before this, the applicant must refund the amount under CPF Scheme to the respondents in terms of the

aforementioned office order. I am however not inclined to grant any interest on the arrears as claimed by the applicant. The respondents are granted

three months time from the date of receipt of this order for implementation of directions contained in this order. OA is allowed. No costs.