

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI

(2)

O.A. NO. 492 of 1998

Date of Decision 14.7.1999

M.L. Kamalwar

Applicant(s)

Shri Mukul Talwar

Advocate for the Applicant(s)

Versus

U.O.E - M/o Railways etc. Respondent(s)

Shri R.P. Aggarwal

Advocate for the Respondent(s)

C O R A M: (Single/Division)

Hon'ble Shri R.K. Ahoaji

Hon'ble Shri                   

1. Whether Reporters of local papers may be allowed to see the Judgement?

Yes/No

2. To be referred to the Reporter or not?

Yes/No

DR

(R.K. AHOJA)  
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.No.492/98

HON'BLE SHRI R.K. AHOOJA, MEMBER(A)

New Delhi, this the 14th day of July, 1999

(3)

M.L. Khullar  
S/o Late G.L. Khullar  
BB-7, Greater Kailash Enclave-II  
New Delhi 110 048

....Applicant

(By Advocate: Shri Mukul Talwar)

Versus

1. Union of India  
Ministry of Railways  
Rail Bhavan, New Delhi
2. The Chairman, Railway Board  
Ministry of Railways  
Rail Mantralaya  
Rail Bhavan, New Delhi

....Respondents

(By Advocate: Shri R.P. Aggarwal)

O R D E R

The admitted facts of the case may be briefly stated. The applicant joined service of the Railways as an Assistant Electrical Engineer on 24.12.1948 and retired on 31.7.1982 as Chief Administrative Officer, Metropolitan Transport Project(Railways), New Delhi. At the time the applicant joined service, there was no pension scheme on the Railways. However, in 1957 a retirement benefit scheme known as State Railway Provident Fund, for short "SRPF", was introduced. In the year 1974 on the basis of the recommendations of the Third Pay Commission, a liberalised pension scheme was introduced and the Railway Board, by its letter dated 23rd July, 1974, decided to give an opportunity to the persons governed by the SRPF scheme to opt for the liberalised pension scheme. The applicant, however, opted to continue with the SRPF. Initially, the dearness allowance was not taken into account for the purposes of

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calculating the pension. However, when the pensionary benefits were further improved as a result of inclusion of the dearness allowance as pay for the purposes of calculating the pension by the Railway Board's letter dated 4.10.1982 it was decided that the railway servants who had retained the SRPF may be allowed another opportunity to opt for the Railway Pension Rules. This option was allowed by letter dated 4.10.1982, copy at Annexure A-2, to those railway servants who were in service on 31.8.1982. This option was to be exercised latest by 28.2.1983. By a subsequent letter dated 9.11.1982 the Railway Board preponed the eligibility date to 31.1.1982 and extended the time for execising the option upto to 31.8.1983. It is the case of the applicant that as he had retired from service on 31.7.1982 he had considered himself as ineligible for the benefit of the Railway Board's letter dated 4.10.1982 which prescribed only such railway servants as eligible who were in service on 31.8.1982. As regards the subsequent letter dated 13.5.1983 which preponed the date to 31.1.1982 thus bringing him within the purview of the letter dated 4.10.1982, the applicant submits that he was out of service by that time and was never informed by the Railway authorities of his right to exercise the option. The applicant contends that in similar circumstances where the Railway authorities had not intimated the right to exercise the option and had not calculated the relative benefits as per the directions of the Railway Board's letter dated 4.10.1982, this Tribunal as well as the Supreme Court had ordered that the concerned Railway workers be allowed to exercise the option even at this late stage. The applicant in this regard relies on the decision of this Tribunal in the case of DRR Sastri Vs.

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Union of India and Others in O.A. No.1711/93 decided on 23.9.1994 by the Madras Bench of the CAT and the subsequent order of the Supreme Court in Civil Appeal 1455/96 decided on 22.11.1996 wherein the decision of the Tribunal was upheld.

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2. The learned counsel for the applicant Shri Mukul Talwar has at considerable length argued the case of the applicant to show that the applicant did not have a proper opportunity to exercise his option as per the letter of 4.10.1982 read with letter dated 13.5.1983. He pointed out that not only the applicant was never intimated the calculations referred to in paragraph 2(iii), he had no opportunity of know of the changed cut off date conveyed by the Board's letter dated 4.10.1982 as by that time he was out of the country on account of the treatment of his wife. Shri Talwar further argued that it was only after the decision of the Supreme Court in Civil Appeal No.1455/96 in DRR Sastri Vs. Union of India & Others Vs. DRR Sastri that the applicant came to know of the option available to him because the aforesaid decision of the Supreme Court was published in some newspapers.

3. I have carefully considered the aforesaid arguments and have gone through the available record. On careful consideration I have no doubt in my mind that the contention of the applicant that he was not aware of the option till November, 1997 cannot be accepted. In fact, the applicant's own representation dated 9.6.1997 (Annexure A8) makes this very clear.. In the very opening paragraph of that representation, the applicant states that he has a right to exercise the option to come on to

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pension as a consequence of Board's letters dated 18.6.1985, 8.5.1987 and 19.9.1994. He repeats that in para 7 of his representation. At no stage does he refer to the Board's letter dated 4.10.1982 or the letter dated 13.5.1983 which had allowed a fresh exercise of option to those who had earlier opted for SRPF. The burden of his whole representation is that the further liberalisation of pensionary benefits by the aforesaid letters of 18.6.1985 and 8.5.1987 had changed the comparative merits of the two schemes and in order to make a fair choice it was proper and just that with every change in the pensionary benefits he be given a fresh opportunity to exercise the option. One can only presume that the applicant did not make any reference to the letters dated 4.10.1982 and 13.5.1983 because despite the offer to reexercise his option, he did not find any reason to change over from SRPF to the Pension Scheme; A further liberalisation of pensionary benefits in 1985, 1987 and 1994, and one may add in 1997, made him feel that he had made a mistake and should be given another opportunity to exercise a fresh option.

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4. I am also strengthened in my conclusion by the fact that, when he filed the O.A. on 27.2.1998, the applicant did not take the ground that he had not been made aware of the Board's letters of 1982 and 1983. Later, however, he amended his O.A. on 11.11.1998 when he added the ground regarding lack of knowledge of these letters. Clearly this ground was taken as an afterthought and the conclusion is inescapable that the amendment was carried out in order to make the applicant's case fall within the purview of judgments of this Tribunal in O.A. No.1711/93 D.R.R. Sastri Vs.

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Union of India and Supreme Court's decision also in the Civil Appeal No.1455/96 in Union of India Vs. D.R.R. Sastri.

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5. In so far as applicant's contention that with every improvement in the pensionary benefits he is entitled to exercise a fresh option is concerned, Supreme Court's decision in Union of India & ors. Vs. A.J. Fabain Civil Appeal No.16861 of 1996 is relevant. Relying on Krishna Kumar and Others etc. Vs. Union of India and Others [(1990) 3 SCR 352] the Supreme Court held that since the retirees with Provident Fund Scheme and those with Pension sheme do not have the same pay scales, there is no point in extending the benefit of the Pension Scheme since they did not exercise their option within the given time. The Pension Scheme options having been formulated and options having been given to the retired employees after failure to avail of the remedy, they are not entitled to come back for the benefit of Pension Scheme. In the light of these decisions of the Supreme Court, the applicant having exercised his option for the contributory provident fund, can no longer have a claim to pensionary benefits merely on the ground that such pensionary benefits have since become more beneficial.

6. In the light of the above discussion, finding no merit in the O.A., the same is dismissed. There is no order as to costs.

  
(R.K. Ahuja)  
Member (A)