

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1677/2002

New Delhi this the 29<sup>th</sup> day of April, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Vidya Prakash,  
S/o Sh. Labhu Ram,  
R/o i-H, Vikrant Apartment,  
Plot No.45, Sector-13,  
Rohini, Delhi-110085.

-Applicant

(By Advocate Shri S.K. Vyas)

-Versus-

Union of India through:

1. Chairman, Railway Board,  
Rail Bhawan, Rafi Marg,  
New Delhi-110001.
2. General Manager, Northern Railway,  
Baroda House, New Delhi-110001.
3. Divisional Railway Manager,  
Allahabad.

-Respondents

(By Advocate Shri Rajinder Khatter)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 31.12.2001 wherein his option to switch over to pension scheme has been rejected. Applicant has sought quashment of this order with a direction to respondents to accept the option given by applicant and to pay as a consequential relief DCRG, commutation of pension and other benefits after adjusting the amount of SRPF benefits.

2. Applicant who was working as Driver sought voluntary retirement on domestic grounds and was retired w.e.f. 11.9.79 opting for State Railway Contributory Provident Funds (SRPF). By a letter dated 23.8.79 Railway Board issued orders inviting option to switch over to pension benefit from SRPF to those employees who were in

service as on 1.4.79 on account of liberalisation of pension formula and this option was to be exercised by 31.3.79 to November 22, 1980.

3. On knowing about Board's letter dated 3.8.79 and as option could not be given to him representations have been preferred and finding no response OA-1979/2000 filed by applicant was disposed of on 3.10.2001 with direction to respondents to dispose of the representation by a detailed order keeping in view the judgement of the Apex Court in SLP-14785/96 in Union of India v. D.R.R. Sastri. Accordingly respondents considered the claim of applicant and rejected the same by stating that as applicant has failed to exercise his option during his service he cannot at a belated stage be allowed to switch over to the pension scheme, giving rise to the present OA.

4. Learned counsel for applicant relying upon the decision in Sastri's case (supra) contended that therein also as the option was not communicated to petitioner similar relief has been accorded and as in all fours case of applicant is covered by this decision, he cannot be meted out a differential treatment.

5. It is stated that in case of K.B. Kasturi similar treatment has been meted out by the respondents to him, switching over to pensionary benefits after 21 years of his retirement and as respondents have failed to show that contents of letter dated 23.8.79 had not been communicated to applicant and as option was available to him as he was in service on 1.4.79 he has a legal right to

opt which is accepted by respondents for grant of pensionary benefits and the amount of SRPF be adjusted towards dues on account of retiral benefits to applicant.

6. On the other hand, respondents' counsel took an objection of limitation stating that once applicant has slept over his right he has lost his remedy as well. Sh. Rajinder Khatter, learned counsel for respondents contended that as applicant retired on 11.9.79 and before that several options have been circulated to switch over to pension scheme having failed to exercise his option and moreover acceptance of settlement payment under SRPF the matter cannot be reopened at this belated stage. Moreover, it is contended that the decision in D.R.R. Sastri's case (supra) which is based on the decision in Kasturi's case cannot be treated as a precedent under Article 141 of the Constitution of India, as the same was in the peculiar facts and circumstances of the case and in view of the constitutional Bench decision in Krishena Kumar v. Union of India, (1990) 4 SCC 207 as well as the decision of High Court of Judicature at Madras in No.18256/96 in Union of India v. The Central Admny. Tribunal Chennai Bench through its Registrar & Others, applicant's claim is liable to be rejected.

7. In so far as options are concerned, it is contended that options issued on 20.3.74, 17.4.78 and 20.5.78 were widely circulated but applicant who was not willing to opt for pension scheme had not made any efforts even after his retirement to be in contact with Senior

Supervisor/Welfare Inspector for submission of option. As such, he cannot be accorded an option to switch over to pension scheme at this stage.

8. In the rejoinder contentions put forth in the OA are re-iterated with reference to the decision of the Bombay Bench of this Tribunal in Joseph John Gonsalves v. Union of India, ATR 1990 (I) CAT 9.

9. I have carefully considered the rival contentions of the parties and perused the material on record. Apex Court while dealing with the case of K.R. Kasturi and Sastri (supra) in Union of India v. Kailash, (1998) 9 SCC 721 observed as under:

"1. Leave granted. Heard learned counsel for the parties. Learned counsel for the appellants submitted that the point raised in this appeal is clearly covered by the decision of this Court in Krishna Kumar v. Union of India (1990) 4 SCC 207 and the Tribunal was wrong in taking a contrary view relying upon the decision of this Court in R. Subramaniam v. Chief Personnel Officer, Central Railway, Ministry of Railways (1996) (10) SCC 72). In R. Subramaniam what has happened was that benefit of the order passed in his favour was not given to him even though SLP filed by the Union of India against it was dismissed and the review application filed by it thereafter was also dismissed. R. Subramaniam therefore filed a writ petition which came to be allowed. That case was thus decided on its own facts. The Tribunal was therefore not right in deciding the respondent's application in his favour by following that decision. Realising the difficulty in this way, learned counsel for the respondent tried to support the order of the Tribunal with the decision of this court in Union of India v. D.R.R. Sastri (1997) (1) SCC 514). That case also was decided on facts special to it. This court refused to interfere with the order of the Tribunal because the Union of India had failed to explain why the benefit, which was given to K.R. Kasturi was not given to D.R.R. Sastri even though his case was similar. Obviously, the two-Judge Bench would not have intended to take a view contrary to what was held by the Constitution Bench of five-Judges in Krishna Kumar case (1990 (4) SCC 207). Nor

would it have intended to lay down that because a wrong benefit is given to one, similar benefit is required to be given to others similarly situated as denial of the same would amount to discrimination violative of Article 14 of the Constitution. Therefore, D.R.R. Sastri's case has to be regarded as a case decided on its special facts."

10. The Constitution Bench in Krishna Kumar's case held as follows:

"7. On a reading of the Constitutional Bench decision of the Honourable Supreme Court, it is clear that the date fixed in each of the Notification for exercise of the option for the employees to switch over to pension scheme was to be adhered to and that the cut-off dates were not arbitrarily chosen but has nexus with the purpose for which the option was given. It was also made clear that the period of validity of option was extended on certain circumstances for stated reasons. When the position was stated in such categoric terms by the Hon'ble Supreme Court with reference to the various circulars which inter alia included the circular dated 23.7.1974 there is no gain saying that merely because in a different case, namely, in the one reported in 1997 (1) SCC 514 (UNION OF INDIA & OTHERS versus D.R.R. SASTRI) in view of the special facts involved in that case, the honourable Supreme Court was pleased to confirm the order of the Tribunal which chose to grant the relief, on the basis of the said decision, the employees who failed to exercise their option within the stipulated time and who came forward to exercise their option at a highly belated point of time, such option should also be accepted irrespective of belated nature of exercise of such option and grant the relief in their favour. As interpreted by the honourable Supreme Court in the subsequent decision reported in 1998 (9) SCC 721 (UNION OF INDIA AND OTHERS versus KAILASH) in the light of the decision of the constitutional Bench of the honourable Supreme Court reported in 1990 (4) SCC 207, there is no scope for entertaining the claim of the deceased applicant in the case on hand as well who came forward to exercise the option after a delay of nearly 18 years. We are therefore unable to sustain the order of the Tribunal impugned in this Writ Petition.

In the result, the Writ Petition, is, therefore, allowed. The order impugned in this Writ Petition is hereby set aside."

11. Moreover, Apex Court in Union of India v. L.A. Fabian 1997 (1) SLR SC 676 rejected the similar claim on the ground of non-exercise of option, as available and held that Krishena Kumar's decision (supra) is a binding precedent under Article 141 of the Constitution of India to be followed.

12. If one has regard to the aforesaid rulings the decision in D.R.R. Sastri's case (supra) following Kasturi's case where a similar decision was taken by the Railways to allow the railway servant to exercise option and to switch over to pension, what has been held in Kailash's case (supra) that a wrong benefit to one would not perpetuate a right and as D.R.R. Sastri's case has been observed to be a case decided on its special facts the same cannot be resorted to as a precedent under Article 141 of the Constitution of India and resort of applicant on this basis is liable to be rejected.

13. In a constitutional Bench decision in Krishena Kumar's case (supra) after dealing with options circulated from time to time cut off date was found to be reasonable within the purview of Article 14 of the Constitution of India and those who failed to exercise their option are not found entitled to be accorded the benefit.

14. As applicant was informed of the options circulated in 1974 and in 1978 twice on his own volition accepted the SRPF and voluntarily retired without any objection, the delay in exercising option, i.e., in the year 1999 on the ground that he was made aware of the

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option cannot extend the period of limitation and in this view of the matter the OA is highly belated. However, having regard to the representations made by applicant and direction of the Tribunal and on perusal of the orders passed I do not find any legal infirmity in the same.

15. In so far as option circulated vide letter dated 23.8.79 is concerned, the same was available through General Manager of all the Divisions and offices of the Railways and as applicant stood retired voluntarily on 11.9.79 he could have approached the Welfare Officer and could have exercised option. Having failed to exercise option he cannot be allowed to switch over in the light of the decision of the constitutional Bench.

16. In the result, as the decision in D.R.R. Sastry's case (supra) is held to be in the peculiar facts and circumstances of its case OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju  
(Shanker Raju)  
Member (J)