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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DATE OF DECISION : 01.05.92

O.A. NO. 2713/1991

Shri Gopal Singh

...Applicant

vs.

CSIR & ANR.

...RESPONDENTS

O.A. NO. 2714/1991

Shri Khazan Singh

...Applicant

vs.

CSIR & Anr.

...Respondents

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Hon'ble Shri J.P. Sharma, Member (J)

For the Applicants

...Shri M.K. Gupta

For the Respondents

...Mrs. Raj Kumari Chopra

1. Whether Reporters of local papers may be allowed to see the Judgement? 2
2. To be referred to the Reporter or not? 1

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicants in these cases challenged the action of the respondents in denying the benefit of switching over to pensionary scheme despite the fact that similarly placed person, i.e., Shri Pyara Singh, Fine Mechanic, National Physical Laboratory (NPL) has been allowed the said benefit by the respondents. The applicants have made representations to the respondents to extend the

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same benefit to the applicants which has been rejected by the respondents and hence this application under Section 19 of the Administrative Tribunals Act, 1985 for the relief to quash the OM dt.26.4.1990 issued by the Director, NPL and also the decision taken by the respondent No.1, Director General, Council of Scientific and Industrial Research (CSIR) communicated vide order dt.16.1.1991. It is also prayed that a declaration be made that the option to switch over to Pensionable Scheme from Contributory Provident Fund (CPF) Scheme is deemed to have been exercised by the applicants and consequently, the applicants are entitled to the pensionary benefits. Further it is prayed that a direction be issued to the respondents to fix applicants' pension retrospectively from the date of retirement on attaining superannuation age on 30.6.1984 in the case of Khazan Singh and 31.7.1984 in the case of Gopal Singh and make payment along with interest @24% p.a. Since both the applications pertain to the adjudication of the same issue and both the applicants are situated similarly under the same employer, so both the Original Applications are disposed of by a common judgement.

2. The facts which are common to both the applicants are that Shri Gopal Singh was appointed as Farash

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w.e.f. 28.5.1949 and applicant-Shri Khazan Singh was appointed as Sweeper w.e.f. 14.6.1954. Both the applicants were serving in the National Physical Laboratory which were controlled by respondent No.1 which is also a society registered under the Societies Registration Act. Both the applicant were borne on the Contributory Provident Fund Scheme. In the year 1979, Government of India, Ministry of Home Affairs issued OM No.3(2)-PU/79 dt.9.8.1979 whereby the Government servants who were borne on the Contributory Provident Fund Scheme were allowed to switch over to Pensionable Scheme/service. This scheme was extended to CSIR (Respondent No.1). Respondent No.1 also gave option to its employees to come over from Contributory Provident Fund Scheme to Pensionable Scheme. It was made incumbent by the said OM of 1979 on the Heads of all the National Laboratories to inform all servants/employees of the CSIR and its laboratories individually who are/were borne on the Contributory Provident Fund Scheme and to obtain their signature in token of that. The case of the applicants is that respondent No.2 never brought to their notice and so they were prevented from giving any option to switch over to Pensionable Scheme for no fault of their. In the year 1985, Government of India gave another opportunity, but the applicants had already

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retired in 1984 and so were not benefitted by that OM of 1985.

3. Shri Pyara Singh, Fine Mechanic, NPL, who is similarly situated to the applicants filed O.A. No.1648/1988 (Shri Pyara Singh vs. CSIR) before the Principal Bench of the Central Administrative Tribunal, which was decided on 4.9.1989 (Annexure A4) and the benefit was almost given to the applicant, though the said application was rejected on the point of limitation with an observation in the judgement that the respondents shall consider the case of the applicant with sympathy. The applicants made representation against the department that since Shri Pyara Singh has been given the pensionary benefits and the case of Shri Pyara Singh is almost similar to that of the applicant, so the same pensionary benefits be given to the applicants after their shifting from CPF Scheme to Pension side. The respondents, however, did not grant the relief and stated in reply that the relief to Shri Pyara Singh was given as per the observations in the judgement of the Central Administrative Tribunal. The applicant, therefore, challenged the said order on the ground that it is unjustified and illegal and violative of the principles of natural justice and fair play.

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4. In both the Original Applications, the notices were issued to the respondents and the respondents were served for the date 16.1.1992, but again another time a service was issued for 31.1.1992 when one Shri A.K.Jha, S.O. appeared for the respondents and prayed for four weeks' time and the matter was adjourned to 5.2.1992. On that date Mrs.Raj Kumari Chopra appeared for the respondents and again the time was granted to file the reply and the matter was adjourned to 27.4.1992. On 27.4.1992, none appeared for the respondents in both the cases, so the learned counsel for the applicants has been heard.

5. The learned counsel for the applicants pointed out that in the judgement in the case of Shri Pyara Singh, annexed to the application (OA 1648/1988), the matter was decided on 4.9.1989 dismissing the application on the ground of limitation, but further stating, "Notwithstanding the aforesaid, as a model employer like the Government, should not reject the well founded claims of its employees on the technical plea of limitation. We would like to enter a caveat for the applicant to the effect that the Government may consider the request of the applicant for exercising option to switch over to the Pension Scheme." In pursuance of this judgement, Shri Pyara Singh has been granted the

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relief of option. The learned counsel for the applicants, therefore, argued that the respondents have granted the relief to Shri Pyara Singh on the basis of the judgement of the Central Administrative Tribunal, referred to above and refused the same to the applicants stating in the reply that the judgement in the case of Shri Pyara Singh was only personal to him and cannot be applied to the present applicants. However, it is not so. The Hon'ble Supreme Court clearly in the case of Kasturi Lal Lakshmi Reddy Vs. State of Jammu and Kashmir, AIR 1980 SC 1992 and 1980 (4) SCC 1 held as follows:-

"The Government is not free, like an ordinary individual, in selecting the recipients for its largess and it cannot choose to deal with any person it pleases in its absolute and unfettered discretion. The law is now well established that the Government need not deal with anyone, but if it does so, it must do so fairly without discrimination and without unfair procedure. Where the Government is dealing with the public whether by way of giving jobs or entering into contracts or granting other form of largess, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with some stand and or norm which is not arbitrary, irrational or irrelevant. The Governmental action must not be arbitrary or capricious, but must be based on some principle which meets the test of reason and relevance."

6. Though the applicants have filed the applications very late in November, 1991, but taking into account that the respondents have considered the case of Shri Pyara Singh and justice should not only be done, but seem to be done, so

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the respondents should have also considered the case of the applicants, namely Shri Gopal Singh and Shri Khazan Singh in the same spirit as they have considered the stale claim of Shri Pyara Singh and allowed him the relief to switch over to the Pensionable Scheme. In fact the applicants have retired sometimes in 1984 and they should have assailed the grievance of not having been given the option within a prescribed period under Section 21 of the Administrative Tribunals Act, 1985, however, in the case of Shri Pyara Singh (supra) has given them a fresh cause of action in 1989 when the judgement was delivered and further by giving the relief by the respondents to Shri Pyara Singh in 1990. Thus though the claim of the present applicants is also a stale, but in view of the fact that the applicants cannot be distinguished from the case of Shri Pyara Singh and Articles 14 and 16 of the Constitution forbid discrimination, so the case of the applicants is to be treated at par with that of Shri Pyara Singh and the relief granted to Shri Pyara Singh by the respondents should also be granted to the present applicants in the same spirit.

7. In view of the above discussion, both the Original Applications are allowed with a direction to the respondents

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to allow the applicants to give their option afresh to switch over the the Pensionable Scheme and thereafter give them the pensionary benefits according to the Extant Rules as has been given to Shri Pyama Singh in the same manner.

However, the actual pensionary benefits shall be paid to both the applicants only commencing for the last three years from the date of filing this application, i.e., w.e.f. 1.11.1988. The respondents to comply with the directions in three months from the date of receipt of a copy of the judgement.

Costs easy.

AKS

J. P. Sharma
(J.P. SHARMA) 1.5.82
MEMBER (J)