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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.785/94

New Delhi, this the 22nd November, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Shri Balbir Singh Mehndiratta,
Ex-Stenographer
Office of FA&CAO/Constn.
Northern Railway,
Kashmere Gate, Delhi

AND

Ex-Dy. Manager (Confdl),
Indian Railway Constn.Co.Ltd.,
Palika Bhawan,
Sector-XIII, R.K. Puram,
New Delhi.

R/o II-C, Nehru Nagar,
Ghaziabad (U.P.)

... Applicant

By Advocate: Shri V.P. Kohli

Vs.

Union of India
through

1. The Secretary,
Railway Board,
Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

... Respondents

By Advocate: Shri D.S. Mahendru, Proxy for
Shri P.S. Mahendru

O R D E R

Shri J.P. Sharma, Member (J)

The applicant was initially employed as
a Stenographer in the office of F.A. & C.A.O./Constn.
Kashmere Gate, Delhi. He has opted for deputation
post in IRCON in November, 1979. He was absorbed
in IRCON w.e.f. 22.11.82.

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2. The applicant filed O.A.1071/88 before the Principal Bench in which he has claimed for the grant of the relief that direction be issued to the respondents to absorb the applicant from the date of issuance of the sanction of the Government and as such entitled to be absorbed from the date of issuance of the sanction while retaining lien in the Railways till the date of issuance of the order of absorption. That case was decided by the Principal Bench and it was held that the lien of the applicant in the parent department cannot be treated as terminated from a date prior to the date the railway authorities issued approval to the acceptance of resignation or retirement of the applicant. This case was decided on 20.11.92. After the decision of this case, the respondents by the order dated 23.9.93 passed the following order:

"As a result of Railway Board's decision to provisionally implement the CAT/DLI's common judgement of 20.11.92 in the case of Shri Balbir Singh, Ex.Steno. in Gr.Rs.425-700(RS) under FA&CAO/Const. subject to the final disposal of the SLP on the matter of principle pending in the Supreme Court in Sharan's case(OA No.364/86) and without prejudice to filing of SLP against the common judgement, the acceptance of his resignation from Railways on final absorption in Indian Railway Construction Company Limited has been provisionally revised from 21.11.82(AN) (issued vide SOO No.:41 dated 15.1.86) to 15.1.86 i.e. the date of issue of orders regarding acceptance of resignation of this case."

After the applicant has earned the benefit monetary or otherwise, in April,1994 he filed the present application for the grant of the following reliefs:

- i) That the respondents be directed to accept fresh option of the applicant with regard to commutation of his pension given through annexure A/3.

- ii) That the applicant having already exercised his fresh option for commutation of 1/3rd pension as against 100% already allowed to him, the respondents be directed to work out the dues recoverable from the applicant in this regard so that he can deposit the same with the respondents within a reasonable period of time.
- iii) That the respondents be directed to start payment of balance 2/3rd pension with relief as per rules to the applicant with immediate effect.
- iv) That costs of application be allowed in favour of the applicant and against the respondents.
- v) That the Hon'ble Tribunal be pleased to pass such further order/orders as the Hon'ble Tribunal deems fit and proper in the facts and circumstances of the case

3. The respondents contested this application and took the stand that the applicant has never showed his intention to revise his option from 100% commutation of pension to 1/3rd commutation of pension either in his earlier O.A.No.1071/88 or in C.C.P. No.238/93 as such the application is barred by principles of estoppel. It is stated that the application is totally devoid of merit and deserves to be dismissed.

4. The applicant has also filed the rejoinder reiterating the facts already stated in the O.A. We have heard the learned counsel of the parties and perused the records.

5. The Railway Board by its letter No.F(E)III/86/PN-1/5 dated 31.8.90 has considered the matter of permanent absorption of permanent Railway employee in Central Public Sector Undertakings, Central autonomous bodies - payment of pro-rata retirement benefits and provided a format for the same. Regarding Pension and Gratuity, it has been provided that such an absorbee will exercise an option within six months of the date of issue of the order dated 31.8.90

either to receive pro-rata monthly pension or to receive a lumpsum amount in lieu of monthly pension. This option shall be exercised in writing. The option once exercised shall be final and in case no option is exercised within the stipulated period then it shall be deemed to have been opted in favour of pro-rata monthly pension. The applicant has opted for 100% lumpsum payment and he has also been paid. Even treating his date of absorption provisionally from the date of issue of the order i.e. 15.1.86 as such the applicant cannot now furnish another option when the option already given by him has already been acted upon. The applicant of course was a Stenographer but is expected to know the consequences of option and also the rules under which he is claiming pensionary benefits. Not only this even after the deemed date of absorption from 15.1.86 on the basis of direction given by the Tribunal which is subject to the decision of the S.L.P. filed by the Administration before Hon'ble Supreme Court, the applicant has not prayed this relief in O.A.No.1071/88. In view of the above facts it is not open to the applicant now to unsettle the settled position regarding terminal benefits. In O.A.1192/94 - Shri Radha Kishan Garg decided on 30.9.94 and in the case of O.A.No.1193/94 Shri Prem Nath Birdi Vs. UOI decided on 5.9.94 by the Principal Bench, the pensioners in those cases also have been denied the relief prayed for which is similar to the present case. The applicant has no case and it is a fit case where the applicant could be saddled with cost. But since he has retired from service and living a retired life, the costs are not being imposed.

6. There is a time frame limit for getting a judicial review for a cause of action. The cause of action has arisen to the applicant on his absorption in IRCON w.a.f. 1982 though the orders were issued subsequently in January, 1986. The applicant was not fully satisfied with the terminal benefits and therefore he filed the O.A.No.1071/88. The applicant has also not raised this issue of benefit and given option of 100% lumpsum payment of pension. In C.C.P. filed jointly against the non-compliance of the decision given in O.A.1071/88 and other similar bunch of cases, the applicant also kept silence regarding the revised option which he now wants to give for monthly payment of pension. Having received the amount in lumpsum which is quite handsome amount, the applicant having utilised the benefits and usufruct of that amount wants to switchover to the payment of monthly pension which is not legally justified and also the claim is barred by delay, laches and after thought.

7. The present application is therefore totally devoid of merit and is dismissed.

J. P. Sharma
(J.P. SHARMA)
MEMBER(J)

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