

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

+ **W.P. (C.) No.1/2010**

% **Date of Decision: 06.01.2010**

Delhi Transport Corporation Petitioner
Through Ms.Avnish Ahlawat, Advocate.

Versus

Sh.Brij Bhushan Sharma Respondent
Through Ms.Kittu Bajaj, Advocate.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE MOOL CHAND GARG

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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The petitioner/DTC has impugned the order dated 6th July, 2009 passed by the Central Administrative Tribunal in T.A No.629/2009, Sh.Brij Bhushan Sharma v. Delhi Transport Corporation holding the respondent eligible for pension under the pension Scheme of 27th November, 1992 and directing the respondent to return the amount of

provident fund paid to him s and granting simple interest of 8% on the arrears of pension.

The brief facts to comprehend the controversies are that the respondent retired from the service of the petitioner Corporation on 31st October, 2004. A pension scheme was issued by the petitioner by office order No.16 dated 27th November, 1992 which contemplated in terms of Clause 9 of the scheme that if any employee of DTC would not exercise any option within the prescribed period of 30 days or quit service or dies without exercising the option or if the option exercised is incomplete or conditional or ambiguous, he would be deemed to have opted for the pension scheme benefits.

The respondent had joined the services of the petitioner Corporation in 1965 and according to respondent he did not give any option in writing at the time of introduction of pension scheme and nor did he file any option form. However, on his service book a stamp was put indicating that he had not opted for the pension scheme. According to the respondent he had not exercised the option and under Clause 9 of the scheme of 1992, he was deemed to have opted for the pension scheme. In 2002 another office order dated 28th October, 2002 had also been issued stipulating that those employees who had not opted under the 1992 scheme could exercise their option for the pension scheme. The respondent therefore, opted for the pension scheme pursuant to

officer order of 2002 as according to petitioner he had not filed any option form in 1992. After his retirement the petitioner made representations for grant of pension which was declined on the ground that he had opted not to avail the pension in 1992.

On failure of the petitioner to grant the pension, an original application under Section 19 of the Tribunals Act, 1985 was filed which has been allowed by the Tribunal by order dated 6th July, 2009 in T.A No.629/2009. The Tribunal noted that since the respondent had not opted for pension scheme under the 1992 scheme and under the deeming clause 9 he would be deemed to have opted for the same, therefore, the respondent is entitled for pension under the said scheme. The Tribunal has rejected the plea of the petitioner that the endorsement was made on the service book of the respondent on the basis of the option exercised by the respondent on the ground that the option form of 1992 was not produced by the petitioner and the plea of the petitioner that the option form had been removed by the respondent in collusion with the officials the petitioner has also been rejected on the ground that the plea is based on surmises.

This cannot be disputed that under Clause 9 of the Pension Scheme of 1992, if an employee had not opted for the pension under the scheme, under the deeming provision, he was deemed to have opted for pension. The petitioner could substantiate its plea that the respondent

had not opted for pension by filing the option form of the respondent, which has not been done. The plea of the petitioner that the option form was removed by the respondent in collusion with other officials also cannot be accepted in the facts and circumstances. In case the respondent had filed an option form and had not opted for pension and it was removed, the petitioner should have taken some action against the delinquent officials or should have conducted enquiry about it.

The respondent had opted for the pension under the scheme of 2002. The pension scheme of 2002 was for those who had not exercised their option under the pension scheme of 1992. Since the respondent had applied under the scheme of 2002, at that time, the petitioner ought to have declined to accept his option on the ground that the scheme was only for those employees who had not exercised the option under the pension scheme of 1992, which was not done by the petitioner. The pension had been declined in 2004 by the petitioner when the respondent demanded it after retirement. The Tribunal has noted these facts and after considering the pleas of the parties, has held that the respondent is entitled for pension.

In the circumstances, there is no such error or illegality in the order of the Tribunal holding that the petitioner is entitled for pension as he had not opted for pension under the 1992 scheme and he had opted for pension under the scheme of 2002, which requires to be

corrected by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

For the foregoing reasons the writ petition is without any merit and it is, therefore, dismissed.

ANIL KUMAR, J.

January 06, 2010

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MOOL CHAND GARG, J.