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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

✓ O.A.No. 556/91
O.A. No. 674/91

Date of decision: 28-4-95

Hon'ble Shri S.R. Adige, Member (A)

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

Vir Bhan Sood,
S/o Shri Ved Prakash,
r/o 428A- Pocket II,
Mayur Vihar Phase I,
Retired Shop Superintendent Signal
Workshop, North Eastern Railway,
Gorakhpur Cantt (U)).
Presently working as Dy.
General Manager RITES,
27, Barakhamba Road,
New Delhi.

... Applicant

(By Advocate Shri J.C. Singhal)

versus:

1. Union of India through General
Manager, North Eastern Railway,
Gorakhpur (UP).

2. Chief Workshop Manager,
Signal Workshop,
North Eastern Railway,
Gorakhpur Cantt (UP)

3. Financial Adviser & Chief
Accounts Officer,
North Eastern Railway,
Gorakhpur (U.P.)

... Respondents

(By Advocate Shri Shyam Moorjani)

O_R_D_E_R

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

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Although O.A. No. 556/91 and O.A. No. 674/91
were linked together and, therefore, heard together,
we find that the only thing common between the two
applications is that the parties are common and so
also certain relevant facts to some extent but the
issues in dispute between the parties are different
and hence, the two O.As. will be dealt with separately.

OA No. 556/91.

In this application, the applicant is aggrieved that the respondents have rejected his request made in the letter dated 26.6.1989 followed by the letters dated 18.1.1990 and 26.6.1990, for withdrawal of earlier option for full commutation of pension with consequential pensionary benefits. The Respondents had rejected his representation dated 26.6.1989 by letter dated 27.12.1989 (Annexure A-2) followed by their letter dated 19-21/9/1990 (Annexure A-1) which he has challenged in this application. This O.A. has been filed on 28.2.1991.

2. The brief facts of the case are that the applicant joined the North Eastern Railway on 9.12.1963 as Apprentice Mechanic. On 2.9.1981, he was sent on deputation as Assistant Inspecting Engineer to Rail India Technical and Economic Services Limited, a Public Sector Undertaking, for short). (RITES). The applicant volunteered for permanent absorption in RITES and by Office Order dated 4/5-2-1986, the Railways treated him as retired w.e.f. 2.9.1984 in public interest (Annexure A-5), which is the order challenged in O.A. No. 674/91 which will be dealt with separately. On his retirement, the applicant states that he opted on 7.3.1986 for full commutation of his pension (Annexure A-4). The FA&CAO by letter dated 9.6.1989 (Annexure A-3)

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apprised the applicant of the amount representing full commuted value of pension together with a cheque which the applicant states he received on 26.4.1989. The applicant says that he made his own calculation and found that the amount paid has been calculated on the basis of his age as 45 years as against his actual age of 43 years. Since he stood to lose monetarily on account of addition of two years to his age, he made the representation dated 26.6.1989 i.e. within two days of the receipt of the letter from the Office of FA&CAD to change his option to 1/3rd commutation instead of full commutation. On rejection of his request on the ground that he has exercised his option beyond the permissible period of 2 weeks, the applicant again represented on 18.1.1990 (Annexure A-8). In this representation he has stated that he had not been advised about the result of the medical examination and he cannot, therefore, be expected to 'dream to it' and he had, in fact, exercised his option within two days of the receipt of the cheque on 24.6.1989. The applicant's further representation dated 26.6.1990 was also rejected by the respondents reiterating their stand taken in their earlier letter of 27.12.1989.

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3. We have heard Shri J.C. Singhal, learned counsel for the applicant and Shri Shyam Moorjani, learned counsel for the respondents at length and perused the records.

4. The applicant's case is that the respondents have failed to follow the provisions of Rule 2906 and 2907 of the Indian Railway Establishment Code (Volume II) (Extract given in Annexure A-6). He has also relied on the provisions of para 3 of Rule 37-A of the CCS (Pension) Rules (extracted in Annexure A-7).

5. Before dealing with Rule 2906 of the Indian Railway Establishment Code, we can straightaway reject the submissions made on behalf of the applicant under Rule 2907, this Rule is not applicable to his case, as there has been no modification of the prescribed table of values between the dates of administrative sanction for commutation and the date the commutation was due to become absolute.

6. Rule 2906 (1) provides as follows :-

" (1) On receipt of an application for commutation the sanctioning authority shall transmit to the applicant a copy of the Accounts Officer's certificate of the lump sum payable on commutation in the event of his being reported by such medical authority as the sanctioning authority may prescribe to be a fit subject for commutation ; and shall at the same time instruct him to appear for examination before the said authority within three months from the date of its order, or, if he has applied for commutation in advance of the date of his retirement, within three months of that date but in no case earlier than the actual date of retirement. The intimation shall constitute administrative sanction to commutation, but shall lapse if the medical examination does not take place within the period prescribed in the sanctioning order. If the applicant does

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not appear for examination before the said medical authority within the prescribed period the sanctioning authority may, at his discretion, renew administrative sanction for a further period of three months without obtaining a fresh application for commutation of pension. The applicant may withdraw his application by written notice despatched at any time before medical examination is due to take place, but this option shall expire on his appearance before a Medical authority.

Provided that if the medical authority directs that his age for the purpose of commutation shall be assumed to be greater than his actual age, the applicant may withdraw* his application by written notice despatched within two weeks from the date on which he receives intimation of the revised sum payable on commutation or, if this sum is already stated in the sanctioning order, within two weeks from the date on which he receives intimation of the finding of the medical authorities.

If the applicant does not withdraw in writing his application within the period of two weeks prescribed above, he shall be assumed to have accepted the sum offered.

(2) Subject to the provisions contained in clause (3) and to the withdrawal of an application under the proviso to clause (1) of this Rule the commutation shall become absolute, that is, the title to receive the commuted portion of the pension shall cease and the title to receive the commuted value shall accrue, on the date on which the medical board signs the medical certificate. Payment of the commuted value shall be made as expeditiously as possible, but in the case of an impaired life, no payment shall be made until either a written acceptance of the commutation has been received or the period within which the application for the commutation may be withdrawn has expired. Whatever the date of actual payment, the amount paid and the effect upon the pension shall be the same as if the commuted value were paid on the date on which commutation become absolute. If the commuted portion of the pension has been drawn after the date on which the commutation became absolute, the amount drawn shall be deducted from the amount payable in commutation."

The applicant's case is that the respondents never gave him intimation of the lump sum payable in the normal course or the changed position regarding his age,

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as prescribed in the Rule. It was only on his own initiative that he withdrew his earlier option by his letter dated 26.6.1989 on receipt of the cheque on 24.6.1989, although the letter dated 9.6.1989 itself was received after this date. When the respondents rejected his claim for exercising fresh option for commutation of 1/3rd pension only by letter dated 27.12.1989, he gave a more elaborate application on 18.1.1990 to the competent authority, explaining the position that he could not have dreamt of the medical result, unless advised and so his option exercised on 26.6.1989 was well within time as it was within two weeks of the receipt of the cheque. To the respondents preliminary objection that the O.A. suffers from laches and delay and is barred by limitation, Shri J.C. Singhal, learned counsel for the applicant also contended that since the reply of the Chief Works Manager, Bharatpur Cantt. dated 27.12.1989 is not the final authority, he made another representation dated 26.6.1990 addressed to the General Manager, North Eastern Railway for which the reply was given on 19/21-9-1990. Shri J.C. Singhal also submits that since the claim affects his pension, it is a recurring cause of action, and ultimately from 21.9.1990, there is only about 64 days delay which ought to be condoned as he has a genuine grievance and the principles of natural justice have

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not been followed (relied on A. Sagayanathan and others v. Divisional Personal Officer, Southern Railway, Bangalore (AIR 1991 SC 424) and Naubat Ram Sharma v. Addl. Dist. Judge II, Moradabad (AIR 1987 SC 1352)).

7. Shri Shyam Moorjani, learned counsel for the respondents, has contended that it is settled law that repeated representations does not extend the period of limitation. What the applicant is challenging is the letter of 27.12.1989 (Annexure A-2) and the O.A. has been filed on 28.2.1991. Hence, it is barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. No pension amount is involved in this case, but the issue involved is only a change of commutation of pension from 100% to 1/3rd amount. According to him, no sufficient reasons have been shown in the application for condonation of delay so as to prevent him from coming to the Tribunal in time and the ~~should be dismissed on the grounds of laches and delay.~~ application. The fact that the applicant has also received the final payment of 100% commutation of pension, encashed the cheque in June 1989 itself showed that he had acquiesced in the settlement and this application is, therefore, an afterthought which should be dismissed on both these counts. On merits, the respondents contend that the applicant was aware of every step in the process

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of commutation of his pension towards which the cheque was paid which he had already encashed.

They point out that the application form containing the Account Officer's report as required under Rule 2906 was, in fact, received by the applicant personally on 6.2.1989 being the calculation sheet which contains his signature (Annexure R-2). He has also signed the medical report after his medical examination held on 19.4.1989 and 20.4.1989, on the later date, when the Medical Board assessed his age as 45 years, against his actual age of 43 years. He having accepted the medical report on 20.4.1989 and not raising any objection to it till 26.6.1989, when he had also encashed the cheque sent to him, he cannot change his option after the 2 weeks statutory period allowed under Rule 2906. The Respondents' submit that this application should, therefore, be dismissed.

8. From the provisions of Rule 2906, it is seen that the medical examination of the concerned person has to be conducted within 3 months from the date of the administrative sanction. It is seen from the records that the original application made by the applicant on 28.12.1988, being incomplete, he had submitted the complete form only on 18.4.1989 (Annexure RR-III to the Rejoinder) and he was medically examined on 20.4.1989, without any delay. As per the respondents' averment, they had furnished him the Account Officer's report as required under Rule 2906

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on 6.2.1989 (Annexure R-2). The applicant has, in his rejoinder, correctly mentioned that this calculation sheet gives the figure of commutation value for different ages from 43 years to 48 years. On perusal of the medical examination report, we are unable to accept the contention of the applicant that he had signed only the blank form on 20.4.1989 and he was not aware that his age has been enhanced by two years in the report. We have no reason to believe the version of the applicant that he signed a blank form when the medical Board/authority consisting of 3 doctors have duly signed the report below his own signature on that date. Having regard to the provisions of Rule 2906, medical examination has been held within three months of the receipt by the applicant of the sanctioning authority's order dated 6.2.1989. The provision to Rule 2906 provides that if the medical authority direct that his age for the purpose of commutation be enhanced, then the applicant may withdraw his application within two weeks from the date on which he receives intimation of the revised sum payable or if this sum is already stated in the sanctioning order within two weeks from the date on which he receives intimation of the findings of the medical authority which in this case was two weeks after 20.4.1989. Further, if the applicant does not withdraw his application within two weeks in writing, he shall be assumed to have accepted the sum offered.

9. The applicant has laid great emphasis on the Foot Note to the Rule that his request has to be

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treated as withdrawing his previous application and the respondents have not followed this Rule in rejecting his request. The contention of the applicant is indeed correct that his request should be treated as withdrawal of his previous application provided the conditions prescribed in the Rule are fulfilled, namely, that the request for withdrawal is made within the prescribed time limit of 2 weeks from the date he received intimation of the revised sum payable on commutation or from the date he received intimation of the finding of the medical report, which, in this case, was received by him on 20.4.1989, when he signed the medical report. Since, admittedly, he has not given any such application requesting to withdraw his earlier application for full commutation of pension within the prescribed period of two weeks he cannot now rely upon the Foot Note to the Rule without complying with the conditions laid down therein. Rule 2906(2) provides that the commutation shall become absolute on the date on which the medical board signs the medical certificate. Payment of the commutation value is to be made as expeditiously as possible but not before the period of two weeks when the commutation may be withdrawn. In this case, by the applicant's own admission, he had encashed the cheque sent to him as 100% commutation of pension in June, 1989 and it was only after that, that he made his

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representation on 26.6.1989 to change his option. He has also reproduced para 3 of Rule 37A of CCS (Pension) Rules which also provides that the employee concerned will have opportunity to change his option for receiving monthly pension by written notice despatched within two weeks from the date on which he receives intimation of the finding of the medical board (authority). This Rule, therefore will also not help the applicant. Since, the applicant has admittedly not withdrawn his application within two weeks of intimation of the medical report which he had signed on 20.4.1989, his claim of acceptance of his request for change of option is rejected. Besides, he is now estopped from going back on his application at his own sweet-will and time, as he has already taken ^{the} ^{encashing} ~~benefit of~~ the commutation value which had already become absolute and paid to him.

10. The O.A. is also barred by limitation having regard to Section 20 of the Administrative Tribunals Act, 1985 and no sufficient reasons have been given to condone the delay. It is settled law that repeated representations will not extend the period of limitation and the cases relied upon by the applicant will not assist him in the facts of this case for

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the reasons given above. In the result, the
application lacks merit and is dismissed. No
costs.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

S.R. Adiga
(S.R. Adiga)
Member (A)