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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

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o.A.1110/92

Date of decision: 30.3.93

Jagteshwar Singh .. Applicant.

versus

Union of India .. Respondents.

Sh.R.K.Kamal .. Counsel for the applicant.

Sh.Shaukat Mattoo .. Counsel for the respondents.

CORAM:

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

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

J U D G E M E N T (ORAL)

The applicant is a Railway employee who has been on deputation to the RITES and since absorbed therein. His grievance relates to the denial of an opportunity to him to opt for pension in lieu of the S.R.P.F. scheme in pursuance of the Railway Boards' circular dated 4.10.1982, which is annexed with the reply of the respondents.

2. The grievance arises in the following manner. The applicant, who was serving in the Ministry of

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Railways, in the Research, Design and Standard Organization (Respondent No.2), was sent on deputation to the Rail India Technical and Economic Service (RITES) on 15.12.1981. He had, at that time, opted for S.R.P.F Scheme.

3. While on deputation, the Railway Board had issued a circular dated 4.10.1982 granting a fresh option to Railway employees, whether in service or on deputation or having retired, to come over to this pension scheme. He alleges that the circular contained a specific provision that its contents should be brought to the notice of every such Railway employee including employees on deputation. An option was to be exercised before 28.2.1983.

4. The applicant states that while he was on deputation he neither got to know of that circular nor was a copy of that circular given to him by RITES. He stated that, as a matter of fact, RITES had sent a letter dated 6.6.86 (Annexure A-4/1) to the second respondent stating that the Railway Boards' letter dated 4.10.82 does not seem to have been received in their office. This was in reply to the latter's letter dated 15.5.86 (Annexure A-4/2) enquiring whether the said letter had been received and sent to the railway staff on deputation with RITES.

5. The applicant states that he had been filing

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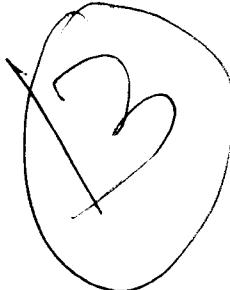
representations. One such representation dated 9.4.91 is at annexure A-5. The applicant then came to know of the judgement rendered by this Tribunal in O.A.938/89 (Annexure A-1) holding that if a person could not exercise his option due to lack of knowledge of the Railway Boards' letter he could exercise a fresh option.

6. It is under these circumstances that the applicant has filed this O.A. for a direction to allow the respondents to permit him to exercise his option in terms of the circular dated 4.10.82.

7. The respondents have filed a reply refuting all the claims and allegations made by the applicant. They contend in para 3 that the application is time barred as the cause of action arose in 1982. It is also stated that the applicant has not even quoted the relevant Railway Boards' letter nor attached a copy of the same in the absence of which it would be difficult for the respondents to file reply.

8. Nevertheless, the respondents admit that, while the applicant was on deputation to RITES, the Railway Board issued a circular on 4.10.82 affording a fresh opportunity to various categories Railway employees to exercise option and a copy of the circular has also been annexed with the reply.

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9. The respondents further contend that if the applicant relies on the annexure A-4/1 reply given by the RITES to the second respondent, RITES should have been made a party in this application.

10. We have perused the record and heard the learned counsel for the parties. We notice from the circular dated 4.10.82 of the Railway board, annexed by the respondents, that detailed instructions have been given as to how publicity should be given to the circular to facilitate exercise of option by the employees. Paras 4 and 5 of the circular read as follows:-

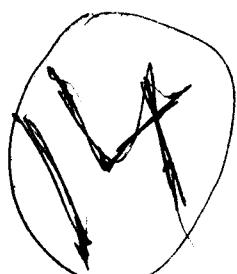
"4. The Railway Administration should take urgent steps to bring the contents of this letter to the notice of all concerned employees under their administrative control, including those on leave or on deputation or on foreign service. To facilitate prompt circulation of these orders, the Ministry desires that the contents of this letter should also be published by the Railways in their Gazettes, in an extraordinary issue (in English, Hindi and regional languages, as necessary as early as possible and copies furnished to the recognized unions. Suitable Press releases should also be issued.

5. It would be desirable to obtain an acknowledgement from each individual so that ignorance of this order is not pleaded at a later stage". (Emphasis supplied)"

11. It is clear that the Railway Board had thought it fit to resort to all methods of publicity that are available in order to ensure that every Railway employee becomes aware of the scheme and given an opportunity to

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exercise an option so that no injustice is done to anyone on the only ground that he was not aware of the circular. It is for this reason that a direction was given that this circular should be brought to the notice of employees under the administrative control of the Railways, including those on leave or on deputation or on foreign service, besides publication in the Railway Gazette and issue of a press release. It is also clear that it was the duty of the Ministry of Railways, who are aware of the particulars of the persons like the applicant who are on deputation, to send notices to them. Nevertheless, the Railways have not produced documents to show that they have sent the necessary number of copies of the circulars to the RITES for service on the persons on deputation under acknowledgement. The annexure A-4/1 letter by RITES denies receipt of the circular.

12. In this view of the matter we are satisfied that the respondents have not been able to establish that the copy of the circular has been sent to the applicant and he failed to opt in time. This onus is on the respondents and it has not been discharged.

13. The applicant has stated that he had made a representation dated 9.4.91 to the R.D.S.O. (Annexure A-5) referring to his earlier letters dated 6.6.86. The respondents contend that the O.A. is nevertheless barred

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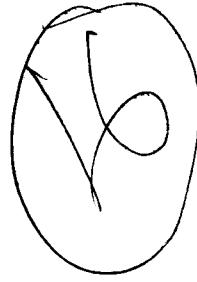
by limitation. In the circumstances of this case, we are of the view that this is not a case where the respondents should contest the claim merely on the ground of limitation. The respondents would have been on stronger grounds had they established by documentary evidence that the circular dated 4.10.92 was served on the applicant in time. This has not been done. Further, the relief, if granted, will not affect any third party. We, therefore, condone the delay.

14. For the aforesaid reasons, we dispose of this application with the following directions following the annexure A-1 judgement:

- i) We declare that the applicant is entitled, in the circumstances of the case, to exercise an option, though belated, in terms of circular, dated 4.10.82 annexed to the respondent's reply.
- ii) The applicant is directed to exercise an option to switch over to the pension scheme including Family Pension Scheme as mentioned in circular dated 4.10.82, within a period of two months from the date of receipt of this order and send it to respondent No.2.



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iii) In case the respondents receive such an option, they shall pass appropriate orders granting pensionary benefits to the applicant from the date on which the applicant refunds the Government's contribution in the Provident Fund.

15. There will be no order as to costs.


(B.S. Hegde)

Member (J)

bv


(N.V. Krishnan)

Vice Chairman (A)