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Central Administrative Tribunal
Principal Bench: New Delhi

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OA No.1707/91

New Delhi this the 11th Day of February, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Late Sh. Abdul Hafiz,
s/o Sh. Gangu Khan,
Retired Van Porter under
Station Supdt. Northern
Railway, Saharanpur
through legal heirs:

1. Smt. Shano Begum w/o
Late Sh. Abdul Hafiz.
2. Miss Satara aged 17 years
D/o Late Sh. Abdul Hafiz
3. Miss Gulnaz aged 15 years
D/o Late Sh. Abdul Hafiz,
C/o Saddiq Hotel,
Kucha Rehman, Chandni Chowk,
Delhi-110092.

...Applicants

(By Advocate Sh. G.D. Bhandari)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager
Northern Railway, State Entry Road,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Ambala.

...Respondents

(By Advocate Ms. B.Sunita Rao, though none appeared).

ORDER(ORAL)

This O.A. was filed by Abdul Afiz, a retired Van Porter of the Northern Railway. He retired on 31.10.83. He last worked under the Station Superintendent, Saharanpur which was then under the Delhi Division of the Northern Railway and which has since been bifurcated into Delhi and Ambala Divisions. At present, that station falls under Ambala Division.

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2. The dispute is whether the applicant was entitled only to Contributory Provident Fund benefits or he had opted for Railway Pension Scheme and, therefore, entitled to payment of pension.

3. During the pendency of the O.A. the applicant expired on 13.1.92 and on an application by the legal heirs, which was allowed, the names of three legal heirs viz. the wife of the deceased and his two daughters have been brought on record.

4. It is contended in para 4.3 of the OA that the deceased employee gave an option to the Station Superintendent, Saharanpur, who forwarded the same with the Annexure A-1 letter dated 27.12.1974 to the D.P.O (T), New Delhi alongwith the option form of another employee Krishan Lal, Cook. It is further stated in para 4.4 that this was received by the dealing Clerk of the DPO's Office by his acknowledgement dated 30.12.74, which is endorsed on the Annexure A-1 letter.

5. However, on retirement, the applicant's account was settled, treating him as a beneficiary of the Contributory Provident Fund alone.

6. Thereafter, representations were made. His case was taken up by ^{the union. The} ~~the~~ applicant has filed a photo copy of the letter of the Station Superintendent, Saharanpur to the DPO, Ambala which appears to be a reply to a letter dated 3.10.88. It is stated by the official that the pension option of the applicant was sent to the DPO, New Delhi with the letter dated 27.12.74 (Annexure A-1) and ^{letter} that ~~has~~ been acknowledged on the same letter.

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7. It is further stated in para 4.12 that the matter was taken up by the Divisional President of the Uttariya Railway Mazdoor Union (URMU) on 20.12.89 (Annexure A-6). In that letter^{to} the ^{it is} DRM, Ambala and New Delhi/ stated that the complete pension papers of the applicant are lying in the establishment section with the dealing clerk Smt. Pinkey Sabharwar.

8. As no relief has been granted to the applicant, this application has been filed for a direction to the respondents to sanction pension in favour of the applicant and if necessary to adjust the arrears payable to him against the Provident Fund already received. The prayers sought have not been amended after the LRs were brought on record.

9. The respondents have filed a reply denying the claims made in the OA. They have contended that no relief can be given on this OA.

10. In regard to the option form it is first stated in para 1.1 that no option regarding pension was rendered by the applicant. In reply to the material paragraphs 4.2, 4.3 and 4.4. of the OA the respondents have stated as follows:-

“Paragraph 4.2 & 4.3:- That the contents of para 4.2 & 4.3 of OA are not admitted as worded, and in reply it is submitted that the option was not received by the respondents. The Annexure A-1 of OA seems to have been filed after adding the name of the applicant at Serial No.2 by manipulating there in and it cannot be taken cognizance of after a lapse of 17 years. The option is not available on record of the respondents as he did not submit the option.

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Paragraph 4.4:- In reply to this paragraph it is humbly submitted that the aforesaid pension form of the applicant is not available with the department is not on record."

11. I have carefully considered the matter. The counter-affidavit in reply to the OA is ambivalent in regard to the submission of the pension form by the applicant. The respondents have not stated whether the Annexure A-1 letter of the Station Superintendent, Northern Railway, Saharanpur was actually received but that it contained only the pension form of Krishan Lal, Cook and that the pension form of the applicant was not sent along with that letter. They could have very well produced the letter which they should have received, as the pension form of Krishan Lal was also sent therein. It is not their case that Krishan Lal has not been granted pension. They could also have produced the letter by which Krishan Lal's form was sent to them to establish that, with that letter, the applicant's option was not sent. Likewise, they have not apparently taken steps to verify, after the OA was filed, the genuineness of the Annexures A-1 and A-2 documents from Saharanpur which could very well have done.

12. Merely to allege that the applicant's name appears to have been inserted in the Annexure A-1 letter of the Station Superintendent, Saharanpur does not carry conviction. If that be so, there is no explanation as to why the Assistant Station Superintendent of Saharanpur reiterated on 8.10.88 (Annexure A-2) that the pension form of the applicant was indeed sent to the DPO, New Delhi.

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13. In reply to para 4.12 to 4.16 the respondents have stated that ^{the} contents of these paragraphs are immaterial. I am surprised by this reply because in paragraph 4.12 of the OA reference is made to the Annexure A-6 letter dated 20.2.89 of the URMU in which it is alleged that the complete pension papers of the applicant are lying in the establishment section with the dealing clerk Smt. Pinkey Sabharwal.

14. In the circumstances, I am satisfied that the applicant has established that he exercised his option to be governed by the pension Scheme in 1974 which was forwarded to the concerned authorities by the Annexure A-1 letter.

15. In the circumstances, the respondents are bound to treat the deceased as an employee who had opted for the pension scheme and, therefore, on his retirement on 31.10.83 that employee was entitled to pensionary benefits in accordance with that scheme.

16. In the circumstances, I dispose of this OA with the following directions to respondents 2 and 3 because the applicant retired from Saharanpur when that station was under the New Delhi Division under the second respondent while that station is now, after bifurcation, under third respondent:-

- i) It is declared that the applicant had opted for the Pension Scheme of the Railways in 1974 and accordingly, on his retirement he is entitled to settlement of his pensionary dues, after setting off the payments made earlier treating him as a C.P.F. beneficiary.

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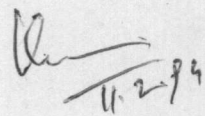
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ii) The respondents are directed to work out the pension and other pensionary dues payable to the deceased employee for the period from 1.11.83 till his death on 13.1.92, as mentioned in MP-1520/92.

iii) With effect from 14.1.92 the legal representatives of the deceased are entitled to family pension.

17. The learned counsel for the applicant at this stage submits that the legal representative Smt. Shano Begum also died on 15.7.92 and in respect of this event he has produced a copy of the death certificate from the Municipal Corporation, Saharanpur. In the circumstances, the dues payable in respect of the deceased Government employee as well as the deceased widow of the employee shall now be payable to other two legal representatives No.2 and 3 Miss Satara and Miss Gulnaz after having their identity established to the satisfaction of the respondents.

18. The learned counsel for the applicant seeks payment of interest also on the payment of dues. Considering the facts of the case, I am of the view that, as the application has been made only on 15.7.91, the respondents should pay interest @12% per annum w.e.f. 15.7.91 till the amounts are actually paid. No costs.



(N.V. KRISHNAN)
Vice-Chairman

Sanju.