

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.
T.A. No.

40

1986

DATE OF DECISION 31.3.1986

Shri Krishna Kumar

Petitioner

Petitioner in person

Advocate for the Petitioner(s)

Versus

Director of Audit, Northern
Railway and Another

Respondent

Shri P.H. Bamchandani

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. S.P. MUKERJI, MEMBER

The Hon'ble Mr. H.P. BAGCHI, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?

JUDGEMENT

The petitioner has come up before us under
Section 19 of the Administrative Tribunals Act
against the order of the Deputy Director of Audit,

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Northern Railway of 18th June, 1985 rejecting his representation in which the petitioner had asked for pensionary and other retirement benefits under the Liberalised Pension Rules.

2. The facts of the case can be summarised as follows. The petitioner is a retired Audit Officer of the Railways who was compulsorily retired by the Chief Auditor, Northern Railway under Rule 56(j) of the Fundamental Rules with effect from 25.11.1966 for non-compliance of transfer order. He moved the Hon'ble High Court and the Supreme Court against the order of compulsory retirement ~~but his petition~~ were rejected on 28.10.1968 and 2.2.1973 respectively. At the time of his retirement he was ~~in~~ non-pensionable service. He was contributing to the State Railway Contributory Fund and was paid his own contribution and the special contribution by the Government. This employer's contribution is not admissible to those who receive monthly pension after retirement as per the orders of the Hon'ble Supreme Court dated 2.2.1973.

The Chief Auditor by an order issued on 31.3.1973

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granted to the applicant leave on half average pay from 1.1.1966 to 24.11.1966 and in continuation, post retirement leave on half average pay from 25.11.1966 to 13.10.1967. It was also ordered that the pensionary equivalent of retirement benefits of Government contribution to the contributory provident fund was required to be deducted from the leave salary. The applicant moved the Hon'ble High Court of Delhi in Civil Writ Petition 149/74 claiming an amount of Rs.30,000/- on account of emoluments, leave salary and certain benefits under the contributory provident fund (but not pension). The Hon'ble High Court in its judgment dated 24.9.1982 directed to regularise his benefits and arrears upto his retirement on 25.11.1966 and sanction of leave after retirement for specified period. His other pleas before the High Court were not accepted. Accordingly, the Director of Audit passed the following orders on 3.11.1982:

"In pursuance of the judgement dated 24.9.1982 of the Hon'ble Delhi High Court in Civil Writ No.149/74 regarding Krishna Kumar

vs. Chief Auditor & others, the period of

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absence of Shri Krishna Kumar from 1.2.1966 to 24.11.1966 already converted from E.O.L. into L.H.A.P. vide this Office S.O.O. No.1287-NR/72-73 dated 31.3.1973 and paid for accordingly is again sanctioned as E.O.L. Consequently in partial supersession of this office S.O.O. No.1287-NR/72-73, dated 31.3.73, the post-retirement terminal leave admissible to Shri Krishna Kumar is sanctioned as under:-

The payment of leave salary during the above period shall be subject to the deduction of pensionary equivalent of retirement benefits as required under the rule in force at that time."

An amount of Rs.2013.85 was paid to the applicant and accepted by him in November, 1982.

3. From 1982 onwards a second watershed in the long history of litigation was launched by the applicant with unmitigated pertinacity. In accordance with the perception of the applicant, with the sanction of post-retirement leave vide the order of 3.11.1982, he got a new lease of his career which had been snuffed out on 25.11.1966. He thought that in November, 1982 in his service

career got extended from 25.11.1966 to 24.3.1969 and he could therefore in 1982 presume himself to be in service upto 24.3.1969 and exercise the option to switch over from ^{the h} Contributory Provident Fund to pensionary scheme. This perception can be said to have dawned on him in 1982, for nowhere before 1982 either in the Department or before the High Court or Supreme Court which he has been 'ad lice' & moving ~~solve~~, had he ever asked for such a switch over to the pensionary scheme.

4. Before the ink was dry on the order of 3.11.1982 quoted above the applicant moved the Hon'ble High Court of Delhi on 8.11.1982 in contempt petition (CCP 206/82) in CWP 149/74 alleging that the respondents had disobeyed the order of the Hon'ble High Court dated 24.9.1982 and withheld his dues estimated at Rs.65,000/- on account of alleged arrears of uncommuted residue of pension and gratuity. He also mentioned for the first time in the contempt petition that the option for pension was available to him upto 28.2.1983 and in any case upto 24.3.1969, he should be deemed to have opted for it. The

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Hon'ble High Court of Delhi dismissed the contempt petition by its judgment dated 27.5.1983 and upheld deduction of pensionary equivalent of retirement benefits of Government contribution in the Provident Fund from leave salary. The learned Judge observed specifically that the applicant himself had been stating that he was not holding a pensionable post. The learned Judge had also specifically noted that the petitioner was not entitled to any pension.

5. The applicant did not file any appeal against the judgment of 27.5.1983 but had filed a Letters Patent Appeal 39 of 83 on 9.11.1983 in Delhi High Court which was dismissed as withdrawn on 17.8.1984.

6. The applicant then filed a contempt petition (CMP 31536 of 83 in CA No. 454 of 69) in the Hon'ble Supreme Court of India claiming pensionary benefits by saying that he should be deemed to have exercised the option to come over to the pension scheme in accordance with the orders of the Ministry of Finance dated 28.5.1959, 15.1.1964, 8.2.1966 and 31.8.1968. Again he withdrew the

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contempt petition from the Supreme Court on 15.3.1984. Two months thereafter again on 15.5.1984 he filed another miscellaneous petition No. 28193 of 1984 in the Hon'ble Supreme Court repeating his earlier plea for pension. This was heard by the Hon'ble Supreme Court on 8.10.1984 and was allowed to be withdrawn by the petitioner.

7. Again the applicant filed another Civil Writ petition 16240 of 84 and a miscellaneous petition 39397 of 85 in the Hon'ble Supreme Court claiming pension under the Railway Board's orders on the same ground as before which had been rejected by Hon'ble High Court of Delhi on 27.5.1983 on the contempt petition No. 206 of 82. The writ petition was again dismissed by the Hon'ble Supreme Court leaving it "open to the parties to reach a settlement." There upon the applicant submitted an application to the respondents on 28.4.1985 for processing his option for pension but the same was rejected.

8. We have carefully gone through the various documents, orders and judgments of the Hon'ble High Court of Delhi and Supreme Court placed before



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us by the parties and heard their arguments.

This is a unique case in which the High Court of Delhi and the highest court in the country have been moved consistently and repeatedly through a ~~labyrinthine~~ ⁶ ~~labyrinthian~~ process during the last two decades invoking their sacred and extraordinary jurisdiction on the matter not worthy of the time and energy which have been bestowed on it so far. For the following reasons, the applicant's case for being brought over to the liberalised pension scheme completely fails:

i) He had already accepted the Government contribution to the provident fund and other retirement dues in 1967 and 1973. While accepting these he had never raised the question of his desire to express option to come over to the liberalised pension scheme.

ii) On the introduction of liberalised pension scheme of 1960 non-pensionary members of the Railway Audit Branch like the applicant who were governed by the Contributory Provident Fund Scheme were given an option to elect the liberalised pension scheme. The


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applicant did not avail this opportunity offered to him in 1964. In May, 1966, the applicant's counsel in his notice dated 10.5.1966 (annexure 'G' to the counter) intimated as follows:—

"5. By virtue of his appointment in the Railway, my client is not entitled to any pension nor has he opted for it nor is interested to have it. On the other hand he is non-pensionable, that is, that he is entitled to all the benefits of the State Railway Provident Fund admissible to non-pensionable railway employees in accordance with the Railway Establishment Codes."

- iii) Till August, 1982 during the proceedings of the CWP 149 of 1974 he had accepted that he was holding a non-pensionable post and the relief that he claimed in that writ petition had nothing to do with grant of pension.
- iv) The order of the Department dated 3.11.1982 quoted above clearly states while granting him leave upto 24.3.1969 that

from his leave salary the pensionary equivalent of retirement benefits will be deducted. This clearly shows that he had already been retired from Service w.e.f.

25.11.1966 the date from which the leave starts and therefore the question of his being 'offered' to exercise any option for liberalised pension scheme does not arise. The deduction of pension equivalent from leave salary cuts ~~away from~~ ^{at} the root of his claim of being entitled to exercise option because even though treating him on leave for purposes of allowing leave salary as admissible to him, the reduction of leave salary by pension equivalent shows that his status ceased to be that ~~of a Government servant~~ ^{in active service} of a Government servant to entitle him to exercise the option.

v) The Hon'ble High Court of Delhi in the judgment dated 27.5.1983 in the contempt petition No.206 of 1982 clearly and unequivocally stated that the petitioner was not entitled to any pension.

vi) His repeated applications to the Hon'ble Supreme Court claiming pensionary rights

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through contempt petition No.35136 of 1983, miscellaneous petition No.21983 of 1984, were withdrawn and his writ petition No. 1624 of 1984 was dismissed by the Hon'ble Supreme Court.

9. The aforesaid concatenation of judicial proceedings in the Hon'ble High Court of Delhi and Hon'ble Supreme Court show that the applicant miserably failed to establish his claim or right as such to the liberalised pension scheme. His own conduct and ~~acquiescence~~ for 16 long years after his retirement to the non-pensionable character of his service disqualify him for claiming pensionary benefit as a matter of legal right. One can only hope that he should reconcile himself to what he has got from the respondents directly and under orders of the Hon'ble High Court and Hon'ble Supreme Court and ~~devote~~ himself and his indomitable and creditable energies to their causes. So far as this Tribunal is concerned, we regretfully find no reason either in law or in equity to intervene in the matter which seems to have been already over-adjudicated

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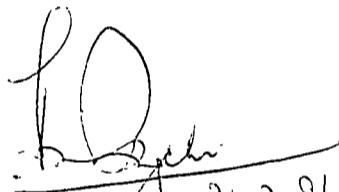
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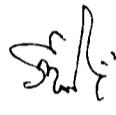
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upon both in the High Court as well as Supreme Court.

10. In effect, for the reasons aforesaid, the application is disallowed. Though in such a case as this, the application should have been dismissed with costs, considering the age and financial standing of the applicant we refrain from passing any order as to costs.


(H.P. BAGCHI) 31.3.81


(S.P. MUKERJI)