

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

C.A.No.1251 of 1988

Date of decision: 14.9.90

Shri Lal Singh Applicant

Shri B.S.Mainee Counsel for the applicant

VERSUS

Union of India & ors. Respondents

Shri O.N.Moolri Counsel for the
Respondents

CORAM:

THE HON'BLE MR.KAUSHAL KUMAR VICE CHAIRMAN
THE HON'BLE MR. J.NARASIMHA MURTHY JUDL.MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgment ? *Yes*
2. To be referred to the Reporter or not ? *No*
3. Whether their Lordships wish to see the fair copy of the Judgment ? *No*
4. To be circulated to all Benches of the Tribunal ? *Yes*

M.S
(J.Narasimha Murthy)
Judl.Member

K. Kumar
(Kaushal Kumar)
Vice Chairman
14.9.90

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1251/1988. DATE OF DECISION: September 14, 90.

Shri Lal Singh Applicant.
Shri B.S. Maine Counsel for the Applicant.
V/s.
Union of India & Ors. Respondents.
Shri O.N. Moolri Counsel for the Respondents

CORAM: Hon'ble Mr. Kaushal Kumar, Vice Chairman.
Hon'ble Mr. J. Narasimha Murthy, Member (J).

(Judgment of the Bench delivered by
Hon'ble Mr. Kaushal Kumar, V.C.)

JUDGEMENT

The short point that arises for consideration in this case is whether a Railway employee who had exercised his option while still in service for switching over from the non-pensionable Contributory Provident Fund Scheme to the Pension Scheme can be denied the benefit of the said option on the ground that his continuation in service was due to ^{the} fortuitous circumstance of his having not been retired on the basis of the date as recorded in his service book.

2. The facts of the case giving rise to the present application filed under Section 19 of the Administrative Tribunals Act, 1985 are that the applicant had joined the service of the respondents as Carpenter in the year 1946. According to the applicant, his date of birth was 19th July, 1927 and the same is said to have been mentioned in various official communications as per averment in para 6.4 of the application. On the basis of the said date of birth, the applicant was due for retirement on superannuation on 31st July, 1985 and he was actually retired from service on the said date.

Mr. Moolri

3. In 1983, the respondents had given an opportunity to all the Railway employees governed under the SRPF to switch over to pensionary benefits. It is averred in para 6.7 of the application that in pursuance of the aforesaid circular, the applicant opted for pensionary benefits and gave his option in the requisite form to Respondent No.2. It appears that no action was taken on the same. The Railway Board issued another circular No.F(E)III/85/EN/1/15, dated 18.6.1965 which gave another opportunity to the Railway staff for exercising their option for the Railway Liberalised Pension Rules. The applicant was again asked to exercise his option for pensionary benefits on 17.7.1985. The Deputy Chief Mechanical Engineer (W), Alambagh, Lucknow, communicated the said option of the applicant to the Senior Accounts Officer (W), Lucknow, vide his letter dated 20th July, 1983, a copy of which has been filed as Annexure A-2 to the application. The applicant also filled up the requisite form for payment of pensionary benefits on the basis of his option. However, on 28.7.85, the applicant was informed by the Department that his date of retirement should have been 28.2.1985 but due to some administrative errors/omissions, it had been wrongly shown as 31.7.1985 in the service record of the applicant. The applicant was informed vide letter dated 10.10.1987 filed as Annexure A-1 to the application, that since his case was a policy matter, it could not be considered by the Pension Adalat. Aggrieved by the said communication, the present application has been filed.

4. The case of the respondents, as stated in the counter-affidavit is that "Due to clerical error, however, the date of birth was recorded in the retirement list as 19.7.1927 instead of 19.2.1927, hence he was shown to be retired on 31.7.1985 (AN) instead of 28.2.1985(AN). However, at the time of his retirement for calculating

and paying the settlement dues to the employees, just after his retirement as per extant rules and practice adopted by the Respondents, his service record was scrutinised and on scrutiny it was found that his date of birth is recorded as 19.2.1927, hence he should have retired on 28.2.1985, but due to clerical error, the petitioner worked for five more months beyond the date of actual superannuation (i.e. 28.2.1985, from 1.3.1985 to 31.7.1985). No doubt, the petitioner opted for Pension on 17.7.1985, for the first time. In this regard it is stated that if he had retired on the date of superannuation i.e. 28.2.1985, he would not have been entitled to exercise option for pension, as this option was available only for those employees who retired on or after 31.3.1985 and the petitioner was due to retire on 28.2.1985. However, his case was referred to the Rly. Board through the G.M. (P). N. Rly's letter dt. 26.8.1985 (Annexure R-3) to accord sanction for the irregular retention in service beyond the date of superannuation i.e. from 1.3.1985 to 31.7.1985, and the decision of the Rly. Board was received vide their letter No.E(G)86-RT2/3 dated 8.4.86 under the G.M.(P). N. Rly. Letter No.522-E/399/EiiW/L dated 18.4.86 (Annexure R-4) in reply to letter dt. 24.5.86 (Annexure R-5) and on 25.8.1986 (Annexure R-6), wherein it has been decided that the period from 1.3.1985 to 31.7.1985 may be treated as on re-employment, according to which Shri Lal Singh, the petitioner, Ex. T. No.323-A, is deemed to have retired from service w.e.f. 28.2.1985. It has also been decided that in terms of the instructions contained in Rly. Board's letter dt. 18.6.85, circulated under G.M.'s Printed Serial No.8752 the persons who were in service on 31.3.1985 and retired on or after 31.3.1985 were eligible to opt for pension. Since the petitioner is deemed to have retired from service on 28.2.1985, (and thus not in continuous service on 31.3.1985) as such his case is not

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covered under the Rly. Board's letter dt. 18.6.1985) P.S. No.8752) filed herewith as Annexure R-7). As a result, the petitioner remained as S.R.P.F. optee and accordingly his case has been settled under S.R.P.F. Rules instead of Pension Rules."

5. The point that arises for determination is whether in terms of the Railway Board's letter dated 18.6.1985 on the subject of "Exercise of fresh option by the Railway Employees governed by the SRPF(C) Rules - to come over to the pensionable service", the applicant is entitled for switching over to the pension scheme. The relevant paragraphs from the said circular, which was produced before us by the learned counsel Shri Moolri at the time of hearing, are reproduced below: -

"Consequent upon the treatment of the entire dearness allowance upto the price Index Level of 568 as pay for retirement benefits w.e.f. 31.3.85, removal of the exting limit of Rs.1500/- p.m. on pension & raising the ceiling of DCRG from Rs.46,000/- p.m. to Rs.30,000 p.m. as issued vide this Ministry's letter No.PCIII/85/DP/1 dated 17.5.65 and F(E) III-82 PNI/3 dated 17.5.85, the Ministry of Rly. with the approval of the President have decided that another opportunity for pension option be given to the Railway staff who were in service on 31.3.85 and onwards and still governed by the SRPF (C) Rules to come over to the pension scheme including Family Pension Scheme. This option will remain valid upto six months from the date of issue of the orders i.e. upto and inclusive of 17.12.85.

XXXXXXXXXX XXXXXXXXX

"4. The Railway servant who does not exercise an option within the prescribed period or quit service without exercising an option or whose option is incomplete or conditioned or ambiguous shall be deemed to have opted to remain under SRPF (C) Rules. It should be made clear to all concerned that this is the last

M. Murali

opportunity for them to opt for pensionary scheme and no further option should. "

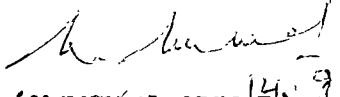
6. The pre-requisite conditions for exercising the option are that the concerned Government employee should have been in service on 31.3.1985 and onwards and still governed by SRPF Rules. Para 4 also makes it clear that the concerned Railway servant should have exercised his option in the prescribed period and he should actually have been in service at the time of exercising the option. Further, the option should have been complete, unconditional and unambiguous. It does not stipulate that if a person is ^{still} continuous in service on re-employment or extension, he would not be eligible for exercising the option in terms of the aforesaid circular. In the present case, the applicant had continued in service till 31.7.1985. The same might have been due to any technical lapse on the part of the respondents and merely because they had treated the service for the period beyond 28.2.1985 as being on re-employment basis, does not render the applicant ineligible for exercising the option for the pensionary scheme. When the applicant had actually retired on 31st July, 1985 and was paid salaries due ^{up} to that date, his deemed retirement from 28.2.1985 as contended in the counter reply has no bearing in so far as his entitlement for pensionary benefits in terms of the circular dated 18.6.1985 is concerned.

7. In the light of the above discussion, the application is allowed and we direct the respondents to accept the option exercised by the applicant in July, 1985 and act thereon for allowing him the benefits of pensionary scheme as admissible under the relevant

M. Murali

rules and instructions on the subject after adjusting any amounts already paid to the applicant. There shall be no order as to costs.


(J. NARASIMHA MURTHY)
Member (J)


(KAUSHAL KUMAR) ^{14.9.90}
Member (A)

14.9.1990.