

258

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
DELHI.

R.A. No. 20/1990.

in

O.A. No. 1887/1987. Date of decision: 13.2.1991

Shri Jagan Prasad Srivastava .... Applicant.

Vs.

Union of India & Others ..... Respondents.

CORAM :

HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN.

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

For the applicant ... Shri B.B. Srivastava,  
Counsel.

For the respondents ... Shri Jagjit Singh,  
Counsel.

(Orders of the Bench delivered by Hon'ble  
Mr. Justice Amitav Banerji, Chairman).

This Review Application has been filed by  
the respondents- Union of India & Others , praying for  
a review of the judgment of the Tribunal dated 5.7.1989  
in O.A. 1887/1987 on the ground that the order had been  
obtained by making false statements and concealing  
true facts. Along with the Review Application, a  
Misc. Petition has been filed for condonation of the  
delay in filing the Review Application.

The applicant in O.A. Shri Jagan Prasad  
Srivastava prayed for payment of pension to him. His  
case was that he was unaware of the pension scheme  
notified by the Government of India, Ministry of  
Railways under letter No.F.(E)50/R 1/1/6 dated  
16.11.1957. The respondents should have asked him to

59.

opt for pension or State Railway Provident Fund Rules (SRPF). His case was that since he had not been asked to exercise his option, he was entitled to ask for pension from the date of his retirement. The applicant's case was that he had joined the service in B.B. & C.I. Railway on 14.11.1924, and retired from service after attaining the age of superannuation from the post of Station Master, Jaipur (Western Railway) on 28.4.1958. He came to know of this pension scheme only some time before filing of the O.A.

The respondents' case in the Review Application was that the applicant was aware of the pension scheme but he had submitted his option to continue with the provident fund under the S.R.P.F. Rules. He had submitted his option on 9.1.1958 and he had made a request to the Divisional Superintendent (E), Jaipur, stating that since he had opted for S.R.P.F., the amount may be paid to him. Consequently, it was stated that having exercised his option for payment under the S.R.P.F. Rules, his plea that he was entitled to be paid pension was entirely wrong. His submission that he was not aware of the provision for payment of pension to the Railway employees was also false. He had concealed these facts while filing the O.A. before this Tribunal.

The respondents were handicapped in filing a reply to the O.A. for they did not have the relevant papers with them to show as to what had happened

in his case. The O.A. was filed 30 years after he had retired and such old papers are usually weeded out. It was further stated that on 16.1.1990 while sorting out the old records in the Divisional Accounts Office, the record pertaining to the applicant was found/traced. The above record showed that the applicant had in fact opted for S.R.P.F. and not for pension. A copy of the option was filed along with the R.A. as Annexure R-2. The hand written letter dated 9.1.1958 by the applicant, praying that he may be paid 90% of the provident fund was filed as Annexure R-3.

The Review petitioners' case further was that the O.A. had been filed after 30 years of the retirement of the applicant, the delay in filing the O.A. was condoned and his O.A. was allowed since the respondents were not able to produce the relevant record. The judgment was pronounced on 5.7.1989. The respondents received a copy of the same on 31.7.1989. A Review Application ought to have been filed within 30 days of the receipt of the copy of the order but it could not be filed at that time. It could be filed only after the relevant record had been recovered. In other words, the plea was that review was filed on discovery of the relevant material which was not found earlier and the proper reply could not be filed in the O.A. It was further stated that the applicant had not only received all the benefits under the S.R.P.F. Rules but had prayed in the O.A. for the pensionary benefits and had also been issued payment

order for payment of Rs.20,413/- as minimum pension from 1.1.1986 to 30.11.1986. He has been paid pension for the month of December,1989, amounting to Rs.503/-. The respondents have prayed that:

- (i) The review petition may be allowed and the judgment in original application No.1887 of 1987 may be set aside with heavy cost.
- (ii) Respondent (applicant) may be ordered to refund amount of pension Rs.20916/- which has been paid by review petitioners with interest.
- (iii) Uphold action of the review petition in asking Post Master to seize the A/C of respondent and not to pay till this review petition is disposed of by Hon'ble Tribunal.
- (iv) Such further orders may be passed, directions may be given which may deem fit and proper in the circumstances of the case.

The review applicant has filed M.P. No.462 of 1990 for condonation of delay in filing the Review Application.

Shri Jagan Prasad Srivastava has filed two replies- one to the prayer for condonation of delay and the other to the Review Application. In regard to the former, he had stated that the condonation application had not been supported by an affidavit and as such, it is not maintainable in law. Secondly, the period of limitation is 30 days and that no authority has been given to the Bench even to entertain an application under Section 5 of the Limitation Act. The M.P. filed by the respondent for condonation of delay is neither entertainable

62-

nor maintainable. Thirdly, it has been stated that the delay in filing the Review Application cannot be condoned. It has further been stated that the applicant was retired on 15.8.1957 and not in 1958. The option now produced was never acknowledged by the respondent to the applicant, as a result of which it slipped from his memory that some option was taken from him. He was retired on S.R.P.F. basis by the DRM/DS(E), Jaipur. The applicant claim was that this was not a valid option. The applicant stated that the respondents only gave evasive reply and could neither produce the letter/communication under which the applicant was informed of the Pension Scheme, nor could produce the option and stated that the records had been destroyed. Consequently, the option which has now been produced was never acknowledged by the applicant <sup>and</sup> was not a valid option. As regards the amount of Rs.20413/- credited in the S.B.A/C of the applicant at Naka Madar Post Office, Ajmer, it has been seized by the Postmaster under the instructions of the Railway, as such it is there with the Post Office authorities. He has got only a sum of Rs.503/- as his pension for December, 89 and is prepared to refund it, if the Court so orders. He, therefore, denied that the <sup>total</sup> payment of Rs.20916/- had been made to him.

The applicant, Shri Jagan Prasad Srivastava

03

stated that the respondents have not stated as to why they could not trace the option earlier.

He superannuated on 15.8.1957, was retired on S.R.P.F. basis, by the DRM/DS(E), Jaipur, as the Railways believed that the applicant was governed by the S.R.P.F. Rules. The option taken on 9.1.1958 was taken on the misunderstanding that the applicant was not entitled to the Pension scheme. It was vehemently denied by the applicant that he had given false facts or concealed any material facts before the Tribunal. Reference was given to letters dated 4.12.1980, 29.8.1983 and 18.11.1983 of the DRM/DS(E), Jaipur which were annexed to O.A. 1887/87 as Annexures A-5, A-18 and A-20. The applicant stated that in all these letters, it has been confirmed that he was retired on S.R.P.F. basis, as he was governed by S.R.P.F. Rules. It has been further clarified that pension scheme was not applicable to the applicant. It was urged that the applicant's option was, thus, taken on wrong basis and under coercion. Lastly, it was urged that the Review Application was hopelessly time barred and the same was not entertainable or maintainable.

In the other reply to the Review Application, it was stated that the applicant was running 88th year, had been operated for enlargement of prostate and was virtually confined to bed. When he filed the O.A., he was 85 years old and he gave whatever

64

facts were alive in his memory. He had no intention either to mis-represent the facts or suppress any material information. He filed the O.A. for payment of pension on his memory. He then referred to the pension scheme for Railway Servants as published in the Western Railway Gazette Extraordinary dated 30.12.1957 which clearly laid down that those who retired on or after 1.4.1957 and have received in full or part their Provident Fund assets and Special Contribution to provident Fund were eligible to opt to come under the Pension Rules. The applicant stated that even though he had been retired on S.R.P.F. basis, he was entitled to come under the Pension scheme on his refunding the Provident Fund bonus with interest thereon actually received by him. He further stated that he had exercised the option at the instance of the D.S. (E), Jaipur. The acknowledgement of having received the option was not sent to him and he had no knowledge and if so, what option he had exercised. "An un-acknowledged option means that it has not been accepted."

The applicant superannuated on 15.8.1957 and at that time he was working as Station Master in Jaipur Division of Western Railway. As the applicant was governed by Ex-Company rules, he was granted two and half months full pay leave and six months half pay leave on furlough. Thus the

applicant effectively retired on 28.4.1958 on the expiry of the furlough leave. Thus from 15.8.1957 to 28.4.1958 the applicant was not on duty but on leave after retirement and the option now produced by the railway was taken from him on 9.1.1958 during the currency of leave as per the directions of the railway officers, who apparently failed to advise the applicant the pros and cons of the Pension Scheme and the benefits that would accrue to him.

In the reply to the Review Application, plea of the review application being barred by time was pleaded. The applicant has stated the facts as has been given in the O.A. and has blamed the Railway authorities for not telling him about the Pension scheme. The circumstances in which the option was taken were not also revealed correctly. He relied on the Annexures A-5, A-7, A-11, A-18 and A-20 in this respect. He further stated that he was not told that his option was on the record. He further submitted that in the O.A., the respondents gave only the evasive reply so far as the question of option was concerned. The option was taken from the applicant under compelling circumstances and the same was not valid option. Such an option was not tenable and the applicant was to be deemed to have opted for the pensionary benefits in terms of clause 4 of the Scheme dated 16.11.1957. Lastly, it was pleaded that the review application was

24



not maintainable for the reasons already stated above.

We have heard Shri Jagjit Singh, learned counsel for the respondents-Railways and Shri B.B.Srivastava, learned counsel for the applicant.

First of all it is necessary to consider whether the Review Application is maintainable in law. Three reasons have been set out by the applicant for holding that it was not maintainable. Firstly, it was barred by time; secondly, there was no provision or law for condoning the delay where the Review Application had been filed beyond 30 days and; thirdly, the application for condonation of delay was not maintainable as it was not supported by an affidavit.

As the question of delay is concerned, certain dates are relevant. The order of the Division Bench in O.A. was pronounced on 5.7.1989. A copy of the judgment had been sent to the respondents which had been received by them on 31.7.1989. 30 days time is stipulated for filing a Review Application under Rule 17(i) of the Central Administrative Tribunal (Procedure) Rules, 1987 from the date of the order of which the review was sought. The second leg of the argument was that there was no power in the Tribunal to condone the delay if a review application was filed beyond the above period of time. A number of cases were cited

67 -

in support thereof but, in our opinion, it is not necessary to cite them for a Full Bench decision of the Tribunal in the case of NAND LAL NICHANI AND OTHERS V. UNION OF INDIA AND OTHERS (1989 (10) ATC 113) held that delay can be condoned despite absence of specific provision in the Rules in this regard. But the defaulting party has to show sufficient cause to the Tribunal. It was further held therein that the commencement of the period of limitation is from the date of communication of order either by hand to the party or to his counsel or by sending a true copy of the order by registered post properly addressed and prepaid. It was also held that the grounds for review will be on the same grounds on which it is allowed under the Code of Civil Procedure, 1908, Section 114 and Order 47, Rule 1.

The argument that there is no power in the Tribunal to condone the delay or to entertain a Review Application after the expiry of 30 days from the date of the order is no longer tenable. The Full Bench had considered all these matters in the above case of NAND LAL NICHANI. It has also been held that in an appropriate case where sufficient case is made out, the delay can be condoned. Reference has been also made to Rule 22 of the Central Administrative Tribunal (Procedure) Rules where it is obligatory for the Tribunal to communicate

3

the final order to the concerned respondents or their counsel. The Full Bench disapproved the view taken by the Cuttack Bench of the Tribunal in the case of UNION OF INDIA V. CHITRANJAN DASS (1978) 1 SCC 483. The Full Bench held that the Tribunal has been clothed with the power of a civil court which the civil court enjoys in reviewing its own decisions. The powers of review are exactly the same. It also held that the provisions of Section 5 of the Limitation Act will be applicable and gave reasons for holding so. Lastly, the Full Bench held that the Tribunal has the power to condone the delay in the filing of a review application where a 'sufficient cause' is made out to the satisfaction of the Bench concerned. All arguments that the review application is not maintainable after 30 days, urged at the Bar are, therefore, untenable.

On the question of maintainability of the Misc. Petition to condone the delay that it was not supported by an affidavit is also nullified as an affidavit of Shri R.B. Bansal, Divisional Personnel Officer (M), Western Railway, Jaipur has been filed on 3.8.1990.

The only question that now remains whether sufficient cause has been made out for condonation of delay in filing of the Review Application. The misplaced or lost records of the Railways pertaining to year 1957-58 were recovered only on

16

68

16.1.1990 and the Review Application was filed on 24.1.1990. The delay has been for the period of 31.8.1989 to 24.1.1990. The reason why the Review Application was filed is the discovery of the record believed to have been weeded out. The record was traced from the Accounts Section. There is no reason to doubt the facts regarding the recovery of the same from the Accounts Section on 16th January, 1990. The Review Application was prepared and is signed on 22.1.1990 and was filed on 24.1.1990. The Review Application was filed in all probability due to the recovery of these papers. The filing of the Review Application is based on the discovery of papers which have been believed to have been weeded out and not traced. As a matter of fact, in the O.A. the stand taken by the respondents - Railways was that the matter was about 30 years old and the papers were not traceable and in all likelihood have been weeded out. As we see it, the old papers in the Accounts Section were being looked into and the papers pertaining to the applicant were recovered in that office. It is further evident that after the papers had been discovered on 16.1.1990, the Railways had moved swiftly and prepared the Review Application by 22.1.1990 and filed it on 24.1.1990. There has been no delay in filing the Review Application after the papers were recovered. Time taken, in our view,

24

was reasonable.

In view of the above, we are satisfied that there is a sufficient cause to condone the delay in the present case, more so, when we find that the applicant had exercised option for S.R.P.F. Scheme. It is also relevant that the applicant had received his retiral benefits in 1958 and he was laying claim for payment of pension in 1987. We are satisfied that this is a fit case in which the Review Application should be entertained. We, therefore, allow the Misc. Petition for condonation of delay.

In regard to the Review Application for setting aside the order dated 5.7.1989 in OA 1887/87, it is clear that the Bench of the Tribunal had taken the view that it was necessary for the employee who retired on 1.4.1957 to exercise his option either for S.R.P.F. Scheme or for the Pension Scheme or in case he did not, he would be entitled to the Pension scheme. The Bench of the Tribunal proceeded further to hold that the applicant had not exercised an option for the S.R.P.F. scheme, he was entitled to the Pension scheme and as such, should have been paid the same. It would thus be seen that the respondents were not able to produce before the Bench concerned any paper or evidence to show that the applicant had exercised an option for the S.R.P.F. scheme. The Bench, therefore, held that the pension scheme was applicable to him and allowed

his Application and gave certain directions.

The entire complexion of the case undergoes a change the moment applicant had exercised option for S.R.P.F. Scheme. If he had exercised his option for S.R.P.F. Scheme, he would not be entitled to the pension scheme. Now that the Railways have been able to produce the option form for pension Rules (Annexure R-2) and the letter written by the applicant to the D.S.(E), Jaipur dated 9.1.1958 (Annexure R-3), it is clear that he had exercised his option in favour of continuing with the S.R.P.F. Rules. The original papers in this connection were produced before us and were also shown to the learned counsel for the applicant, Shri B.B.Srivastava. There was no denial that these were not the papers executed by the applicant. As a matter of fact, the applicant states that because of his advancing age, his memory is fading and he was not aware when these papers were filed. It amounts to tacit admission of the fact of having executed these original papers-exhibit Annexures R-2 and R-3. It may be true that in view of his advancing age, he might have forgotten about these papers that he had executed/written. But it leads to one inference that he needed money in January, 1958 and also in 1987 when he had filed the O.A.

Learned counsel for the applicant strenuously urged that the option paper had an acknowledgement form attached to it which was not returned to the

applicant and as such, the option could not be held to be a valid paper. This argument has only to be mentioned before it is rejected. Both the papers (Annexures R-2 and R-3) are signed by the applicant and this fact is not denied. If the applicant has executed the option papers, he cannot resile from it. If the acknowledgement portion had not been sent to him, it does not mean that the option paper is invalid.

Another argument raised by the learned counsel for the applicant was that the Railways had not produced the letter indicating the scheme/form for exercising the option. In our opinion, this does not make any difference to the case. The applicant has not only executed the option in favour of the S.R.P.F. Rules but has also written a letter to the D.S.(E), Jaipur dated 9.1.1958 (Annexure R-3) which is in the following words:

"From: JaganPd. Retd.SM NBi. To The D.S.(E) Jaipur.  
No. J/20 dated 9.1.58

Sir,

As I have opted for SRPF rules under my J/19 of 9.1.58 & vide your MS-150 dated 30.11.57. So please arrange ninety percent of my last receipt of P.F. issued in my favour to be paid to me at an early date for which I shall be much thankful.

Yours faithfully,  
Sd/-Jagan Prasad.  
Retd. SM NBi C/O S.M. NBi."

It will be relevant to reproduce the contents of OPTION FORM FOR PENSION RULES (Annexure R-2) which are as under:

" OPTION FORM FOR PENSION RULES.

Having fully understood the comparative advantages and disadvantages of pensionary and PF benefits as applicable in my case:-

\*i) I opt for the pension rules on the terms and conditions laid down in Rly. Board's letter No. F.(C) 50 RT1/6 Dated 16.11.57.

ii) I opt to continue under the SRPF Rules.

Witnesses: Sd/-

Signature: Sd/-

Name in full: Ramesh  
Chandra Sharma

Designation Dy. S.M.

Office. Nadbai.

Signature Jagan Prasad.

Date 9.1.1958.

Name in full JAGAN PRASAD

Ex. Designation S.M.

Office Nadbai.

Present Jagan Prasad  
address. Retd. S.M.  
C/o S.M. Nadbai  
(Jaipur Division).

\*(Striked out item one which does not apply according to my option). ..."

It is evident from the above that the applicant was in need of money and he had opted for the S.R.P.F. Scheme. He had pursued the matter with the request for payment of lump sum amount and ultimately he was paid a sum of Rs. 9415.20 on 18.5.1958 as the final settlement slip shows.

In the facts and circumstances stated above, we are of the view that the applicant had opted for S.R.P.F. Scheme and was granted lump sum amount and it was not open to him for applying for the pension scheme subsequently. His O.A. for direction to the Railways for payment of pension is, in our opinion, wholly misconceived when he had already executed the option for S.R.P.F. Scheme and obtained money thereunder. That option cannot be set aside after 30 years



79-  
The O.A. was allowed mainly because the Railways had not been able to produce any papers showing as to whether the applicant had ever exercised any option in favour of the S.R.P.F. Scheme.

Any person who has not executed an option for S.R.P.F. Scheme would be entitled to be paid pension. The papers produced by the Railways show that the applicant opted for the S.R.P.F. scheme and not for the pension scheme. The paper Annexure R-2 clearly shows that item (i) mentions about the pension scheme also. The applicant being an educated person who was Station Master at the time of retirement has sent letter dated 9.1.1958, written in hand, the first option in the option Form could not have escaped his notice. That clearly referred to Railway Board's letter No.F.(E) 50 RT 1/6 dated 16.1.1957. It cannot be inferred that he was not aware of the pension scheme.


The above Form whether it was given by the Railways or a friend of the applicant would hardly make a difference. The Form was there. The applicant is an educated person and was writing letters in English. Thus he must have read the contents of the Form before he signed. We are, therefore, of the view that in the present case the applicant cannot say that he had not exercised an option for S.R.P.F. scheme or that he had done so at the instance of Railway Officers. The fact remains that he had exercised his option for S.R.P.F. scheme.

75-  
11

For the reasons indicated above, we are of the view that the Review Application has force and must succeed. We, therefore, allow the Review Application and set aside the judgment of this Tribunal in O.A. 1887/1987 dated 5.7.1989. The amount credited in the account of the applicant in Post Office will now be refunded to the Railways. A sum of Rs.503/- which has been given to the applicant as pension will, however, not be recovered. However, taking into consideration the facts and circumstances of the case, we leave the parties to bear their own costs.

17

The O.A. 1887 of 1987 will now be listed for hearing before a Division Bench.

  
(I.K. RASGOTRA)  
MEMBER (A)  
13.2.91.

  
(AMITAV BANERJI)  
CHAIRMAN  
13.2.91.

SKS