

# Delhi Transport Corporation vs Sh. Rajinder Kumar Modi on 28 March, 2025

**Author: C. Hari Shankar**

**Bench: C. Hari Shankar**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2075/2019 & CM APPL. 9690/2019

DELHI TRANSPORT CORPORATION

.....Petitioner

Through: Mrs. Avnish Ahlawat, Standing  
Counsel with Mr. N. K. Singh, Ms.  
Laavanya Kaushik, Ms. Aliza Alam, Mr.  
Mohnish Sehrawat, Adv.

versus

SH. RAJINDER KUMAR MODI

.....Respondent

Through: Mr. Hari Kishan, Adv.

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

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28.03.2025

C. HARI SHANKAR, J.

1. This case is entirely covered by the judgment rendered by us in DTC v Anil Luthra<sup>1</sup>, though Ms. Ahlawat, appearing for the appellant-Delhi Transport Corporation<sup>2</sup> has spared no efforts in attempting to distinguish the said decision.

2. The respondent had joined the services of the DTC on 19 November 1966. At that time, all employees of the DTC were covered by the Contributory Provident Fund<sup>3</sup> scheme. On 27 1 2025 SCC OnLine Del 1650 2 "DTC" hereinafter 3 "CPF" hereinafter November 1992, the DTC introduced a Pension Scheme in its organization. Para 3 of the Office Order dated 27 November 1992 permitted employees, if they so chose, to continue to remain under the CPF scheme of the DTC. However, the option was required to be exercised within a period of three months from that date, failing which para 9 of the Office Order ordained that they would automatically switch over to the newly introduced Pension Scheme. This period of three months got extended till 1995, as the new Pension Scheme had to be operationalized by the LIC, and there were certain hiccups in the process.

3. The respondent never opted to continue under the CPF scheme of the DTC. Nor did the respondent, at any point of time, state that he did not want to switch over to the Pension Scheme. In other words, no option, positive or negative, was exercised, to continue in the CPF Scheme.

4. As was the case in Anil Luthra, the respondent continued to contribute to the CPF and, at retirement, was also paid the DTC's contribution to the CPF. Several years thereafter, he represented to the DTC stating that he was entitled to be treated as covered under the Pension Scheme and, therefore, seeking disbursal of the benefits available to him thereunder. On the DTC refusing, the respondent approached the Central Administrative Tribunal<sup>4</sup> by way of OA 31/2015, which, by order dated 23 December 2015, has allowed the OA. Aggrieved thereby, DTC has approached this Court under 4 "the Tribunal" hereinafter Article 226 of the Constitution of India.

5. Ms. Ahlawat relies on the list of dates and events filed by the respondent with the OA before the Tribunal, in which, against the date 27 November 1992, it is stated that the respondent did not opt for the pension scheme in pursuance of the Office Order dated 27 November 1992. Thus, she submits, the respondent could not seek to contend, later, that he was a deemed pension optee.

6. We fail to understand how the DTC can seek to avail any benefit from this averment in the list of dates. There is no dispute about the fact that the respondent had not opted for the Pension Scheme pursuant to the office order dated 27 November 1992. The Office Order dated 27 November 1992 did not require him to do so, to switch over to the Pension Scheme. All it required, vide para 3 thereof, was for the employee concerned to opt, should he so desire, to continue under the CPF Scheme. In default, para 9 of the Office Order automatically switched him over to the Pension Scheme. The submission that the petitioner had not opted for the Pension Scheme following the Office Order dated 27 November 1992 is, therefore, neither here nor there and is, in fact, alien to the scheme of the Office Order itself.

7. We have, in our decision in Anil Luthra, after examining the judgment of the Supreme Court in University of Delhi v Shashi Kiran<sup>5</sup>, which fully covers the case, clearly held that a person who exercised no option pursuant to the Office Order dated 27 November 5 (2022) 15 SCC 325 1992 automatically switched over to the Pension Scheme in view of para 9 of the said Office Order.

8. As such, by operation of para 9 of the Office Order dated 27 November 1992, the respondent automatically switched over to the Pension Scheme.

9. Ms. Ahlawat also sought to contend that the respondent had based his case in the OA on the 2002 Scheme which was later introduced by the DTC. This aspect has also been addressed by us in our decision in Anil Luthra. We have pointed out that the matter is not one of pleadings but of operation of law. Para 9 of the Office Order dated 27 November 1992 of the DTC itself stipulated that an employee of the DTC, who was earlier covered under the CPF scheme, and who did not exercise any option in terms of para 3 of the said Office Order, would switch over to the Pension Scheme. This was an inexorable consequence of the operation of para 9 of the Office Order dated 27 November 1992, and no pleadings could alter the position one way or the other. Para 1 of the subsequent Office Order dated 28 October 2002 made it applicable to employees who were not covered by the Office

Order dated 27 November 1992. To employees who were deemed pension optees by virtue of para 9, read with para 3, of the Office Order dated 27 November 1992, therefore, the Office Order dated 28 October 2002 had no application, and the exercise, or non-exercise, by them, of any option under the latter Office Order made no difference.

10. It is obvious that the DTC could not refuse to apply the Office Order dated 27 November 1992 to an employee merely because the employee did not aver that it applied.

11. The situation of the respondent in the present case is, therefore, identical to that of Anil Luthra in the judgment decided by us.

12. Mrs. Ahlawat has also sought to cite the judgments of Division Benches of this Court in DTC v Zile Singh<sup>6</sup>, DTC v Jagdish Chandra<sup>7</sup> and Rati Bhan v DTC<sup>8</sup>. These are judgments rendered by Division Benches, whereas we have followed the decision of the Supreme Court rendered later in point of time in Shashi Kiran. Moreover, Mr. Hari Kishan, learned Counsel for the respondent submits that, in para 3 of the judgment in Zile Singh and in para 10 of the judgment in Jagdish Chandra, it is clearly stated that the concerned employees in that case had opted out of the Pension Scheme. In the present case, the respondent has, at no point of time, opted out of the Pension Scheme of the DTC.

13. We have also observed in Anil Luthra that as the issue now stands fully covered by the judgment of the Supreme Court in Shashi Kiran, there is no question of adverting to any judgment passed by this Court, even though, in that case, reliance had been placed by Mrs. Ahlawat on the Full Bench judgment of this Court in R.D. Gupta v DTC<sup>9</sup>.

6 2017 SCC OnLine Del 6660 7 Judgment dated 21 March 2017 in W.P. (C) 8173/2016 8 2011 SCC OnLine Del 4394 9 2011 SCC OnLine Del 4008

14. Mrs. Ahlawat has not been able to point out any basis on which this case can be distinguished from the judgment of the Supreme Court in Shashi Kiran or for that matter our decision in Anil Luthra, in which we followed the judgment of the Supreme Court in Shashi Kiran.

15. Accordingly, following our decision in Anil Luthra, we find no cause to interfere with the impugned judgment of the Tribunal which is affirmed in its entirety.

16. The writ petition is accordingly dismissed.

17. Compliance with the judgment of the Tribunal, if not already made, be ensured within a period of four weeks from today.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 28, 2025 ar [Click here to check corrigendum, if any](#)