

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-1368/97
OA-1372/97

New Delhi this the 27th day of October, 1999.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN (J)
HON'BLR MRS. SHANTA SHASTRY, MEMBER (A)

OA-1368/97

Shri A. Balakrishnan,
S/o Sh. A. Perachan,
R/o Flat C-504, Dhaulagiri,
Rail Vihar, Phase I,
Sector 15 II
Gurgaon (Haryana) 122001.

...Applicant

(By Advocate Shri J.K. Bali)

-Versus-

Union of India through

1. The Chairman Railway Board
& Secretary to the Ministry
of Railways, Rail Bhawan,
New Delhi-110 001.
2. The General Manager,
Wheel and Axle Plant,
Ministry of Railways,
Yelahanka,
Bangalore-560 064.(Karnataka)

...Respondents

(By Advocate Shri R.L. Dhawan)

OA-1372/97

Shri C.B. Lal,
S/o late Shri K.B. Lal,
R/o A-34, Anand Vihar,
Vikas Marg Extension,
Delhi-110 092.

...Applicant

(By Advocate Shri J.K. Bali)

-Versus-

Union of India through
the Chairman,
Railway Board & Secretary
to the Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.

...Respondent

(By Advocate Shri P.S. Mahendru)

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ORDER

✓ By Reddy, J.-

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These two OAs can be disposed of by a common order as they involve similar questions of fact and law.

2. The applicants, who were retired as officers in the Railways, way back in 1976 and 1977, make a futile attempt to move over to the Pension Scheme. Let us notice the facts in brief.

3. The applicant in OA-1372/97 was retired as Director, Mechanical Engineering, from the Ministry of Railways on attaining the age of superannuation on 31.12.76 whereas the applicant in OA-1368/97 was retired from the post of OSD, Wheel and Axle Plant, on 31.3.77. Their post retirement settlement dues were finalised in accordance with the State Railway Provident Fund (SRPF) Rules, 1977 (for short Rules).

4. Prior to 1957, Railway servants on their retirement were not entitled for pension. The pension scheme was introduced in the Railways on 16.11.57 and was made applicable to all the Railway servants who entered service on or after 16.11.57. The employees were given appointments to opt to switch over to pension scheme. Such appointments were being extended from time to time. The applicants presumably satisfied with their own scheme did not opt for the pension scheme. Several times the opportunity to opt were extended and the applicants never chose to opt under the scheme for pension. It is the allegation of the applicants that subsequent to their retirement, in the letter dated 29.12.79 the Railway Board

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extended the opportunity to opt upto 31.12.78 to the persons who were even retired during the period from 1.1.73 to 31.12.78, but that order was not brought to their notice. It was submitted that if it were brought to their notice the applicants would have availed the benefit of the said extension. The applicants submit that they have made ~~a~~ representations during 1995 to the Railway Board requesting them to treat their letters as their options to pension scheme from the date of representation. The applicants received Railway Board's letter on 23.9.96 in response, stating that the matter has been referred to the Vth Pay Commission whose recommendations were awaited. The applicants, not satisfied by the response filed the OAs to declare that they are entitled to go over to the pension scheme as if they had opted for the said scheme prior to their retirement. It is contended by the learned counsel for applicants that their fundamental ^{rights} under Article 14 and 16 were violated by the Railways in as much as they were not put to notice of the opportunity to opt given in the order dated 29.12.79.

5. It is, however, contended by the learned counsel for the respondents that as the applicants had not opted to go over to the pension scheme even though they were given several opportunities to do so, they are not entitled to make any grievance after several years after their superannuation. It was also contended that the OAs are hit by ^{Section 4} 21 of A.T. Act and are liable to be dismissed on that ground alone.

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6. The only question that arises in this case is whether the applicants can be permitted to opt for the Pension Scheme. The facts are not in dispute in the case. It is fairly conceded by the learned counsel for the applicants that the applicants have been superannuated in 1976 and 1977 respectively, while holding at that time very high positions in the Railways. Prior to 1957 there was no pension for the Railway servants. The scheme called State Railway Provident Fund (Contributory) (SRPF), Scheme was available to the Railway servants and they were governed by the Rules, as stated supra. In 1957 the pension scheme was introduced and all the Railway servants were given opportunity to opt for the pension scheme if they so choose. Such opportunities were being extended from time to time, at the request of the employees. More than eight opportunities were given to the applicants to opt for the pension scheme. Though many employees opted for it, the applicants have deliberately chosen not to opt for the scheme. They were duly retired on superannuation and after their retirement, their dues were settled under the existing SRPF scheme. They now seek after about 18 years of their retirement for the benefit scheme.

7. The learned counsel for the applicants place reliance upon the order dated 29.12.79 of the Railway Board to submit that the extension of time to opt which was granted upto 31.12.78 to the employees who retired during the period 1.1.73 to 31.12.78 was not brought to the notice of the applicants. It is, therefore, contended that they did not have an opportunity to opt under this order. The applicants having had several opportunities, more than eight times, to exercise their options, while they were in service they did not exercise option to join Pension Scheme. They

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have decided to remain in SRPF Scheme. No rule or regulation was brought to our attention to say that all the letters should be brought to the individual notice to the retirees. Reliance placed by the applicants on the circular dated 7.7.74 (Annexure A-2) is wholly untenable. The instructions given by the Railway Board in the above circular are not applicable to the order dated 29.12.79 (A-12). It should be noticed that in the order dated 27.12.78, the Railway Board clarified that the extensions granted subsequent to the extensions granted in 1974 were applicable only to the employees who were in service. Thereafter Federation of the Railway requested the administration to apply the extension to all to the retired employees who also opted for the Pension Scheme. In the order dated 29.12.79, it was decided to apply the extensions to all the retired employees who had opted till 31.12.78 also. Thus the above order came to be passed only at the request of the employees to avoid hardship to employees had erroneously opted. No fresh options were contemplated in the said order.

8. In 1997 SCC (L&S) 996, the Hon'ble Supreme Court has held as follows:

The controversy is no longer res integra. The entitlement to the benefit of the pension was considered by this Court in Krishna Kumar Vs. Union of India. Following that judgment, this Court had set aside the order of the Tribunal. It is seen that the claim of the petitioner is that he did not have knowledge of the extension of the last date for giving the option. It is his case that he retired on 30.11.1975 and he did not have any opportunity of knowledge the extended date. That is falsified by the record. For the first time, it was extended up to 1.1.1973. It was further extended up to 23.7.1974; thereafter, up to 25.6.1975,

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30.6.1976, 3.1.1977, 12.7.1977, 17.4.1978, 7.12.1978 and the last of the extensions was till 31.12.1978. While he was in service, he had the opportunity to register the option on three occasions, namely, on 1.1.1973, 23.7.1974 and 25.6.1975. He did not exercise the option at that time. The option was as regards the principle of gratuity. He thought that that would be a better principle advantageous to him. He withdrew the retiral benefits. Later, when the pension scheme was sought to be given to several persons, he came forward at a belated stage saying that he was not in the know of extension till 1991. When others were given benefit by the Tribunal, he came to file the petition. In view of the aforesaid facts, it is hard to believe that he had no notice of exercising the option for the pensionary benefits. Under these circumstances, we do not find any illegality in the order passed by this Court for recalling the order."

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9. The above decision squarely covers the present dispute. As in the above judgement of the Supreme Court the applicants were afforded more than 8 opportunities to exercise their options, ^{but} they declined. In the circumstances, it cannot be said that the applicants were denied reasonable opportunity to exercise option to come over to pension Scheme. We do not consider it necessary to discuss all decisions cited by the learned counsel for the applicants, in view of the above decision of the Supreme Court.

10. We are also of the view that the applicants are guilty of laches and the OAs are hopelessly barred by limitation. Even assuming that the order dated 29.12.79 gives a fresh cause of action to the applicants, had the applicants been aggrieved by the non-communication of the said order, they should have sought redressal by agitating the matter before a judicial forum immediately thereafter within the period of limitation. They filed the representation in 1995. No reason was given in the OA why

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they delayed till 1995. They do not also say that they came to know of the order only in 1995. It would be strange to have not known of it for about 15 years, particularly when they were such senior officers. However, in the absence of any valid reason, what so ever, we have to hold that the OAs suffer from laches and the vice of limitation.

11. The OAs are liable to be dismissed on both the grounds.

12. The OAs are accordingly dismissed, in the circumstances with costs of Rs. 2,000/- in each case.

(Smt. Shanta Shastri)
Member (A)

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(V. Rajagopal Reddy)
Vice-Chairman(J)

Original judgement filed in OA 1368/97

Attended

6/11/1997

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