

## Prem Nath Sharma Vs Delhi Transport Corporation Through Its Chairman I.P. Estate New Delhi-110002

**Court:** Central Administrative Tribunal Principal Bench, New Delhi

**Date of Decision:** Jan. 4, 2024

**Hon'ble Judges:** Dr. Anand S. Khati, Member (A)

**Bench:** Single Bench

**Advocate:** Naman Jain, Jatin Parashar

**Final Decision:** Dismissed

### Judgement

Dr. Anand S. Khati, Member (A)

1. The present O.A. has been filed by the applicant, who retired as Traffic Inspector from the respondent - Delhi Transport Corporation (DTC), with

a prayer to quash and set aside the impugned orders dated 30.07.2020 and 17.08.2020, whereby his case for payment of pension in terms of Office

Order No. 16 dated 27.11.1992 was rejected. According to him, in terms of Clause 9 of the said order, he was deemed to have opted for the same.

2. It is submitted by the learned counsel for the applicant that the respondent "DTC introduced a Pension Scheme vide Office Order No.16 dated

27.11.1992, applicable to Central Govt. Employees, Clause 3 of the same reads as under:

"3. All the existing employees including those retires 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 this O.O. for the implementation of the Pension

Scheme as approved by the Govt. of India."

In terms of the above, all the employees were required to exercise their option by 26.12.1992. However, the applicant exercised his option on

28.12.1992, i.e. after the prescribed time limit, and in such cases, Clause 9 of the said Office Order would have been operationalized, which reads as

under:

"9. If any of the employee of DTC who does not exercise any option within the prescribed period of 30 days or quit 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."

3. According to the applicant, his case would have clearly fallen under the above clause for the simple reason that he had failed to exercise his option

within the prescribed period of 30 days. Hence, he is eligible for the benefits in terms of DTC Pension Scheme, however, having erroneously taken on

record his belated option dated 28.12.1992, the respondent treated him as an employee not having opted for any pension scheme and automatically

deemed to have been covered under the Employee Pension Scheme, i.e. EPS-95, but he was never informed that EPS-95 had been applied in his

case. The applicant was under the bona fide impression that he was receiving pension in terms of DTC Pension Scheme and was unaware that, in

fact, he is receiving pension under the EPS-95 Scheme since February 2013. Later in 2019, on comparing with his peers, he came to know regarding

this anomaly. Aggrieved, he approached the respondents several times to rectify the anomaly, but to no avail. He also filed RTI applications to gather

relevant information and then, he preferred formal representation dated 20.07.2020, which was rejected by the respondent vide order dated 30.07.2020

without any application of mind and without appreciation of terms of Order dated 27.11.1992 and, thereafter, his appeal was also rejected vide order

dated 17.08.2020.

4. The learned counsel for the applicant also submitted that disbursal of incorrect pension is a continuous cause of action and, in this regard, he relied

upon the judgments of the Hon'ble Supreme Court in Union of India vs. Tarsem Singh, (2008) 8 SCC 648 (paras 4-5), Asger Ibrahim vs.

LIC of India, (2016) 13 SCC 797 (paras 4-5) and Rushibhai Jagdishbhai Pathak vs. Bhavnagar Municipal Corporation, 2022/INSC/592

(paras 10 to 12).

5. Per contra, Mr. Jatin Parashar proxy for Mr. Ajesh Luthra, learned counsel for the respondent-DTC, relying upon the averments made in the

counter affidavit, submitted that the applicant was appointed in DTC as Retainer Crew Driver, Batch No.4564, Token No.14792, w.e.f. 23.02.1973

and brought on monthly rates of pay w.e.f. 24.08.1973. He was promoted to the post of Assistant Traffic Inspector and, thereafter, Traffic Inspector

and retired as such w.e.f. 31.08.2012 on attaining the age of superannuation. On introduction of Pension Scheme vide Office Order No.16 dated

27.11.1992, the applicant had exercised his option as "do not opt for the Pension Scheme", received vide Diary No. I.P.Depot/8549 dated

28.12.1992 available in his service record. The option forms from the existing employees were accepted upto 31.12.1992 and, as such, it is incorrect to

say that the applicant had not exercised his option. As per his option "not opted for DTC Pension Scheme", dated 28.12.1992, which was also

authenticated by the then Unit Officer, I.P. Depot; the same was taken into account in the office orders dated 26.03.2012, 26.09.2012 and 11.03.2013

as "Pension not opted", issued at the time of his retirement. The applicant has been retired from the services of the DTC w.e.f. 31.08.2012 from

the post of Traffic Inspector and on the basis of option exercised by him, all the retiral benefits, i.e. Gratuity as per Gratuity Act and CPF (both shares,

i.e. own + Employer's Share) were settled and released in his favour at the time of his retirement. He had also applied for EPS95 Pension

and drawing Pension from RPFC w.e.f. 01.09.2010 after attaining the age of 58 years and, as such, he is not entitled for DTC Pension.

6. Learned counsel for the respondents further submitted that the present O.A. is squarely covered by the decision rendered by the Hon'ble Apex

Court in DTC Retired Employees vs. Delhi Transport Corporation, decided on 08.05.2001 in Civil Appeal Nos. 3715-3716 of 2001 and the

judgment of the Hon'ble High Court of Delhi in Delhi Transport Corporation vs. Madhu Bhushan Anand and Ors. in WP(C)

No.14027/2009, decided on 10.08.2010 (paras 43 to 46). Further, he relied upon several decisions of this Tribunal, more particularly, in Dharambir

Singh vs. Delhi Transport Corporation in O.A. No.2828/2012 dated 21.10.2013, in Virpal Singh vs. DTC in O.A. No.2035/2020 dated 15.12.2020 and

in O.A. No.2750/2022 dated 27.09.2022, wherein this Tribunal dismissed the O.As., keeping in view the law settled by the Hon'ble High Court in

the case of DTC vs. Madhu Bhushan Anand (supra). He further argued that the applicant is not entitled for DTC Pension and all the dues have

already been released under EPS95 in his favour, as per his entitlement. Hence, his appeal was rejected vide order dated 20.08.2020 and,

accordingly, he prayed that the O.A. is liable to be dismissed.

7. In rejoinder, the learned counsel for the applicant reiterated the claim made by the applicant and vigorously argued that the option exercised by the

applicant was beyond time and was, therefore, not a valid option and could not have acted upon by the respondents, being covered under deeming

provision contained in Clause 9 of the order dated 27.11.1992. He further argued that there is no dispute to the fact that the time to exercise option

was never extended and, in this regard, he made reference to the order passed by this Tribunal in Chandar Ratan vs. DTC in O.A. No.2750/2022

dated 27.09.2022, which relates to an employee who exercised a valid option within the stipulated time and later sought to wriggle out of the same.

8. Heard Mr. Naman Jain, learned counsel for the applicant and Mr. Jatin Parashar, proxy counsel for Mr. Ajesh Luthra, learned counsel on behalf of

the respondent-DTC and perused the pleadings and judgments on record.

9. On a perusal of the record, it is evident that the option form dated 28.12.1992, wherein the applicant is shown to have opted for the

pension scheme introduced by DTC vide its office order No.16 dated 27.11.92, was duly signed by him and also authenticated by the then Unit

Officer, DTC, I.P. Depot. It is the contention of the applicant that since the option was required to be exercised by 26.11.1992 in terms of the order

dated 27.11.1992, the option exercised by him beyond time was non-est and, accordingly, being covered under deeming provision contained in Clause 9

of the said order dated 27.11.1992, could not have been acted upon by the respondents, however, as the respondents have considered the options

exercised by the employees upto 31.12.1992, the option exercised by the applicant was taken into consideration and at the time of his retirement, the

office orders dated 26.03.2012, 26.09.2012 and 11.03.2013 were passed indicating as "Pension not opted". Accordingly, the applicant is not

entitled for DTC Pension and all his retiral benefits, i.e. Gratuity and CPF etc. have already been settled and released on the basis of the option

exercised by him.

10. I have also gone through the judgment dated 15.12.2020 passed by a coordinate bench of this Tribunal in an identical matter bearing O.A.

No.2035/2020, the relevant part of the same is reproduced below:

"7. What has come out is that there is a document wherein the applicant chose at the relevant point of time, to continue with the earlier CPF

Scheme. This document is signed on 21.12.1992 and it contains signature of the applicant as well as his Unit Incharge. The applicant herein was

superannuated in the year 2009 and no such claim, to cover him in GPF cum Pension scheme of 1992, was raised at that time. Thereafter it was only

in the year 2016 that he started making comparison who had opted for Pension scheme, and made representations that he ought to have been covered

under the new pension scheme of 1992.

8. In view of the reply already submitted by the respondents to the applicant's representation and the signed copy of the option form to continue

with CPF scheme as brought out above, the Tribunal does not find any merit in the case being set up by the applicant. Such belated change of course

is not permissible.

9. There is no merit in the O.A. The same is dismissed at the admission stage itself. No costs.

11. Further, the Hon'ble High Court of Delhi in the case of DTC vs. Madhu Bhushan Anand (supra) has observed as under:

"43. The compulsion alleged by them is the uncertainty of pension being released. As noted hereinabove the pension scheme notified on 27.11.1992

could not take off because LIC did not fund the scheme as envisaged and later on the Central Government agreed to fund the scheme on 31.10.1995

and indisputably those who retired after 1.11.1995 were paid pension. Thus, the compulsion resulting as the consequence of the uncertainty of pension

being released, which may have been uncertain when the said respondents opted out to receive pension and reverted to receive benefit under CPF,

came to an end on 1.11.1995. The silence of these respondents for periods ranging from 12 to 15 years when they took recourse to legal action is

clearly indicative of there being no compulsion. The silence of these respondents speaks for itself. It is apparent that with the passage of time these

respondents became clever by a dozen and thought why not take the benefit of a few who likewise went to Court and obtained relief, by pulling wool

over the eyes of the Court by pleading that their act of subsequently opting out of the pension scheme was meaningless because the contract stood

concluded, a submission which was accepted by the Courts without considering the further issue of contract being novated.

44. In our opinion these respondents have no claim whatsoever to receive pension. They novated the contract by volition when they subsequently

opted out of the pension scheme and DTC accepted the same and paid to them even the management's share in the CPF account. Their claims are hit

by delay, laches and limitation. They are not entitled to plead that right to receive pension is a continuous cause of action, for the reason, in law either

pension can be received or benefit under the CPF account. If the management forces down the gullet of an employee payment under the CPF

Scheme and the employee desires pension he has to approach the Court or the Tribunal within a maximum period of 3 years being the limitation

prescribed to file a suit.

45. That apart, if it was the case of the respondents that they were compelled to opt out of pension scheme on account of the uncertainty in the

implementation of the pension scheme, they ought to have sought a declaration that their act of opting out of the pension scheme be declared null and

void, being out of compulsion and for said prayer they ought to have made the requisite pleadings entitling them for such a declaration. Needless to

state an act out of compulsion is a voidable act and not a void act. The respondents have admittedly not done so. It is only in the rejoinder filed by

them to the reply to their respective OA that a bald plea has been set forth that they acted out of compulsion when they opted out of the pension

scheme.

46. Accordingly, we hold that the said writ petitions have to be allowed.Ã¢â‚¬â€œ

12. Moreover, the Hon'ble Supreme Court in DTC Retired employees' Association vs. DTC (supra), after detailed consideration of the

issue in question, dismissed the Appeal made by the applicants therein, keeping in view the aforesaid decision of the Hon'ble High Court of Delhi.

13. In view of the above settled position of law on the issue under consideration, the decisions relied upon by the learned counsel for the applicant

regarding disbursal of incorrect pension being a continuous cause of action, are not applicable in the present case, as vide the option form dated

28.12.1992, the applicant himself did not opt for the pension scheme. Hence, we find no infirmity in the impugned orders passed by the respondents.

14. As a result, we find no merit in the O.A., and the same is, therefore, dismissed. However, there shall be no order as to costs.