

33

Central Administrative Tribunal
Principal Bench

O.A. No. 37 of 1996
M.A. No. 242 of 1998

New Delhi, dated this the 1st JULY 1999

Hon'ble Mr. S.R. Adige, Vice Chairman (A)
Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

- 1) Smt. Nanki Devi,
W/o late Shri Hushnak Rai,
- 2) Master Mehar Singh,
S/o late Shri Hushnak Rai.
- 3) Ms. Bhumpati (Alias) Kamaldip Rai,
D/o late Shri Hushnak Rai. ... Applicants

(By Advocate: Shri S.P. Singha)

Versus

Union of India and others through

1. The Chief Personnel Officer,
Northern Railway, Baroda House,
New Delhi-110001.
2. The Divisional Railway Manager,
Delhi Division,
State Entry Road,
Northern Railway,
New Delhi. ... Respondents

(By Advocate: Shri P.S. Mahendru)

O R D E R

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

The O.A. had been heard on 19.1.98 and orders had been reserved. Before orders could be pronounced, M.A. No. 242/98 was filed by applicant's counsel to bring certain additional documents on record, which it was claimed had a direct bearing on the case. Accordingly, notice was ordered to be issued on the M.A. to which respondents have also filed their reply and both parties have been heard.

~

2. In the O.A. filed on 21.12.95 applicant Shri Hushnak Rai impugned respondents' order dated December, 1994 (Ann. A-1) and applicant had sought grant of the benefits of the Pension Scheme under liberalised pension rules to him from the date of his retirement, together with arrears.

3. His case is that he joined Railway Service as a Porter on 18.6.41 and retired on superannuation on 30.6.72. Being illiterate and having no information about the benefits of the Pension Scheme introduced in 1957 he did not opt for the Pension Scheme and continued to be governed by the PF Scheme and on retirement received the paltry sum of Rs.7372/- under the P.F. Scheme. He states that the Railway Ministry introduced the Pension Scheme for Railway Servants vide Circular dated 16.11.57 and Railway employees who were covered by the Pension Scheme were permitted to opt for the Pension Scheme. This option was extended 7 times for those in service till 15.7.72 like applicant, but unfortunately the notification extending the last date for option was not made available to him, nor did any supervisory official explain the benefits of the Pension Scheme to him and hence he had no opportunity to switch over to the Pension Scheme and continued to remain under the P.F. Scheme till his retirement on 30.6.72.

4. Applicant Shri Hushnak Rai stated that after his retirement he applied for grant of pension but copies of those representations got

misplaced. However, from certain correspondence exchanged between 1980 and 1987 he claimed it would indicate that he had repeatedly asked for switching over the Pension Scheme. Applicant asserted that the Railway Ministry by circular dated 19.9.92 allowed families of deceased non-pensionable Railway Servants who died between 1.4.69 and 15.7.72 to opt for the Family Pension Scheme in lieu of contributory State Railway Provident Fund benefit. He stated that subsequently by the CAT, Bombay Bench order dated 11.11.87 in Ghanshyam Das and Anr. Vs. CPO, Central Railway & Others respondents were directed to extend this benefit to all those Railway employees who had retired during the period 1.4.69 to 16.7.72 and who had indicated their option in favour of the Pension Scheme at any time either while in service or after retirement and who now desired to opt for the Pension Scheme. By Hon'ble Supreme Court's order dated 16.1.95 in WP (C) No. 881/93 R. Subramaniam Vs. CPO Central Railway respondents were directed to grant to Shri Subramaniam the same benefits as was granted to others of aforesaid order dated 11.11.87 subject to his depositing the entire amount which he had received in lieu of PF System within three months of acceptance of his option by Govt. Applicant Shri Hushnak Rai asserted that despite several representations made in this regard, respondents are not accepting his prayer to be included under the Pension Scheme, compelling him to file this O.A.

5. Respondents challenge the O.A. They invite attention to applicant Shri Rai's own admission in Para 4.6 of his O.A. that he never opted for pensionary benefits and further more state that records pertaining to the period 1972 when applicant retired have since been weeded out. They contend that as applicant never opted to come under the Pension Scheme, he is not entitled to its benefits.

6. Meanwhile during the pendency of the O.A. applicant unfortunately expired and his legal heirs were brought on record.

7. As mentioned above, after completion of pleadings this O.A. was listed for hearing on 18.1.98 and was argued by both sides. After hearing, orders were reserved..

8. Meanwhile on 23.1.98 applicants' counsel filed No. 242/98 to bring certain additional documents on record which he claimed had an important bearing on the case and which could not be produced at the time of hearing on 18.1.98. Applicants' counsel states that as legal representatives of applicant were residing at different places it had not been possible to obtain their signatures and sought permission to file the same on behalf of late applicant's legal Representatives for consideration before delivering order in the case. These documents are

7

- (i) Copy of letter dated 15.9.87 (Ann. A-1) from FA & CAO, Northern Railway informing applicant with reference to his representation dated 3.9.57 that under the existing rules his prayer for sanction of pension could not be considered but if in future the rules permitted his case would be considered.
- (ii) Copy of letter dated 7.9.89 (Ann. A-2) addressed to late applicant's wife regarding release of ex-gratia sum to her under CPF consequent to the retirement and subsequent demise of her husband although Shri Hushnak Rai was still alive on that date.
- (iii) Service certificate dated 4.8.72 (Ann. A-3 MA-242/98) with reference to applicant's representation dated 12.6.72.

9. Respondents in their reply to MA-242/98 have stated that the M.A. has not been signed/verified by late applicant's Legal Representatives and is hence not maintainable and the M.A. is also silent as to when and by whom and from which place the documents were discovered. They aver that these documents cannot be allowed to be placed on record unless they are incorporated in the O.A. so that respondents are afforded an opportunity to file reply to the said documents.

11. We have heard both sides.

12. Applicants' counsel has emphasised that Shri Rai was an illiterate person who was unaware of rules and instructions as amended from time to time, and in the interest of justice merely on that account his case should not go by default. It

0

further transpires that Shri Hushnak Rai has since unfortunately passed away, and his legal heirs have been brought on record.

13. We have considered the matter carefully.

14. In claims such as this, dating back several years, if not decades we have to rely upon the pleadings and the late applicant in Para 4.27 of his O.A. has himself admitted that he did not exercise option. This fact had been noted by the Bench in its order dated 8.1.96 during initial hearing of the O.A. and had pointed out that the O.A. was hit by limitation as well as was barred by estoppel.

15. As these infirmities have not been overcome by applicant to our satisfaction, notwithstanding the additional documents filed with M.A. No. 242/98 we find ourselves unable to grant the reliefs prayed for by applicant. However, it will be open to applicants to make a fresh representation to respondents enclosing copies of

the documents they rely upon, on receipt of which nothing in this order will preclude respondents from themselves considering the same in accordance with rules, instructions and precedents if any.

16. The O.A. is dismissed but with observations contained in Para 15 above. No costs.

Lakshmi Swaminathan
(Mrs. Lakshmi Swaminathan)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

/GK/