

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.1147 OF 1996

Allahabad, this the 31st ~~th~~ day of MAY, 1999.

CORAM : Hon 'ble Mr.G.Ramakrishnan, Member (A)

Mohd.Zahoor,
S/o. Late Sri Sayyad Hasan,
R/o. Village and Post- Kapsa,
Phoolpur,
Distt. Allahabad.

.....Applicant.

By Shri A.K.Srivastava, Advocate.

Versus

1. Union of India, through
its Secretary,
Ministry of Railway,
New Delhi.
2. General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
Northern Railway,
D.R.M. Office,
Lucknow.

.....Respondents

By Shri A.V.Srivastava, Advocate.

ORDER

(By Hon 'ble Mr.G.Ramakrishnan, Member (A))

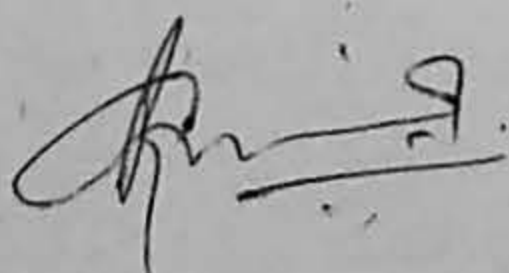
This is an application filed by the applicant under Section 19 of the Administrative Tribunal Act, 1985 seeking a direction from the Tribunal to the respondents to grant pensionary benefit and pay arrears of the pension to the applicant alongwith 12% interest.

contd.../2p

2. According to the applicant he was appointed on 2-5-42 at Loco Shed Lucknow on the post of Fitter Khalasi and he retired on 30-6-81 on attaining the age of superannuation as a Head Light Fitter. According to the applicant after retirement he was paid the due amount of gratuity, P.F. and LIC but had not been granted the benefit of pension. Applicant stated that he had made applications to the D.R.M. Northern Railway Lucknow on 13-7-85 and 13-9-93 praying for payment of pensionary benefits. In the representation dated 13-9-93 which has been enclosed to O.A. as annexure-A2, he stated that he had already submitted option for pension in the office alongwith other employees. He claimed that in view of the Tribunal's order in O.A. No.534/91 Smt. Noorjahan & Others Vs. U.O.I. & Ors. photocopy of which he annexed as annexure-3 he was entitled for pensionary benefits. He also claimed arrears of pension with interest under law from the respondents. He claimed that he was covered under Pension scheme and had opted for pension benefits under the rules. Further he claimed pension on the ground that pension was a right of the applicant and the same could not be with-held by the respondents, and that non-granting of pensionary benefits to the applicant was illegal, unjust and against the rules. He sought for the following reliefs :-

1. Hon'ble Tribunal may kindly be direct to the respondents to grant the pensionary benefits to the applicant from the due date.
2. Hon'ble Tribunal may kindly also direct to the respondents to pay the arrears of pension with interest to the applicant from the due date.

contd.../3p



3. Hon'ble Tribunal may pass any other order or direction as the Hon'ble Tribunal may deemed fit and proper in the facts and circumstances of the case.

3. Respondents filed written reply, in which they resisted the claim of the applicant. They stated that the O.A. was not within the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985 and the same was liable to be rejected. They stated that the applicant was a non pension optee and as such after his retirement all the settlement dues were paid to him which he had received without any protest. The details of the payments made to him were given as Provident Fund Rs.16,687.00, and S.C. to P.F. Rs.8382/-. They avered that he never opted for pension till the option was being received from time to time from the employees. They further stated that as the applicant did not opt for pension at the time of introduction of the scheme he remained non-pension optee. They further stated that no representation as stated in the O.A. was received by them. According to the respondents the liberalised pension scheme/rule came into force in the year 1986 for all the employees who were on the role on 1-1-86 and the said scheme was not applicable in the case of the applicant as he had retired on 30-6-81. Further the applicant was not a pension optee and as such he had been paid S.C. to P.F. alongwith bonus. The applicant never opted for pension and as such he was not entitled for pension under the rules.

4. In the rejoinder affidavit filed by the applicant he reiterated the pleas made in the O.A. and claimed for pension. Further he stated that in O.A. 43/92



Vishwanath Iyer Vs. Union of India, Jabalpur Bench
Central Administrative Tribunal had held -

"the question of limitation ceases to have any relevancy if it is held that the retired employee had automatically come under the pension scheme from the date of his retirement."

5. It was further stated that it was incorrect to say that applicant had not opted for pension benefit. Further he avered that just after coming pension scheme applicant had submitted option alongwith other employees in the department and after retirement from time to time he submitted representations for payment of pension. Further he stated that according to the relevant circular of Railway Board at the relevant time even if it was assumed without admitting that the applicant had not submitted option even though he had opted pensionary benefits under the deeming provisions, because he had not submitted any application or option to this effect that he may continue under the SRPF rules. He stated that it was held by Hon'ble C.A.T. Jabalpur in Vishwanath Iyer case that since the respondents had at no point of time contended that they had obtained written option from late Sri P.Vishwanath Iyer to continue under SRPF rules, he was entitled to receive pension. Further it was stated that on the ration of judgement of Hon'ble Supreme Court in Karmi Devi Vs. Union of India reported in (1994) 27 ATC 568 his claim for pension should be given. He further reiterated that just after coming of pension rules the applicant had submitted option in the department and after retirement from time to time he had submitted/demanded/represented for payment of pension.



contd.../5p

6. Heard the learned counsel for the parties. Learned counsel for the applicant cited the following judgements in support of his claim for pensionary benefits of the applicant :-

1. Union of India & Others Vs. D.R.R. Shastri
FLR 1997 (75) SC 76.
2. Vishwanath Iyer (deceased) through LR
Smt. Meenakshi Iyer Vs. U.O.I. and others
(1994) 27 ATC 209.
3. Karmi Devi Vs. Union of India & Others (1994)
27 ATC 568 S.C.
4. Judgement in O.A.No.534/91 decided on 6-9-96
(C.A.T.Allahabad).

7. Learned counsel for the respondents submitted what was stated in the C.A. and submitted that the applicant had not opted for pension and therefore was not entitled for pension. Further he submitted that deeming provision was not applicable.

8. I have given careful consideration to the submissions made by the learned counsel for the parties as well as the rival pleadings and perused the records.

9. This Bench of the Tribunal in O.A.No.534/91 had directed the respondents to settle the pensionary benefits of the original applicant w.e.f. date of his retirement and pay arrears to legal heirs after adjustment of the amount already paid by way of Govt. contribution to the PF within a period of three months from the date of communication of the order upto the expiry of the original applicant. Further his legal heirs



were also entitled to the family pension as per rules. This decision had been taken based on the ratio of the judgement of the Supreme Court in the case of Karmi Devi Vs. U.O.I. reported in (1994) 27 ATC 568. Further this bench of the Tribunal had also relied on the Railway Boards' letter which had been referred to in the amendment application to that O.A. in terms of which the deceased employee could have been deemed to have opted for pension scheme. In the absence of specific rebuttal on the part of the respondents, the Tribunal held that such a letter from Railway Board was issued.

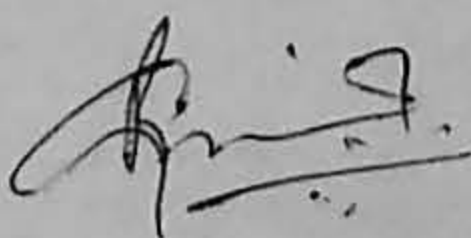
10. In the judgement delivered by the Jabalpur Bench of this Tribunal referred to in (1994) 27 ATC 209 in the 6th paragraph it is stated as follows :-

"6. Before going into the merits of this case, it is deemed necessary to highlight the following extract from the Pension scheme :

'The President has been pleased to decide that the Pension Rules, as liberalised, vide Railway Boards' memorandum No.E48CPC/208 , dated 8th July,1950 and amended or clarified from time to time, shall apply -

- (a) to all railway servants who enter service on or after the date of issue of this letter, and
- (b) to all non-pensionable railway servants who were in service on 1st April,1957 or have joined railway service between that date and the date of issue of these orders, who opt for these benefits in preference to their existing retirement benefits.'

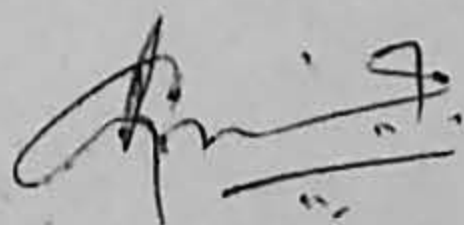
4. Railway Servants referred to in paragraph 1(b) above shall, on or before 31st March, 1958, exercise an unconditional and unambiguous



option on the prescribed form, (copy enclosed), electing the pensionary benefits or retaining their existing retiring benefits under the State Railway Provident Fund Rules. Any such employee from whom an option form showing the employee's option is not received within the above mentioned time-limit or whose option is incomplete or conditional or ambiguous, shall be deemed to have opted for the pensionary benefits. Where however, an employee has died or dies on or after 1st April, 1957 without exercising any option for the pensionary scheme, his dues will be paid on the Provident Fund system."

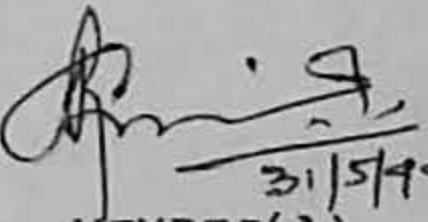
The above extract gives credence to the submissions made by the learned counsel for the applicant of the "deeming provisions" and as pleaded in the Rejoinder. Respondents have categorically asserted in the C.A. that the applicant has not opted for the pension scheme. As per the Railway Boards' letter referred to in CAT/Jabalpur decision referred to above, it would appear that the provision at the time of introduction of pension scheme was that all Railway employees working on 1-4-57, unless positively opts for continuing under the SRPF Rules would be deemed to have opted for Pension scheme. In this view of the matter and in the absence of any averment from the respondents that the applicant had opted for continuing under the SRPF Rules, I am of the view that the applicant is entitled for the benefits under the Pension scheme.)

In view of the above finding, on the ratio of the judgement of CAT/Jabalpur referred to in para-4 above, we reject the plea of limitation advanced by the respondents.



11. In view of the foregoing this O.A. is disposed of with the following directions:-

- (i) Respondents are directed to grant benefits to the applicant from the due date under the Pension scheme.
- (ii) Respondents are directed to make the payment of arrears under Pension scheme to the applicant after adjusting the benefits received by the applicant under the SRPF Rules within three months from the date of receipt of the copy of this order. Both parties are not entitled for any interest payments.
- (iii) Parties to bear the costs.


31/5/99.
MEMBER(A)

/satya/