

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

(2A)

O.A. No. 2024/91

199

T.A. No.

DATE OF DECISION 28.1.97

Sh. Sri Nagesh Pathak

Petitioner

Shri S.S. Maines

Advocate for the Petitioner(s)

Versus

Genl. Manager, N.R. & Dns

Respondent

Shri R.L. Dhanan

Advocate for the Respondent

CORAM

The Hon'ble Mrs. Lakshmi Swaminathan, Member (J)

The Hon'ble Mr. _____

1. To be referred to the Reporter or not? *yes*2. Whether it needs to be circulated to other Benches of the Tribunal *X*

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

(25)

O.A. 2824/91

New Delhi this the 28th day of January, 1996.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Shri Sri Niwas Pathak,
S/o Shri Reghunath Prasad,
Retired Switch Man,
Railway Station,
Madrak.

...Applicant.

(By Advocate Shri B.S. Mainee)

Versus

Union of India, through

1. The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Divisional Railway Manager;
Northern Railway,
Allahabad.

..Respondents.

(By Advocate Shri R.L. Dhawan)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant is aggrieved that the respondents have failed to pay monthly pension to him in spite of the fact that he had opted for pensionary benefits in accordance with the Railway Rules before his retirement on 30.9.1983.

2. The applicant submits that he had filled up the form opting for pension and given the said form to one Shri Mahendra Pal Singh, Station Master of Madrak Station where he was working on 15.2.1983. He relies on the certificate issued by the Station Master, Madrak dated 18.10.1983 to the effect that the applicant's pension form was sent by him by Dak to the Divisional Railway Manager, Northern Railway - Respondent 2 - on the same date, i.e. 15.2.1983. Thereafter he has submitted that he had made a representation to Respondent 2 on 18/19.8.1984 requesting the respondents to consider the option

28,

26

he had exercised for pensionary benefits followed by subsequent representations on 30.1.1985 and 21.2.1985, etc. Shri B.S. Mainee, learned counsel for the applicant, submits that in these representations the applicant had also submitted that he would be ready to deposit the amount due ¹³from him, regarding processing of the option form for pensionary benefits instead of the settlement dues he had received under the SRPF rules. According to the applicant, no action has been taken by the respondents ¹²to which he had made further representations in 1987, 1988, 1989 and finally on 14.11.1990. Receiving no reply, he has filed this application on 1.11.1991. The learned counsel submits that since the payment of pensionary benefits is a recurring cause of action, this application is barred by limitation. Further he submits that since the applicant had exercised his option for pension in accordance with the Railway Rules on 15.2.1983 before his retirement from service, the judgement of the Supreme Court in Krishena Kumar Vs. Union of India & Ors. (JT 1990 (3) SC 173) which is relied upon by the respondents, is not applicable to this case. He has also filed affidavit from Shri Mahendra Pal Singh dated 1.10.1991 regarding the fact that the applicant had submitted his pension form on 15.2.1983 while he was posted at Madrak Railway Station which had been forwarded by him in a sealed cover after entry in the delivery book.

2. The respondents have filed their reply and they have taken a preliminary objection on the ground of limitation relying on the judgement in S.S. Rathore Vs. State of M.P. (AIR 1990 SC 10) that as the application has been filed more than eight years after the applicant ^{claims he 13} had ~~already~~ given his option for pensionary benefits, it is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. They have also submitted that the applicant had accepted the settlement dues as admissible under the SRPF Rules at the time of his retirement on 30.9.1983 and hence he cannot make his claim for payment of monthly pension from 1.10.1983 at

13.

27

this stage after a lapse of more than eight years. They have, further submitted that option for pension was invited by the respondents from the staff who were in service on 31.8.1982 and retired on or after that date, by Railway Board's letter dated 4.10.1982. However, the applicant had accepted the settlement dues under the SRPF Rules applicable to him without any protest which, according to them, clearly shows that he had not opted for pensionary benefits as claimed by him in this O.A. They have also pointed out that the applicant has not refused the settlement dues under the SRPF Rules and they have submitted that there is no option form as claimed by the applicant which is recorded in his service records. In the circumstances, relying on the judgement in Krishona Kumar's case (Supra), the respondents have submitted that the application is without any merit. Shri R.L. Dhawan, learned counsel for the respondents, has submitted that a number of opportunities had been given to the Railway employees to exercise ^{the} options ^{13.} within certain cut off dates and the ninth option which is applicable to the facts in this case was given on 9.11.1982 which was open upto 28.2.1983. In the additional reply filed by the respondents, they have submitted that since the delivery book of Madrak station of the year 1983 has been destroyed after the expiry of five years in accordance with the rules, the same cannot be produced. In the circumstances, they have submitted that the application may be dismissed both on merits and limitation.

3. The applicant has filed rejoinder in which he has reiterated, ~~namely~~ ^{13.} that he had submitted option form and given to the Station Master on duty which was duly forwarded to Respondent 2 which fact, according to him, has not been denied by the higher officers in the subsequent meetings which he had with them. He has also submitted that the fact that the applicant had received retirement benefits under the SRPF Rules but immediately represented to the respondents that he should be paid pension on the basis of his option is a relevant fact on which he cannot be denied the pensionary benefits.

13.

28

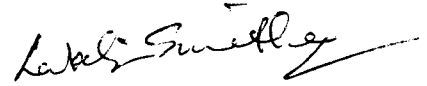
4. I have carefully considered the pleadings, the relevant materials on record and the submissions made by the learned counsel for both the parties. The main question for consideration is whether the applicant had, in fact, opted for pension as he claims on 15.2.1983 which according to the certificate issued by the Station Master Madrak on 18.10.1983 had been forwarded by ^{B.S.} ~~him~~ to Respondent 2. The applicant has himself submitted that he had made his first representation regarding payment of pension to Respondent 2 on 18/19.8.1984 followed by several other representations. When the applicant did not receive any satisfactory reply from the respondents to his representations, he should have filed this application well within time, which he has failed to do. It is settled law that repeated unsuccessful representations not provided by law do not enlarge the period of limitation as held by the Supreme Court in S.S. Rathore's case (Supra). The application is, therefore, liable to be dismissed only on the ground of limitation. The submission made by Shri B.S. Mainee, learned counsel for the applicant, that since this is a pensionary case, the question of limitation does not arise has to be rejected because in this case the issue to be determined is whether or not the applicant is entitled for pension. The applicant has not disputed the fact that he has received the retirement benefits under the SRPF Rules at the time he retired from service w.e.f. 30.8.1983. There is nothing on record to show that he has received the settlement dues as admissible under the SRPF rules, under protest bringing to the attention of the respondents that he has already opted for pension well within ^{the prescribed} time on 15.2.1983. The affidavit dated 1.10.1991 given by the then Station Master, Madrak could have also been produced by the applicant well in time if he chose to. He cannot now rely on this affidavit after more than eight years of the cause of action having arisen to claim benefits of the option for pension. This affidavit will also not assist him. If the applicant was aggrieved that his option for pension had not been duly taken into account by the respondents in time, he ought to have filed this application within the period

js.

29

of limitation which, as already mentioned above, he has failed to do.

5. In the result, for the reasons given above, this application fails and it is accordingly dismissed. No order as to costs.



(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'