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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA NO. 1147/89

DATE OF DECISION: 24.8.90

SHRI BALWANT RAI

APPLICANT

VERSUS

UNION OF INDIA

RESPONDENTS

SHRI B.B. SRIVASTAVA

ADVOCATE FOR THE APPLICANT

SHRI O.P. KSHTARIYA

ADVOCATE FOR THE RESPONDENT

CORAM:

THE HON'BLE MR. T.S. OBEROI, MEMBER (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

J U D G E M E N T

(Delivered by the Hon'ble Mr. I.K. Rasgotra, Member(A))

The applicant, Shri Balwant Rai retired on superannuation as Sub Head of Traffic Accounts Branch, Northern Railway w.e.f. 1.4.1968. In 1957, the Railway introduced the Pension Scheme for railway servants effective from 1.4.1957. The railway servants who were till then governed by State Railway Provident Fund (SRPF) Contributory Scheme were given option to switch over to the pension by exercising option in the prescribed form on or before 31.3.1958. Date for exercising option was

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extended several times to give benefit of the Pension Scheme to as many employees as possible.

2. It is the case of the applicant that even though the facility of option was provided on various occasions to the railway servants who had retained SRPF Contributory Scheme for switching over to pension, the option to come over to the Pension Scheme was not available during the following periods:-

- i) 1.1.1962 to 31.8.1962
- ii) 1.7.1963 to 30.12.1963
- iii) 1.10.1964 to 30.12.1965
- iv) 1.10.1966 to 30.4.1968
- v) 1.4.1969 to 14.7.1972

The facility for opting to pension was available to the SRPF Contributory Scheme to the railway employees who were in service on 31.12.1965 upto 30th June, 1966 vide Railway Board's letter dated 3.3.1966 and again to those railway servants who had retired under S.R. Provident Fund and who had quit service on or after 1.5.1968 subject to their refunding the entire Government Contribution and the excess, if any, of special contribution to provident fund received by them over the death-cum-retirement gratuity due to them under Pension Rules vide orders dated 13.9.1968. The applicant did not take advantage of Respondents' letter dated 3.3.1966, as he was due to retire in 1968 and Option ^{under} given/Railway Board's letter dated 13.9.1968 was not available to him as it covered only those who retired on or after 1.5.1968. His grievance is that the Railway did not give an opportunity to exercise option for coming over to Pension Scheme to those

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railway employees who had retired during the five periods mentioned above and again when the scheme of Dearness Relief for pensioners w.e.f. 1.1.1973 was introduced. It is contended by the applicant that the denial of the Pension Scheme to those employees who had retired during the said five periods was arbitrary and discriminatory.

Meanwhile, the applicant sought the extension of the decision of the New Bombay Bench of the C.A.T. in TR No.27/87. The applicant's petition was, however, rejected by the respondents, Northern Railway vide letter dated 16.11.1988 (page 9 of the paper book) on the ground that his case did not fall under the purview of the said order of the Central Administrative Tribunal.

3. The respondents in their reply have stated that the applicant had failed to opt for Pension Scheme and therefore he was finally settled under the SRPF Contributory Scheme. Further he cannot rely on the judgement dated 11.11.1987 of the New Bombay Bench for the benefit, as that decision is applicable only to those employees who retired during the period from 1.4.1969 to 14.7.1972 and who had exercised their option for pension scheme either at any time while in service or thereafter. The applicant retired on 1.4.1968 and had not exercised any option for pension and therefore cannot be extended the benefit of the judgement dated 11.11.1987.. In the course of argument, Advocate Shri B.B. Srivastava, appearing for the applicant, urged that the case of the applicant rests on the premise that facility of option to come over to pension scheme was not available to him immediately prior to his retirement (from 1.7.1966 to 30.4.1968)

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and, therefore, he had no opportunity for exercising the option. The learned counsel also tried to distinguish between the case of the applicant and the general case of the railway servants who retired under the SRPF Contributory scheme which was pending before the Hon'ble Supreme Court.

4. Advocate, Shri O.P. Kshtariya, learned counsel for the respondents submitted that the case of the applicant was no different from the general case of the railway servants who had retired under the SRPF Contributory Scheme without exercising option to come over to the pension.

5. The issues relating to the Contributory Provident Fund Scheme retirees have been dealt with at length by the Hon'ble Supreme Court in the case of Krishena Kumar Vs. Union of India and Others, reported in Judgements Today, 1990 (3) SC, 173. In paragraph 37 of the judgement, their Lordships of the Supreme Court have taken note of the judgement of the Central Administrative Tribunal, relied upon by the applicant and have observed that:-

"We have perused the judgments. The Central Administrative Tribunal in Transferred Application No.27/87 was dealing with the case of the petitioners' right to revise options during the period from 1.4.69 to 14.7.72 as both the petitioners retired during that period. The tribunal observed that no explanation was given to it nor could it find any such explanation. In State of Rajasthan V. Retired C.P.F. Holder Association, Jodhpur, the erstwhile employees of erstwhile Princely State of Jodhpur who after becoming

Government servants opted for Contributory Provident Fund wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on Nakara which was also followed in Union of India V. Bidhubhushan Malik, (1984) 3 SCC95, subject matter of which was High Court Judges' pension and as such both are distinguishable on facts."

In view of the above, the judgement relied upon by the applicant is not available to him. Another ground relied upon is that during the five periods the benefit of option was not available and the applicant is particularly affected by non-availability of the option during the period from 1.7.1966 to 30.4.1968 i.e. immediately before his retirement. The Hon'ble Supreme Court has also dwelt on this aspect of the matter and have analysed the facts relating to each occasion when facility for exercising option was provided to railway servants. Paragraph 14 of the judgement reads as under:-

"The learned Additional Solicitor General states that each option was given for stated reasons related to the options. On each occasion time was given not only to the persons in service on the date of the Railway Board's letter but also to persons who were in service till the stated anterior date but had retired in the meantime. The period of validity of option was extended in all the options except Nos. 3rd, 4th, 5th and 7th. We find the statements to have been substantiated by facts. The cut-off dates were not arbitrarily chosen but

had nexus with the purpose for which the option was given."

The dates for giving option etc. were fixed to switch over to the Pension Scheme had nexus with the reason for granting particular option. There was no intent to keep option available at all time for all persons. For instance, the first option from 1.4.1957 to 31.3.1958 (for those in service from 1.4.1956) was given on the introduction of Pension Scheme on the Railways. This was extended from time to time on four occasions ending in last period of 30.9.1959. The second option was given from 1.7.1959 to 15.12.1960 (for those in service on 5.7.1959) consequent to introduction of recommendation of the Second Pay Commission. This was extended on two occasions ending on 31.12.1961. Third option was given from 1.9.1962 to 31.3.1963 (for those in service on 1.9.1962) consequent upon the decision to count officiating pay for pensionary benefits. Fourth option was available from 1.1.1964 to 16.7.1964 (extended upto 30.9.1964) on introduction of Family Pension Scheme. Fifth option from 31.12.1965 to 30.6.1966 (for those in service on 31.12.1965) was extended consequent to liberalisation of the Pension Scheme. The sixth option from 1.5.1968 to 31.12.1968 (for those in service on 1.5.1968) was granted in pursuance of the decision to change the definition of 'pay' w.e.f. 1.5.1968 for purposes of pensionary benefits. The subsequent developments are not germane in this case. It would thus be seen that options were given for specific reasons and not for the reason to cover certain periods which might have remained uncovered. The five periods during which the facility of option was not

available are, therefore, not significant in any manner. Keeping in view the above discussion, we are of the view that there is no merit in the application and in the facts of the case, we have no option but to dismiss the same. Accordingly, the application fails and is dismissed with no orders as to the costs.

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A) 24/8/90

T.S. Oberoi 24/8/90
(T.S. OBEROI)
MEMBER(J)