

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 811/1992
T.A. No.

199

DATE OF DECISION 1-6-93

Shri R.N.Mubayi

Petitioner

Shri K.N.R.Pillai

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri D.S.Mahendru

Advocate for the Respondent(s)

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The Hon'ble Mr. N.V.Krishnan, Vice Chairman(A)

The Hon'ble Mr. B.S.Hegde, Member (J).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(Hon'ble Shri N.V.Krishnan, Vice Chairman(A)

The applicant was a Director in the Railway Board who retired some time in 1968. His grievance is that he has not been allowed to opt for the pension scheme in vogue in the Railways in place of Provident Fund Scheme which was applicable to him.

2. The brief facts are as follows:-

2.1 The applicant was a Director in the Railways and he retired on 1-10-1968. He was governed by the State Railway Provident Fund Rules, because he did not opt for the pension scheme introduced by the Railways. He also did not opt for the pension scheme when, subsequently, also, a number of options were given before his retirement. On retirement, his retired benefits have been settled on the footing that he was governed by the State Railway Provident Fund Rules.

2.2 The Ministry of Railways issued a letter dated 13-9-68 (i.e. a few days before the applicant retired) relating to the grant of option to persons governed by State Railway Provident Fund Rules to come over to pensionable service. That letter reads as follows:

"The President is pleased to decide that Rly servants who have retained the State Rly Provident Fund (Contributory) benefits and who quit service on or after 1-5-68 may be allowed another opportunity to opt for the liberalised Rly Pension Rules including the benefit of family pension scheme for Rly. Employees 1964, as amended from time to time. This option has to be exercised by 31st Dec 1968. The option once exercised shall be final and will be subject to other general terms and conditions laid down in Rly Bd's letter No.F(P)63NP-1/40 dated 17-1-64. In the case of those Rly.servants who are eligible for exercising an option under these orders but who have already retired and been settled up under State Rly Provident Fund (Con.) Rules, the option for pension will be valid if they refund the entire Govt. Contribution and the excess, if any, of special contribution to Provident Fund received by them over the DCRG due to them under Pension Rules within one month of their being advised to do so by the Rly Administration."

2.3 Admittedly, the applicant did not exercise any option in pursuance of this letter within the time stipulated therein.

2.4 The applicant for the first time submitted a representation dated 7-1-91 which is at An.A-1. Though the applicant did not specifically exercise an option in that representation also and request the authority concerned that his belated option in favour of the pension scheme be accepted and his retirement benefits be recalculated on that footing, yet, the purport of that representation was for such permission to be given to him.

2.5 He states that a Member of Parliament (Shri A.B.Vajpayee) then forwarded this representation vide the letter dated 11-1-91 (An.A-1A to the Minister of Railways. The Minister of Railways informed Shri A.B.Vajpayee, M.P. by his letter dated 7-11-91 (An.A-2 that the applicant's request for grant of option for pension could not be agreed to under the

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existing rules and that similar claims have been rejected by the Supreme Court.

3. It is in these circumstances that this application has been filed to direct the respondents to permit the applicant to exercise option for pension and to compute his retirement benefits on that basis.

4. When this application came for admission, we wanted the learned counsel to argue why this application should not be dismissed as being hopelessly time barred.

5. Though the applicant has not filed a miscellaneous petition for condition of delay, the reasons for the delay have already been stated in the application itself. In a nutshell, these reasons are as follows:-

- i) The applicant had gone abroad immediately after retirement for two years.
- ii) In terms of the An.A-3 letter of the Ministry of Railways the contents of that letter were to be brought to the notice of the applicant individually, which has not been done.
- iii) The railway officials who retired after getting the provident fund benefits, formed an Association called the All India Retired Railwaymen (P.F.terms Association) of which the applicant became the President in 1983. The objective of the Association was to represent that as the pensionary benefits had become more beneficial, all those who had retired on provident fund terms should also be given the benefit of pension. Successive representations did not produce any result and hence Writ Petition No.352

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of 1989 was filed in the Supreme Court.

It was during this period that the applicant came to know that a similar official, Shri PP Iyer, had been given permission to exercise a belated option for pension.

(iv) However, the applicant chose not to represent at that stage because those who were in similar situation who had represented had not been given the option by the Railway Board and there was no possibility of the applicant getting a favourable reply.

(v) Secondly, as he was the President of the Association and was fighting for a common cause in the Supreme Court, he did not think it appropriate to fight for his individual case.

(vi) The writ petition filed by the applicant and others was dismissed by the Supreme Court on 13-7-90 and thereafter he took up the matter by sending a representation on 7-1-91 An.A-1.

6. We have heard the learned counsel of the applicant. We are not at all impressed by the reasons for not resorting to judicial remedy in time for the following reasons:-

(i) In the first place, it is noted that the applicant was a Director in the Railway Board itself at the time of his retirement on 1-10-68. It is strange that he was not aware of the letter issued by the Ministry on 13-9-68 An.A-3.

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(ii) Even if his ignorance about this letter is accepted at its face value, there is no reason why he did not make any enquiries about this matter when he returned to the country after two years of foreign assignment, to find out whether there was any further development in this regard. For, a perusal of the judgement of the Supreme Court in Krishna Kumar Vs. UOI & Others (JT 1990(3) SC 173) shows that the Railways gave options to its employees to come to the pension scheme after 1-10-68 also about which the persons were aggrieved as the option was not extended to them.

(iii) At any rate, it is admitted that the applicant came to know about the An.A-3 circular of the Ministry of Railways some time in 1985 when he knew that the Railway Board authorised pension for Shri PP Iyer by the letter dated 11-6-85 An.A-6 by permitting him to exercise an option for pension.

(iv) There is no reason, whatsoever, why the applicant did not agitate the matter immediately thereafter. The applicant's case was entirely different from the case of other persons whose writ petitions were dismissed in the aforesaid judgement of Supreme Court because the applicant's claim is rested on the ground that the An.A-3 circular was never brought to his notice. He was in service till 30-9-68 and the An.A-3 circular allowed persons who retired on or after 1-5-68 to exercise the option in favour of the pension scheme, which

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option should be exercised before 31-12-68.

The applicant having retired on 10-10-68 was entitled to exercise an option in terms of this letter. If his case was that he was not aware of the An.A-3 letter, he should have made an representation immediately after he became aware of it- which he claims was some time after June 1985 when the An.A-6 letter was issued in the case of Shri PP Iyer. His case is entirely different from those of the petitioners in Krishna Kumar's case. There was no reason why he should have delayed filing of his representation.

(v) Further when he became aware of this fact- as he has stated in (a) of para 4.7- that representation of similarly placed persons had already been rejected, he should have straightaway approached the competent judicial authority for redressal of his grievance.

7. The learned counsel for the applicant argued that his representation An.A-1 has been turned down only by a letter dated 7-11-91 of the Railway Minister An.A-2 and that, therefore, this claim is within limitation. We are unable to agree. His representation at An.A-1 addressed to the Secretary, Railway Board remained unanswered because of it being a stale claim. However, the applicant arranged to have the same representation sent to the Railway Minister by Shri A.B.Vajpayee, Member of Parliament who wrote to the Railway Minister in this connection on 11-1-1991 An.A-1A. The Railway Minister sent a reply to Shri Vajpayee, Member of Parliament on 7-11-1991 An.A-2 as he was bound to do. That letter does not give the

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applicant a cause of action because that is a communication between the Minister and a Member of Parliament.

8. In the circumstances, we find that this application is hopelessly time barred and accordingly we dismiss it.

B.S.Hegde
1-6-93

(B.S. HEGDE)
Member (J).

1-6-93

Ch
1-6-93

(N.V.KRISHNAN)
Vice Chairman (A)

1-6-93