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Central Administrative Tribunal
Principal Bench

O.A.No.1751/97

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

New Delhi, this the 12th day of May, 1998

Shri V.R.Mehta
retired Controller of Stores
Northern Railway
Resident of 373, Anand Vihar
D Block
New Delhi - 110 092. Applicant

(By Shri R.K.Kamal, Advocate)

Vs.

Union of India through

1. The Chairman
Railway Board
Rail Bhawan
Ravi Marg
New Delhi-1.
2. General Manager
Northern Railway
Baroda House
New Delhi - 1. Respondents

(By Shri R.L.Dhawan, Advocate)

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The case of the applicant is that while working with the Indian Railways, he was deputed to the Asian Development Bank, Manila (Philippines). At that time he was posted in Indian Railway as Controller of Stores in Senior Administrative Grade Level-II (SAG level - II). While on deputation to the Asian Development Bank, he had submitted his request for voluntary retirement vide his letter dated 15.11.1984 to take effect from 30.1.1985. In the letter seeking voluntary retirement he had also opted for Pension Scheme. His grievance is firstly that though the Railway Board accepted his request for voluntary retirement from the aforesaid- mentioned date and raised no objection in respect of his option for the

Pension Scheme, the respondents have finally after protracted correspondence advised the applicant that his option for pension has not been allowed. His second grievance is that though he had been not only promoted under the Next Below Rule to SAG-I he had also been confirmed in that grade, his retiral benefits including his leave encashment have been calculated on the basis of his pay in SAG-II.

2. The respondents in reply have raised a preliminary objection that the OA is barred by limitation. On merits they say that at the time the applicant sought voluntary retirement, there was no Scheme available for exercising fresh option for pension instead of Contributory Provident Fund; such an option came into operation w.e.f. 1.3.1986 when the applicant already stood retired w.e.f. 30.1.1986. The applicant has also by way of abundant caution filed a Miscellaneous Application for condonation of delay, if any.

3. I have heard the counsel on either side and after going through the pleadings on record, I find that the applicant's case is barred by limitation in respect of both of his grievances. The applicant applied for voluntary retirement with his so called option for pension scheme vide his letter dated 15.11.1984 Annexure A-4. It has been urged on applicant's behalf that since he was on deputation with the Asian Development Bank, Manila, Phillipnes, the relevant circulars of the Railways inviting fresh options, could not come to his notice in the normal course of business. It is also urged that the

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Northern Railways Headquarter Letter No. 78-E/154/E1A dated 15.2.1998 copy annexed to the rejoinder clearly states that since neither the Northern Railway nor the Frontier Railways were aware of the applicant's proceedings on deputation, the question of informing him regarding the railway's circulars did not arise at all. The learned counsel for the applicant submitted that in similar circumstances this Tribunal has in OA No. 1110/92 decided on 30.3.1993 concluded that the applicant therein was entitled to exercise the option in terms of an earlier circular dated 4.10.82. Had the applicant brought his grievance to this Tribunal in 1986 within the period of limitation, he could possibly have pleaded that he could not exercise his option till 1984 as he was not aware nor made aware of the circular dated 4.10.1982. The question, however, at this stage is not about the knowledge of the circular dated 4.10.1982 but the fact that the respondents had not conceded his option for pension. In this context, the learned counsel for the applicant argued that respondents finally decided the case of the terminal benefit only in 1997 vide their letter dated 25.4.1997 Annexure A-1. A plain reading of this letter of Northern Railway shows that this letter pertains not to the final decision on the terminal benefit but relates only to the settlement of the outstanding amount of the House Building Loan taken by the applicant during his service and its adjustment against Special Contribution to Provident Fund and Leave Encashment due to the applicant. On the other hand, Annexure R-1/1 dated 6.9.1985 from Shri Sikka,

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CPO Northern Railway in reply to the applicant's letter dated 28.8.1985 fairly stated the respondent's position in the following terms:

"Sub: Your letter dated 28.8.85

Option to opt for pension was thrown open to Railway Servants who have retired on or after 31.3.85, in terms of Railway Board policy directive dated 18.6.85. Since you sought voluntary retirement from 31.1.85, such option is not open to you at this stage.

2. With regard to payment of SC to PF, I shall pursue the matter with N.R. Railway."

4. It is clear from the above that the applicant was made aware as far back as 1985 that his option was not being accepted by the respondents. The applicant has been thus guilty of sitting over his claim for 12 years; his prayer now is clearly time barred.

5. The learned counsel for the applicant also urged that there is sufficient ground for considering the application for condonation of delay. He submitted that the decision of this Tribunal in OA No. 1110/92 came only in 30.3.1993 and that on learning of this decision the applicant found that he had a case for exercising option in terms of 1982 circular. The applicant had been making representations continuously and it was not till the impugned letter of A-1 of 1997 that he learnt that he would not get justice from the respondents. The learned counsel also pressed the argument that the non-payment of pension was a recurring cause of action and further submitted that the Tribunal may exercise discretion in favour of a retired person seeking pension. I find that the explanation given for the delay and the grounds adduced are in no way satisfactory and sufficient to

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condone the delay. Even if it was to be accepted that the applicant wanted the benefit of the decision of this Tribunal delivered in 1993, he postponed his OA for another 4 yrs. I am in agreement with the learned counsel for the respondents that unless very strong reasons exist, relaxation in the period of limitation is not called for. The Hon'ble Supreme Court has also observed in P.K. Ramachandran Vs. State of Kerala, JT 1997(8) SC 189 that "the Law of Limitation hardly affect a particular party but it has to be applied with all its regour. When the statue so prescribes, Courts have no powers to extend the period of limitation on equitable grounds". In short the claim of the applicant in regard to his option for pension fails since it cannot overcome the hurdle of limitation.

6. The applicant has also sought the payment of his retiral benefits on the basis that he had been confirmed in SAG Grade 1. In terms of FR 15(a), a Government servant who is promoted under the Next Below Rule can avail of his pay fixation on that basis only after he returns from deputation. In the present case, the applicant never returned from deputation since he sought and obtained voluntary retirement on completion of his deputation period. His plea is that having been confirmed in SAG 1, vide orders issued in 1982 he is not deprived of the higher pay scale by the operation of FR 15(a). Apart from the fact that this prayer also suffers from latches, on merit also he has no case. The order of confirmation ~~herein~~ in the higher grade is a consequence of the Next Below Rule. Since the applicant never returned to his parent department,

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no order of fixation of pay in the higher grade was ever issued. Secondly, the only relevant pay for fixation of the terminal benefits would be the pay received by the applicant at the time he proceeded on deputation. Consequently, the determination of his terminal benefits have also to be on that basis.

7. In the light of the above discussion, I find that there is no ground for interference and the OA is accordingly dismissed. There is no order as to costs.

R.K. Ahuja
(R.K. Ahuja)
Member (A)

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