

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2666/96

New Delhi this the 27th Day of February 1998

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Govind Swaroop Saxena,
Son of late Shri Ganga Swaroop Saxena,
Resident of D-359, MIG Flats,
Pratap Vihar,
Ghaziabad, U.P.

Petitioner

(By Advocate : Shri K.B. Chatterjee)

-Versus-

Union of India,
through General Manager,
Northern Railway,
Baroda House,
New Delhi

Respondents

(By Advocate: Shri R.L. Dhawan)

ORDER

Hon'ble Shri R.K. Ahooja, Member (A)

The applicant who was working as a Booking Clerk at the Old Delhi Railway Station was dismissed from service w.e.f. 24.3.1967. Aggrieved by this order, the applicant filed a suit before Sub-judge, Delhi which was decreed in his favour on 27.8.1973. The appeal filed by the respondents was also dismissed on 6.4.1974. The applicant though taken back in service was again placed under suspension on the basis of the previous charges and was again dismissed from service. The applicant also in turn again went before the Sub-judge and got another decree in his favour on 23.2.1982 holding that the dismissal of order was bad in law and the applicant was to be deemed in service with all benefits as usual. The appeal filed by the respondents was dismissed on 18.7.1984. The second appeal was filed before the High Court of Delhi and the same was also dismissed on 22.3.1985. Thus the decree



in regard to reinstatement of the applicant became final. The applicant had in the meantime reached the age of superannuation on 31.11.1981 and could not be put back in service. He became entitled, however, to all the benefits including outstanding dues of salary, provident fund, bonus etc. The applicant claims that as per the Government Orders he had exercised his option for pension scheme instead of retaining C.P. Fund on 16.10.60 through the Chief Booking Clerk, Allahabad where he was then posted. Since he was treated by the respondents as under suspension from 20.6.1964 to 30.11.1981, the date of his superannuation he filed a contempt petition before the High Court where for the first time the respondents took an objection that the applicant was not a pension optee and that a sum of Rs. 632/- or Rs. 1673/- was paid to the applicant towards the Head of the Provident Fund. The applicant says that he did not receive any such amount. He had been dismissed twice and neither the termination letter dated 23.3.1967 nor the one dated 5.8.1975 spoke anything about his pension and hence there was no question of contesting for his pensionary benefits prior to the proceedings in the contempt petition. His grievance is that though he had filed a number of applications claiming his pension from 30.11.1981, the respondents have taken no action. He has, therefore, come before the Tribunal seeking a direction to the respondents to pay him his pension dues w.e.f. 30.11.1981 with 18% interest.

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2. The respondents in their reply have taken a preliminary objection that the OA is barred by limitation since his cause of action, if any, had arisen on 30.11.1981. They also say that this Tribunal has no jurisdiction since the alleged cause of action arose prior to 1.11.1982. On merits they say that all the dues of the applicant were arranged and the Delhi High Court was also informed that the applicant was not a pension optee. The Pension Scheme for Railway Servants came into effect from 1.4.1957. The applicant could exercise his option for switching over from RSPF to Pension Scheme Rules. The service record of the applicant does not show that such an option was given. They rely on the judgement of the Hon'ble Supreme Court in Kishan Kumar Vs. Union of India, JT 1990(3) SC 173 and say that Government obligation towards an employee under CPF Scheme in giving matching contribution begins as soon as his account is opened and ends with his retirement and thereafter no statutory responsibility continues. It is further submitted that even prior to 1.9.1980 an opportunity was available to the applicant to switch over to the pension scheme vide Railway Notification letters dated 17.9.1960, 26.10.1962, 3.3.1966, 13.9.1968, 23.7.1974 and 23.8.1979 but the applicant did not opt for the pension scheme.

3. The learned counsel for the applicant in his argument before me has pointed out that the applicant had produced a copy of his option dated 6.10.1960, Annexure A-11 addressed to the Divisional Superintendent, Northern Railway, Allahabad and there

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was a notation of acknowledgement thereon also. The learned counsel for the applicant, on the other hand, submitted that no such option was available on record. He also argued that even if the same was sent, it could not be recorded as a valid option since it was not given in the prescribed proforma. He produced a copy of the option form which has been taken on record to show that it provides for a proper acknowledgement of receipt of the option. The learned counsel also produced the original record by way of the service file of the applicant to show that a sum of Rs. 632/- was received by the applicant on account of the provident fund vide AB-79 FIG dated 24.4.1967. He contended that if the applicant had opted for pensionary benefit, he would never have accepted the PF amount on 24.4.1967

4. I have considered the matter carefully. The statement in the records regarding the payment of provident fund does not indicate whether any amount contributed by the Government was also included therein. If no such amount was contributed then it could not be said that the applicant had continued to accept his position in 1967 as a PF optee. In any event the circumstances of the applicant's case are so peculiar that a realistic view has to be taken of his contention. It is an admitted position that after the applicant was initially dismissed from service in 1967, he was never allowed to resume his duty till the date of his superannuation. The respondents themselves state that between 1960 and 1979 fresh opportunities to exercise the option to opt for pension to the railway employees were provided. As the applicant was not in

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service at the relevant time, he could not have availed of such opportunities. In the circumstances I consider that ends of justice would be served if the applicant is deemed to have availed of the opportunity to give option for the pension in 1979.

5. In the light of the above discussion, I dispose of this OA with the direction that the respondents would treat the applicant as ~~an~~ pension optee having exercised his option in 1979. He will be paid the arrears of his pension but in the circumstance of the case he will not be entitled to any interest thereon till the date of filing of this OA i.e. 18.12.1996. Thereafter he will be also paid 18% interest on the arrears of pension till the date of final payment. This order will be complied ^{with} within a period of three months from the date of receipt of a copy of this order.

With this, this OA is disposed with no order as to costs.


(R.K. Ahuja)
Member (A)

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