

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 507
T.A. No.

1995

DATE OF DECISION _____

<u>A. K. Modhly</u>	Petitioner
<u>Shri R. Venkataaramani</u>	Advocate for the Petitioner(s)
Versus	
<u>RTI & OCS.</u>	Respondent
<u>Shri V. K. Patel</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. . Lakshmi Swaminathan, Member(A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal

JUDGEMENT

(Hon'ble Shri N. Krishnan, Vice Chairman(A))

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan
Member(A)
18.9.1995)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.507/1995

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New Delhi, this 18th day of September, 1996

Hon'ble Mrs. Lakshmi Swaminathan, Member(A)

Shri R.K. Moorthy
s/o late Shri Rajagopala Iyer
28/391, Trilokpuri, New Delhi-95 .. Applicant
(Shri R.Venkataramani, Advocate)

vs.

Union of India, through

1. Secretary
Railway Board
Rail Bhawan, New Delhi
2. Chief Personnel Officer
Pension Adalat
Central Railway, Bombay VT
3. The General Manager
Central Railway, Bombay VT .. Respondents

(Shri K.K. Patel, Advocate)

ORDER(oral)

This application is filed under Section 19 of the AT Act, 1985 by the applicant, claiming that he is entitled for pensionary benefits in accordance with the Pension Rules, which have been illegally denied to him by the respondents.

2. The brief facts of the case are that the applicant who entered service as Khalasi in October, 1956, sought voluntary retirement from service with effect from 31.12.80. As a result of an explosion in some of the goods wagons which occurred in the year 1966 near his place of duty at Nagpur, he states that it caused him extreme shock and damaged his eardrums which has completely impaired his hearing. Due to this physical impairment and the nature of the duties involved, he sought and was permitted to take voluntary retirement

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from service - from 31.12.80 on medical grounds. Subsequently, it appears that he had made several representations for reconsidering his voluntary retirement and to reinstate him in service which were rejected by the respondents.

3. The applicant states that from 29.12.81 onwards, he has been making repeated representations for grant of pension under the Pension Rules and other benefits under the State Railway Provident Fund (SRPF) Scheme. These representations also have not been replied. The applicant filed a writ petition in the Supreme Court (WP Civil No.728/94) which was withdrawn on 9.12.94 with permission to move this Tribunal for appropriate reliefs. Thereafter, he has filed this OA.

4. In this application, the applicant has sought a direction to the respondents to consider his case for grant of pensionary benefits in accordance with the relevant Pension Rules. Shri R. Venkataramani, learned counsel for the applicant submits that the Railway Service (Extraordinary) Pension Rules as brought out in Rule 2709 (CSR 738) of the Indian Railway Establishment Code (Volume II) (Fifth Reprint - 1973) is applicable to the applicant. In addition to the above Rules, the learned counsel has also referred to the Railway Board's circular dated 16.11.57, in particular para 4, pertaining to the grant of pensionary benefits. The applicant's case is that although this Pension Scheme was applicable to him as he was in service on 1.4.67, since he had not given any option, opting for the

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benefits under the Pension Scheme, by operation of para 4 of the Circular, he should be deemed to have opted for the pensionary benefits. He further submitted that if in accordance with this Circular the applicant is entitled to the pensionary benefits, then he is willing to refund the amount he had received under the SRPF Scheme to the respondents. An alternative prayer was also made that in the event this is not possible, then at least the respondents should consider the applicant's case for payment of pension under the Railway Service (Extraordinary) Pension Rules taking into account the particular facts.

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5. I have also heard Shri K.K. Patel, learned counsel for the respondents. The main ground taken by the respondents is that the application is strictly barred by limitation and jurisdiction, to the extent that the applicant took voluntary retirement with effect from 31.12.80 and all his dues have been paid to him but he has only filed this application in March, 95 when the cause of action had arisen ^{more than three years} prior to the existence of this Tribunal which was set up under the Administrative Tribunals Act, 1985. Another argument submitted was that the applicant had never exercised his option to be governed by the Pension Scheme as provided in the Railway Board's circular dated 16.11.57 as amended further by letter dated 9.5.58. He also relies on the judgement of the Supreme Court in the case of Krishana Kumar & Ors. Vs. UOI & Ors. (SCALE 1990(Vol.2) page 44) and the judgement of this Tribunal (Bombay Bench) in

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N.A.Joshi Vs. UOI & Ors. OA 426/90 and other connected cases decided on 22.2.91. (placed at Annexure II to the reply). (A)

6. I have very carefully considered the pleadings on record and the submissions made by the learned counsel for the parties.

7. The applicant has relied on para 4 of the Railway Board's circular dated 16.11.57 and submits that since he had not exercised his option within the specified time he is deemed to have opted for pensionary benefits. Para 4 reads as follows:

"Railway servants referred to in para 1(b) above shall, on or before 31.3.1958, exercise an unconditional and unambiguous option on the prescribed form (copy enclosed), electing the pensionary benefits or retaining their existing retirement benefits under the State Railway Provident Fund Rules. Any such employee from whom an option form showing the employee's option is not received within the above mentioned time limit or whose option is incomplete or conditional or ambiguous, shall be deemed to have opted for the pensionary benefits. Where however any employee has died or dies on or after 1.4.57 without exercising any option for the pensionary scheme, his dues will be paid on the provident fund system"

However, the respondents have submitted that these instructions have been amended by the circular dated 9.5.58.

8. The Railway Board's Circular dated 16.11.57 has also been referred to by the Supreme Court in Krishna Kumar's case(supra) and it was even noted there that the period to exercise the option which was upto 31.12.57 was further extended from time to time and lastly upto 30.9.80. The Supreme Court has held that "No doubt that those who did not opt for the pension scheme had ample opportunity to choose between the two". In the light of the judgement of Supreme Court and further clarification of the Railway Board's circular dt.16.11.57 by the circular dated 9.5.58, in case any person has not opted for the pension scheme then he will be deemed to have

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retained the existing retirement benefits under the SRPF Rules and it is not possible to allow him to switch to the pension scheme at this stage. In these circumstances he will not be deemed to have opted for pensionary benefits. In this case, admittedly the applicant has not exercised his option even though he was in service at the relevant time when the Pension Scheme came into effect from 1957 till 9.5.58 or even to the time he took voluntary retirement in December, 1980. Therefore, having regard to the judgement in Krishana Kumar's case, and the judgement of this Tribunal (Bombay Bench) referred to above as well as the other judgements, viz. State of Punjab Vs. Gurdev Singh (1991(17) ATC 287) and V.K. Mehra Vs. Secretary of I&B, (ATR 1986(I) CAT Delhi 203) relied upon by the respondents, the applicant's claim that he should be given the benefit of the Pension Scheme introduced in 1957 merely on the ground that he had not exercised his option for this benefit at that time is not tenable. It is also relevant to state that even at the time he took voluntary retirement with effect from 31.12.80; he had accepted the benefits under the SRPF Rules and he had not exercised his option to come over to the Pension Scheme, and this claim is accordingly rejected.

9. No doubt the OA is also liable to be dismissed on the ground of jurisdiction under Section 21 of the AT Act, 1985. However, on the question of limitation since it is settled position that the payment of pension is a recurring cause of action and because of the peculiar circumstances of the case, I am of the view that it is a fit case where the respondents should, in the interest

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of justice, look into their records and decide the matter in terms of the Railway Service (Extraordinary) Pension Rules, which has apparently not been done.

10. The applicant has stated ¹³ that his hearing was irretrievably lost because of the explosion that took place in the goods wagons at the place of his duty in 1966. The respondents have submitted that the facts stated in para 4.1 by the applicant are correct, thereby implying that the fact of injury suffered by the applicant and his later voluntary retirement on medical ground are correct. However, during the hearing Shri K.K.Patel, Learned counsel submitted that there is no documentary proof available with the respondents regarding the injury caused to the applicant and that in his representation also the applicant had submitted that he was seeking voluntary retirement due to family worries. Further, he submitted that the records relating to the explosion to the goods wagons which occurred in 1966 are not readily available with the respondents, which could show the extent of injury caused to the applicant. However, the reality is that, if at all, these facts can be verified only by the respondents at their end from their records, including those available with the Railway Hospital, Nagpur where the applicant was posted at that time.

11. In the above facts and circumstances of the case, the respondents are called upon to verify, if possible, from the records, the circumstances of the goods wagons explosion in 1966 resulting in the injury stated to have been suffered by the applicant, and to consider his

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claim for payment of extraordinary pension in terms of the provisions of the relevant Railway Service (Extraordinary) Pension Rules, within a period of four months from the date of receipt of a copy of this order with intimation to him. If the applicant is so found eligible then they may pay the pension in accordance with the rules from the date of filing of this application, i.e. 6.3.95.

12. OA disposed of as above. There shall be no order as to costs.

Lakshmi Swaminathan

(Mrs. Lakshmi Swaminathan)
Member(J)
18.9.1996

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