

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH: DELHI

O.A.NO. 938 OF 1989

DATE OF DECISION: 12-9-1991.

Yugal R.Puri.

.. Applicant.

Vs.

Union of India and others.

.. Respondents.

Shri J.K.Bali, counsel for the applicant.

Shri S.N.Sikka, counsel for the respondents.

CORAM:

Hon'ble Mr.G.Sreedharan Nair, .. Vice-Chairman

Hon'ble Mr.S.Gurusankaran, .. Member(A)

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J U D G M E N T

Hon'ble Mr. G.Sreedharan Nair, Vice-Chairman:

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The applicant retired from/service of the respondent as Additional General Manager (Operations) on 31-7-1982 having been absorbed as a Class-I Officer with effect from 10-9-1947. He was governed by the State Railway Provident Fund (Contributory) Rules (for short 'SRPF Rules') which was then in force. In the year 1957, the Railway Board introduced Pension scheme for Railway servants. During the period 1957-87 the Railway Board issued instructions affording opportunity to the employees governed by the SRPF Rules to opt for the pension scheme. It is alleged by the applicant that he did not exercise the option before his retirement and hence his dues were settled under the SRPF Rules. Subsequent to the retirement of the applicant, the Railway Board by their letter dated 4-10-1982 extended the pension option to all those in service on 31-8-1982 enabling them to exercise the option upto 28-2-1983. Subsequently the instructions were modified so as to include employees who were in service on 31-1-1982 and quitted or retired from service after that date and before 31-8-1982. The case of the applicant is

that these instructions came to his notice only in 1988, when he made representation to the second respondent to come over to the Pension Rules. It is stated that ~~the~~ representation was also sent to the Secretary, Railway Board. Ultimately, by the communication dated 2-12-1988 the request was rejected on the ground that the applicant did not avail of the opportunity for exercise of option till his retirement.

2. The applicant prays for permitting him to exercise the option, to switch over to the pension scheme. It is alleged that the authorities failed to intimate him about his eligibility to opt for the pension scheme despite the explicit instructions to that effect given by the Railway Board. There is also a plea of discrimination on the premise that one Sri P.P.Iyyar, similarly placed was allowed to opt for the pension scheme in the year 1985.

3. In the reply filed by the respondents, it is contended that since the applicant did not avail of the opportunity to switch over to the pension scheme till his retirement, he cannot claim the relief at this stage. It is stated that wide publicity was given to the orders of the Railway Board by the issue of a Notification in the Railway gazette, ^{display} despite on notice boards in all offices etc. As regards Sri P.P. Iyyar, it is stated that since he was in Nigeria, his services having been lent to the Government of Nigeria from January, 1979, he could not be made aware of the option and as such his case has no comparison with that of the applicant.

4. Consequent upon the improvement in pensionary benefits as a result of treatment of a portion of the additional Dearness Allowance as pay for the purpose of retirement benefits, the question of affording an opportunity to the Railway employees still governed by the SRPF Rules to come

to the pension scheme was considered by the Railway Ministry and it was decided that the Railway servants, who have retained the contributory provident fund benefits under the SRPF Rules, may be allowed another opportunity to opt for the Railway Pension Rules including the benefits of Family Pension Scheme for Railway employees. Accordingly by the instructions contained in the letter of the Railway Board dated 4-10-1982 yet another option was given to those Railway servants who were in service on 31-8-1982 and who quitted/retired from service on or after that date, the option to be exercised by 28-2-1983. By the letter dated 9-11-1982 a modification was made in respect of the aforesaid instructions to the effect that the benefit may also be allowed to those Railway servants who were in service on 31-1-1982 and quitted or retired from service on or after that date. As the applicant was governed by the SRPF Rules and retired from service on 31-7-1982, the aforesaid instructions governed him as well. However, the option that was exercised by the applicant was not accepted on the ground that the pension scheme was started in 1957 and all Railway employees who were in service on that day were given option to come over to the pension scheme and thereafter further opportunities were given, but the applicant did not avail of the same till his retirement in 1982.

5. It was submitted by the counsel of the applicant that the stand taken up by the respondents is unsustainable. It was pointed out that the relevant instructions, which prompted the applicant to exercise the option, came into existence only after his retirement and that as soon as the applicant came to know about the same, he exercised the option. As against this, it was stated by the counsel of respondents that since the instructions were published in the Railway gazette and in the notice boards of the various offices, the applicant should be deemed to have knowledge of the same and

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since he did not exercise the option within the prescribed period, it is not acceptable.

6. The case of the applicant has to be accepted in view of the specific provision in clause (III) of paragraph 2 of the instructions contained in the letter of the Railway Board dated 4-10-1982. It is stated therein that the contents of the letter should be brought to the notice of all retired Railway servants who are eligible for the option and to the families of all eligible deceased Railway servants who may have died on or after 31-8-1982 without exercising an option within the time limit allowed. It is further provided that the amount to be refunded should also be advised to them simultaneously (emphasis added). There is no case for the respondents that any notice as enjoined in the aforesaid instructions was issued to the applicant or that he was advised with respect to the amount to be refunded by him. In the circumstances, the rejection of the option exercised by the applicant on the ground that he had not opted earlier cannot be accepted.

7. Counsel of the applicant brought to our attention a decision of the Division Bench of this Tribunal sitting at New Bombay in OM PRAKASH KHATTI v. UNION OF INDIA AND OTHERS (O.A.No.407 of 1986 decided on 18-11-1987). The decision ^{directly} is ~~directly~~ in point.

8. In the result, the applicant is permitted to exercise his option to switch over to the pension scheme including the Family Pension Scheme, 1964, within a period of 2 months from the date of receipt of copy of this order. In case, the applicant so exercises the option, the respondents shall pass appropriate orders granting pensionary benefits to the applicant from the date on which the applicant refunds the Government contribution in the provident fund.

9. The application is disposed of as above.

[Signature]
12/9/1991
MEMBER (A)

[Signature]
12-9-1991
VICE-CHAIRMAN