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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.3173 of 1992

This 18th day of May, 1994

Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman (J)
Hon'ble Mr. B.K. Singh, Member (A)

1. All India Retired Railwaymen
(P.F. Terms) Association,
K-131, Kirti Nagar,
New Delhi-15
Through its
Senior Vice Present:
Shri L.C. Agarwal.

2. Shri C.L. Sachdeva,
Retired Sub-Head,
Northern Railway,
R/o SD-394, Tower Apartments,
Pitampura,
Delhi-110034 ..... Applicants

By Advocate: Shri K.N.R Pillai

VERSUS

Union of India, through
The Secretary,
Ministry of Railway
Railway Board,
New Delhi. ..... Respondents

By Advocate: Shri R.L. Dhawan

O R D E R

(Hon'ble Mr. B.K. Singh, Member (A)

This O.A. 3173/92 along with MP 3876/92 has been filed by All India Retired Railwaymen (CPF retirees) Association Vs. Union of India, through Secretary, Ministry of Railways. These applicants who are members of this Association, retired during the period 1.4.69 to 14.7.1972 as PF retirees and during this period unlike earlier and later periods, there was no option available at the time of retirement to come on to the Pension Scheme.

2. The Bombay Bench of the Central Administrative Tribunal had by a judgment dated 11.11.87 in Ghanshyam Das's case held that there was discrimination against

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such persons and as such extended the benefit of the Pension Scheme to those applicants who were before the Tribunal. The operative portion of the judgment gave the following directions to the respondents:

> ""(i) The respondents are directed to hold that the applicants were entitled to the benefit of the pension scheme since their retirement and to determine the pension due to them according to the rules in existence at the time of their retirement taking into consideration the amendments made to the rules thereafter.
>
> (ii) The respondents will be entitled to recover all the amount from the applicants which would not have been due to them if they had opted in favour of pension before their retirement.
>
> (iii) The respondents shall calculate the arrears of pension due to the applicants and after deducting the amounts due from the latter as per clause (2) of this order, pay the balance, if any, to the applicants.
>
> (iv) No interest is to be charged on the amou due to each other.
>
> (v) The above order should be implemented as early as possible and in any case within four months from the receipt of a copy of this order.
>
> (vi) The drespondents are directed to implement the directions given in clauses (i) to (iv) of this order in respect of all the Railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1.4.69 to 14.7.72 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme."

A further OA No.373/89 was again filed in the Bombay Bench of this Tribunal (G.K. Choubal Vs. Union of India & Ors.)in which, while reiterating the directions passed in Tr.A. No.27/87 (Ghansham Dass & Anr. Vs. Chief Personnel Officer, Central Railway), a judgment was delivered on 6.9.89. The operative portion of that judgment reads as follows:-

> "(i) The respondents are directed to hold that the applicant was entitled to the benefit of the pension scheme since his retirement and to determine the pension due to him according to the rules in existence at the time of his retirement taking into consideration the amendments made to the rules thereafter.

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(ii) The respondents will be entitled to recover all the amount from the applicant which would not have been due to him if he had opted in favour of before his retirement.

(iii) The respondents shall calculate the arrears of pension due to the applicant and after deducting the amounts due from the latter as per clause (2) of this order, pay the balance, if any, to the applicant.

(iv) No interest is to be charged onthe amounts due to each other.

The clarificatory order contained in this judgment stated that those who retired during the period 1.4.69 to 14.7.72 and who had indicated their option in favour of the pension scheme either any time while in service or after retirement and who now desire to opt for the pension scheme, may be extended the benefit of the grant of Pension.

3. A Special Leave Petition against the order of the Bombay Bench was filed by the respondents, Union of India,Ministry of Railways, which was dismissed by the Hon'ble Supreme Court. The judgment of the CAT Bombay Bench was followd by two other Benches,namely Bangalore Bench and Hyderabad Bench. The operative portion of the judgment delivered on 2.3.90 by the Bangalore Bench, in case of a group of officers who were applicants before them in OA Nos. 534/89, 581/89 and 605/89 is as follows:

> "The applicants are similarly circumstanced like the applicant in TA No.27/87 (Ghanshyam Das) and the cases are covered by the decision in TA No.27/87 which had been confirmed by the Supreme Court in SLP. Hence the applications are allowed and the respondents are directed to hold that the applicants are entitled to the benefits of pension scheme since their retirement and they are further directed to determine the pension due to them according to the rules in existence at the time of their retirement and taking into consideration the amendments made to the rules thereafter. The respondents will also be entitled to recover or adjust all amaounts from the applicants which had been paid to them as per the State Provident Fund scheme. The respondents shall calculate the amounts due from the applicants and pay the balance to them. The said amaounts should be paid within four months from the date of receipt of this order. The applicants are not entitled to any interest.
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> In the result the applications are allowed. No order as to costs."

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4. While the aforesaid Benches of CAT were passing judgments in line with the judgment of the Bombay Bench dated 11.11.87, a SL No.8461/86 was filed before the Hon'ble Supreme Court in Krishena Kumar Vs.Union of India & Ors. (JT 1990 (3) SC 173). The Hon'ble SC was already seized with several other CWPs which are listed below:

(i) Balbir Singh Vs. Union of India
Civil Writ Petition No.1285/86

(ii) Shri Desh Raj Kohli & Ors. Vs. Union of India
CW Petition No.1575/86

(iii) Shri R.N. Mubayi, President, All India Retired Railwaymen (PF Terms) Association Vs. Union of India
CW Petition No.352/89

(iv) Shri Brij Mohan Kaul & Ors. Vs. Union of India & Anr
CW Petition No. 361/89

(v) Shri K. Ravi Verma & Ors. Vs. Union of India & Anr.
CW Petition No. 1165/89

5. In all these C.W.Ps. the question regarding extension of the benefit of liberalised pension scheme where options had been invited on innumberable ocasions by Railways, the Hon'ble Supreme Court distinguished the aforesaid cases from the facts in which they had dismissed the SLP in case of the judgment delivered by CAT Bombay Bench on 11.11.87, as mentioned above. In this case the Hon'ble SC also discussed the ratio of their own decision in case of Union of India Vs. Vidhubhushan Malik, 1984 (3) SCC 95; DS Nakara & Ors. Vs. Union of India, 1983 (2) SCR 165. The Hon'ble SC also referred to foreign case -- Quinn Vs. Leathem, (1901) AC 495. They also referred to books, treatises and articles. These are Bentham: Theory of Legislation, chapter XII, p. 60; and Halsbury Law of England, 4th edition, vol.26, para 573. In this Constitutional Bench judgment of 1990, the Hon'ble Supreme Court had given a factual statement showing pension options given to Railway employees at pages 178 to 181 and they also indicated the subsequent

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options extended (pagae 181 to 185 of the judgment). They have very carefully scrutinised and discussed the options and its extension in respect of the ~~employees~~, ~~PF~~ ~~and~~ CPF beneficiaries and the pensioners. This Constitutional Bench comprised of Hon'ble Mr. Justice Sabyasachi Mukharji, CJI, B.S. Ray, M.H. Kania, K.N. Saikia and S.C. Agrawal, JJ. In brief it was held as follows:-

"The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee udner CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crysrtallised and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also be equally applicable to the PF retirees. This being the legal position the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regards Pension retirees, the obligation of the State in respect of Pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decided in Nakara that the State's obligation towards its PF retirees must be the same as that towards the Pension retirees. An imaginarydefinition of obligation to include all the Government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case.

(ii) The argument of the petitioners is that the option given to the PF employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art.14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12 th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the government has a continuing obligation and if one is affected by dearness the others may also be similarly affected. In case of PF retirees each one's rights having finally crystallized on the date of retirement and receipt of PF benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the

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corpus after retirement of PPF retiree was affected or benefitted by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option, the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th Option does not arise. It would also appear that most of the petitioners before their filing these petitions had more than one opportunities to switch over to the Pension Scheme which they did not exercise. Some again opted for P.F. Scheme from the Pension Scheme.

Precedent: Doctrine of - Ratio decidendi alone has the force of law -- The Court is not bound by various reasons given in support of the decisions.

(i) The doctrine of precedent, that is, being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved init. It does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case itself required'. This was what Lord Selborne said in Caledonian Railway Co. Vs. Walker's Trustees and Lord Halsbury in Quinn Vs. Leatham (1901) A.C. 495, (502). Sir Frederick Pollock has also said: "Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and applied as necessary grounds of the decision". In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a preacedent. The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis of the facts of the case and the process of reasoning involving the major premise consisting of a preexisting rule of law, either statutory or judge-made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to spell it out with difficulty in order to be bound by it.

(ii) State decisis et non quieta movere. To adhere to preacedent and not to unsettle things which are settled. But it applies to litigated facts and necessarily decided questions. Apart from Art.141 of the Constitution of India, the policy of courts is to stand by preacedent and not to disturb settled point. When court has once laid down a principle of law as applicable to certain state of facts, it will adhere to that principle, and apply it to all future cases where facts are substantially the same.

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A deliberate and solemn decision of court made after argument on question of law fairly arising in the case, and necessary to its determination, is an authority, or binding precedent inthe same court, or in other courts of equal or lower rank in subsequent cases where the very point is again in controversy unless there are occasions when departure is rendered necessary to vindicate plain, obvious principles or law and remedy continued injustice. It should be invariably applied and should not ordinarily be departed from where decision is of long standing and rights have been acquired under it, unless considerations of public policy demand it."

The operative portion of judgment of the Hon'ble SC reads as follows:

"45. It is submitted inthe alternative that if this court feels that a positive direction cannot be made to the Government in this regard, it is prayed that at least an option should be given to the respondents either to withdraw the benefit of switching over to pension from every one or to give it to the petitioners as well, so that the discrimiantion must go.

45. We are not inclined to accept either of these submissions. The PF retirees and pension retirees having not belonged to a class, there is no discrimination. In the matter of expenditure includible inthe Annual Financial Statement, this court has to be loath to pass any order or give any direction, because of the division of functions between the three coequal organs of the Government under the Constitution.

47. Lastly, the question of feasibility of converting all living PF retirees to Pension retirees was debated from the point of view of records and adjustments. Because of the view we have taken in the matter, we do not consider it necessary to express any opinion.

48. Mr. C.V. Francis in WP No. 1165/89 argued the case more or less adopting the arguments of Mr. Shanti Bhushan. Mrs. Swaran Mahajan, in WP No. 1575/86, submitted that the rule as to commuted portion of the pension reviving after 15 years shouldbe applied to PF retirees so that the corpus of Provident Fund dues received more than 15 years ago should be treated as commuted portion of pension and be allowed to revive for adjustments against pension. In the view we have taken in this case it is not necessary to express any opinion on this question.

49. Mr. R.B. Datar for the respondent in WP No.1575/86 and WP No.352/89 more or less adopted the arguments of the learned Additional Solicitor General.

50. In the result, all the Wript Petitions and the Special Leave Petition are dismissed, but the petitioners being retirees, we make no order as to costs."

6. The Hon'ble Supreme Court has distinguished taking into consideration the dismissal of SLP in case of Ghansyam Das Vs. Chief Personnel Officer (supra). In para 37 and 38 it states as under:

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"37. The Central Administrative Tribunal in Transferred Application No.27/87 was dealing with the case of the petitioners' right to revise options during the period from 1.4.69 to 14.7.72 as both the petitioners retired during that period. The Tribunal observed that no explanation was given to it nor could it find any such explanation. In State of Rajasthan Vs. Retired CPF Holders Association, Jodhpur, the erstwhile employees of erstwhile Princely State of Jodhpur who after becoming Government servants opted for Contributory Provident Fund wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on Nakara which was also followed inUnion of India Vs. Bidhubhushan Malik, (1984) 3 SCC 95, subject matter of which was High Court Judges' Pension and as such both are distinguishable on facts.

38. That the Pension Scheme and the PF Scheme are structurally different is also the view of the Central Pay Commissions and hence ex gratia benefits have been recommended, which may be suitably increased."

7. This judgment of the Hon'ble Supreme Court was delivered prior to the judgment of Bangalore Bench and the Bangalore Bench has differed from the ratio established in the case of Krishna Kumar and has stated in paragraph 11 of the judgment that the judgment of the CAT Bombay Bench and that of the Hon'ble Supreme Court are not based on identical facts. This has already been stated by the Hon'ble Supreme Court itself. But in the light of the Constutional Bench judgment of the Hon'ble Supreme Court, which even discussed its own decision in case of Bidhubhushan Malik and D.S. Nakara, the judgment of Bangalore Bench following the ratio established by the Bombay Bench of C.A.T. does not appear to be a correct one. It was also argued before us by the learned counsel appearing for the applicant that a Special Leave Petition has been filed against the judgment of Madras Bench since it has differed with the judgment of the CAT Bombay Bench delivered on 11.11.87.

8. We have carefully gone through the various judgments placed before us. The operative portion of the Madras Bench judgment is as folows:-

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"The present applications would be squarely covered bythe judgment inKrishena Kumar's case. The applicants have not been able to show in what way their cases can be distinguished from that of the 5th petitioners in WP No.1575/86 who retired on 19th June 1972 and whose case on facts is very similar to that of the applicants and whose case was also decided by the judgment in Krishena Kumar.

In the result, we have to reject the contentions of the applicants. The applications are dismissed with no order as to costs."
(OA Nos. 59/93, 1734/92, 1123/92, 507/93.
Decided on 26.8.1993).

It has differed fromthe judgment of other Benches of CAT and has followed the ratio established by the Constitutional Bench of the Hon'ble Supreme Court in the case of Krishena Kumar, mentioned above.

9. In case of D.S. Nakara & Ors. Vs. Union of India, a Constitutional Bench of Hon'ble Supreme Court comprising CJI, Y.V. Chandrachud, V.D. Tuljapurkar, B.A. Desai, O. Chenappa Reddy and Baharul Islam, JJ, had considered the memorandum dated 25.5.1979 issued by Government of India liberalising the formula of computation of pension in respect of employees governed by Central Civil Service (Pension) Rules 1972 and made it applicable to the employees retiring on or after 31.3.1979. By another memorandum dated 23.9.79, the Government of India extended the benefit of the scheme, subject to certain limitations, to the Armed Forces retiring on or after April 1979. The entire case related to the class of pensioners only dividing it into those in civil services xxxxxxxxx personnel retiring on or after 31.3.79 and/for those who had retired prior to 31.3.79 a cut-off date was given. This cut-off date was challenged as discriminatory under Article 14 of In the case of DS Nakara, it was held that it is a class of pensioners who were being divided into two groups on the basis of a cut-off date and were being discriminated and as such the Hon'ble Supreme Court, after detailed discussion of the subject, held that Art. 14 was attracted and that this artificial division in the same class of employees was arbitrary and discriminatory and as such the memorandum of 25.5.1979 extending the benefit to the retirees who retired on or after 31.3.79 and personnel of Armed Forces from April 1979 and denying

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the same benefit to those pensioners who had retired prior to March 31, 1979 and also to those Armed Forces employees who had retired prior to April 1, 1979, was struck down. It was held that there is no rationale to justify a fortuitous circumstance of denying the benefit to those retiring a day earlier or a day after the cut-off date, and the classification which divided the same class into two classes was also held to be arbitrary because it violated Art. 14 of the Constitution. The pension rules being statutory in character there was no question of prescribing a cut-off date or a classification and making the rules according to cut-off date in the matter of computation of pension.

10. We have carefully gone through the judgment of Constitution Bench of the Hon'ble Supreme Court and we find that the facts of this case are completely distinguishable from the case of D.s. Nakara and Ors. Vs. Union of India, 1983 (2) SCR 165. In this Constitutional Bench judgment, the Hon'ble Supreme Court held that the PF retirees form a separate class vis-a-vis the pensioners who had opted while they were in service or immediately after their retirement and as such it was held that it was not violative of Art.14 of the Constitution.

11. The learned counsel for applicant vehemently argued that only those CPF beneficiaries who retired between 1.4.69 and 14.7.72 were denied this benefit. This contention of the learned counsel cannot be sustained because the Hon'ble Supreme Court, on the basis of affidavit filed by the Ministry of Railways and following the CAT Madras Bench, has said that

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there are other periods when options given were not extended and this period according to them is from 1.1.62 31.8.62, 1.7.63 to 31.12.63, 1.10.64 to 30.12.65, 1.7.66 to 30.4.68 and 1.4.69 to 14.7.72. It seems that the Western Railways did not file a detailed affidavit as was done by the Ministry of Railways when a bunch of CPF beneficiaries for grant of pension scheme came before the Hon'ble Supreme Court. It would thus be seen that it is not only the period from 1.4.69 to 14.7.72 but the other periods when option was not extended. also In the judgment of Bombay CAT Bench in case of Ghansham DAs Vs. Union of India & Ors, the major premise still continues to be that only such CPF beneficiaries who had opted for pension scheme while they were in service or immediately after retirement, would be permitted to get the benefit of the scheme. the words "before or after" means that if a man sleeps over his grievance for a decade and then comes up before the Tribunal or in any other court, that matter will not be reopened. Matters already settled cannot be reopened after a long spell of time. After means immediately after retirement. Otherwise it will be barred by limitation and it would be a very big hurdle to cross. The Hon'ble Supreme Court in the case of S.s. Rathore Vs. State of MP and also in State of Punjab Vs. Gurdev Singh, has overruled its own judgment given in the case of Qammar Ali where they had held that the period of limitation will not apply in case of orders which are ab initio void. In case of State of Punjab Vs. Gurdev Singh, they overruled the ratio established in their own judgment and said that the period of limitation would be applicable even in case of void orders (JT 1991 (3) p.463). The period of limitation will start running from the date the cause of action or grievance arose.

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12. Dismissal of SLP by Hon'ble Supreme Court in case of the judgment of CAT Bombay Bench only means that the ratio of that judgment would be applicable to the parties in that particular case and that it cannot be treated as a judgment in rem. The constitutional Bench judgment (JT 1990 (3) SC 173) has practically rejected all the contentions of the learned advocates appearing onbehalf of the various applicants. In case of DS Nakara v. UOI, their Lordships posed the question, "Where then is the purpose for prescribing the specified date verticially dividing the pensioners between those who retired prior to the specified date and those who retired subsequent to that date? That poses a further question, why was the pension scheme liberalised? What is the necessity for liberalisation of the pension scheme?" The onus of justifying the differential treatment was placed on the State. No rational justification was found in the counter affidavit or other material on the record and their Lordships concluded, "If, therefore, those who are to retire subsequent to the specified date would feel the pangs in their old age for lack of adequate security, by what stretch of imagination the same can be denied to those who retired earlier with lower emoluments and yet are exposed to vagaries of rising prices and the falling purchase power of the Rupee? And the greater misfortune that they are becoming older and older compared to those who would be retiring subsequent to the specified date.. The Government was perfectly justified in liberalising the pension scheme. In fact, we find no justification for arbitrarily selecting the criteria for eligibility for the benefits of the scheme dividing the pensioners all of whom would be retirees falling on one or other side of the specified date." Further, "the division itself is both arbitrary and unprincipled. Therefore the cclassification does not stand the test of Article 14 of the Constitution. Further the classification is wholly arbitrary because we do not find a single acceptable or persuasive reason for this

division. This arbitrary action is violative of the guarantee under Article 14 of the Constitution. ..."Whenever classification is held to be permissible, the measure can be retained by removing the unconstitutional portion of classification by striking down the words of limitation. In such a situation, the Court can strike down the words of limitation in any enactment i.e. what is called 'reading down' the measure. We know of no principle that 'severence' limits the scope of legislation and can never enlarge it."

13. Thus it is the same class of pensioners who were vertically divided into two groups and it was held that the classification and the cut-off date both were arbitrary and unprincipled and the same was struck down. But in the instant case the Hon'ble Supreme Court has categorically stated that the CPF beneficiaries and pension retirees are two different classes and as such in this particular case Art.14 of the Constitution is not attracted.

14. We have heard the learned counsel for the parties and have also perused the averments made in the OA, counter affidavit and the rejoinder. We have carefully gone through the judgments referred to by the learned counsel. It is an admitted fact that the Hon'ble Supreme Court held the case of Ghanshyam Das as distinguishable from the case of Krishna Kumar & Ors. on the basis of facts. In the case of Ghanshyam Das it is clear that he opted for the Pension scheme on 20.8.72,not long after his retirement in 1971. The

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other applicant in that case, Mr. D'Souza, had opted for the pension scheme in a request made by him in writing a few days prior to his retirement. In the case of those applicants who had gone to Supreme Court, it was found that none of them had exercised their option at any time either immediatley before or immediately after their retirement. It is an admitted fact that they were aroused from their dogmatic slumber only after 1987, i.e., after a gap of 15 years after their retirment. As stated in the case of State of Punjab Vs. Gurdev Singh, even in case of a grievance in the void order,the period of limitation will apply. No one can be allowed to raise matters in which the cause of action arose 15 years earlier. Even the Central Adminsitrative Tribunal is barred from listening the cases prior to three years before its constitution under Section 21 of CAT Act 1985. It reads as folows:

"A Tribunal shall not admit an application:

(a) in a case where a inal order as such is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within oneyear from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

15. In the case of S.S. Rathore Vs. State of M.P., it was held that the right to sue first accrued not when the original adverse order was passed but when that order was finally disposed of by a higher authority on an appeal or a representation made by the aggrieved employee in exhaustion of a statutory remedy and where no such final order was made, the right to sue accrued on the expiry of six months from the date of the appeal or representation. The same fact has been repeated in case of State of Punjab vs. Gurdev Singh, JT 1991 (3) 463, 1991 (1) AT p.287. In this case it was held that even in case of a void order the period of limitation will apply.

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Laches and delay defeat the remedy and if the remedy is defeated, even the right accruing to a person is lost. The Tribunal is also barred from hearing the cases where the cause of action arose three years prior to its constitution, unless it is a transferred application from any competent court.

16. The Constitutional Bench of Hon'ble Supreme Court delivered its judgment on 13.7.90 in case of Krishena Kumar & Ors. Vs. Union of India (1990 (14) ATC 846. It was delivered after the Bombay Bench of CAT delivered its judgment in TA No.27/87 in which the SLP was dismissed. Large number of writ petitions had been filed right from 1986 by retired Railway employees who were covered by CPF Scheme of the Railways. All these petitions had been filed between 1986 and 1989. It was the case of the petitioners that prior to 1957 the only scheme for retiral benefits in the Railways was the Contributory Provident Fund Scheme. This CPF scheme was replaced under the orders of 1957 by the Pension Scheme whereby the Railways could give pension after retirement instead of its contribution towards the Provident Fund of the employees. It is stated that the employees who entered the Railway service on or after April 1, 1957, were automatically covered by the Pension scheme instead of CPF. Insofar as the employees who were already in service on 1.4.57, were given an option either to retain the PF benefits on condition that the matching contribution already made to their PF accounts would revert to the Railways if they opt for pension scheme. In 1957, the general impression among the employees was that the CPF benefits were equally beneficial and therefore they had exercised the choice between pension and CPF and thus they were given the option to opt for either of these. Subsequently, liberalised pension scheme was introduced for the benefit of the pensioners. The learned counsel for the applicant argued that the CPF beneficiaries at that time had no inkling about the liberalisation of the pension scheme, otherwise they would have opted for the same. This contention of the learned

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counsel is not tenable. The Railways gave repeated options and extended it from time to time to switch over to pension scheme if the C.P.F. beneficiaries so wanted. As regards cut-off date, which was prescribed for options, on several ocasions after 1957 the period was extended from to time and all Zonal Managers were informed of these extensions. In the instant case, unlike the case of D.S. Nakara, as quoted above, the Hon'ble Supreme Court dismissed all the civil writ petitions filed by various groups of CPF retirees holding that the cut-off dates were not arbitrarily chosen but had a close nexus with the purpose for which they had been chosen and distinguished the CPF beneficiaries as a separate class from those of the pensioners. This is evident from the following portion of the judgment:-

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"Thus the court (in D.S. Nakara's case) treated the pension retirees only as a homogeneous class. The PF retirees were not in mind. The court also clearly observed that while so reading down it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notification with respect to the specified date. All the pensioners governed by the 1972 Rules were treated as a class because payment of pension was a continuing obligation on the part of the State till the death of each of the pensioners and unlike the case of Contributory Provident Fund, there was no question of a fund in liberalising pension.

32. In Nakara it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the government's obligation does not begin until the employee retires, when only it begins, and it continues till the death of the employee. Thus, on the retirement of an employee, government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position, the rights of each individual PF retiree finally crystallized on his retirement whereafter no continuing obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees, they would not be so adversely affected ipso facto. It cannot therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot therefore be an authority for this case.

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34. The next argument of the petitioners is that the option given to the PF employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art. 14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive, the government has a continuing obligation and if one is affected by dearness the other may also be similarly affected. In case of PF retirees, each one's rights having finally crystallized on the date of retirement and receipt of PF benefits, and there being no continuing obligation thereafter, they could not be treated at par with the living pensioners".

The apex Court in the course of the judgment also considered the judgment in Ghansham Das's case (TA 27/87) and the decision of the Rajasthan High Court cited by the petitioners concerned and held:

"37. We have perused the judgments. The Central Administrative Tribunal in Transferred Application No.27 of 1987 was dealing with the case of the petitioners' right to revise options during the period from April 1, 1969 to July 1972 as both the petitioners retired during that period. The Tribunal observed that no explanation was given to it nor could it find any such explanation. In State of Rajasthan v. Retired CPF Holders' Association, Jodhpur, the erstwhile employees of erstwhile Princely State of Jodhpur who, after becoming government servants, opted for Contributory Provident Fund wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on Nakara which was also followed in Union of India v. Bidhubhushan Malik, subject matter of which was High Court Judges' pension and as such both are distinguishable on facts."

17. Thus, it would be seen that the Hon'ble Supreme Court distinguished the facts of the case of Ghansham Das and that of Krishena Kumar & Ors.

18. It is an admitted fact that when the Constutitional Bench of the Hon'ble Supreme Court heard the various civil writ petitions, the first being that of Krishena Kumar Vs. Union of India in that bunch of CWPs, the judgment of the CAT Bombay Bench in case of Ghansham Das had been specifically brought to the notice of the Hon'ble Supreme Court and the apex Court distinguished these civil writ petitions on the basis of facts. The admited facts are that the applicant Ghansham Das desired to opt for the pension scheme on 20.8.72 when he retired in 1971. The other applicant,

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Mr. D'Souza, optead for the scheme by a written request a few weeks before his retirement. None of the present applicants, whom the learned counsel Shri K.N.R. Pillai represents, expressed a desire to opt for the Scheme before or immediately after their retirement. At least there is nothing on record to show this. It is only after the judgment in case of Ghansham Das was delivered that these petitioners were aroused from their dogmatic slumber and started agitating and comparing their case with that of Ghansham Das & D'Souza, which, as stated above, are not at all comparable. Thus the applicants have not been able to show that they made any representation for consideration of their case before retirement or exercised their option immediately after their retirement. Therefore their option for the PF Scheme would be deemed to be final.

19. It has been further contended by the learned counsel for the applicants that the SLP filed before the Hon'ble Supreme Court against the judgment of Madras Bench of CAT in regard to OA Nos. 59/93, 1734/92, 1123/92, and 507/93 is pending. The learned counsel for the respondents stated that the Hon'ble Supreme Court had neither admitted the SLP nor had stayed the operation of the judgment of the Madras Bench of CAT. This being so, the Constitution Bench of the apex Court, which has distinguished the case of Ghansham Das and those of the petitioners before them, has also ruled that the PF retirees constituted a separate class vis-a-vis the pensioners and there is no arbitrariness in regard to those who opted for pension scheme either before or immediately after their retirement. They were extended the benefits but those who slept over their rights and in spite of various opportunities given to them to exercise their option for Pension and who were fully conscious of these options and its extension and had voluntarily opted for

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PF scheme, cannot now be allowed to raise a grievance. It has also been held by the Hon'ble Supreme Court that there is no discrimination and that there is no cut-off date vertically dividing the PF optees into two separate classes.

20. In view of the judgment of the Hon'ble Supreme Court in case of Krishena Kumar & Ors., we conclude that there is no merit in the contention of the learned counsel representing the Retired Railway Men's Association, and as such the application is dismissed as devoid of any merit or substance leaving the parties to bear their own costs.

(B.K. Singh)
Member (A)

(S.K. Dhaon)
Vice Chairman (J)

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