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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

Registration T.A.No. 1853 of 1987

(Writ Petition No. 9484 of 1985)

Sri Adya Prasad MisraPetitioner

Versus

The Union of India and ors.Respondents

Hon'ble Mr. Justice K.Nath, V.C.

Hon'ble Mr. A.B.Gorthi, A.M.

(Hon'ble Mr. A.B.Gorthi, A.M.)

Writ Petition No. 9484 of 1985 filed by

Sri A.P.Mishra for the grant of a writ of Mandamus directing the Railway Board New Delhi to permit him to change his option from State Railway Provident Fund (SRPF for short) to the Pension Scheme applicable to the Railway servants, has been transferred to this Tribunal in accordance with section 29 of the Administrative Tribunals Act 1985 and is listed before us as T.A. No. 1853 of 1983.

2. The applicant joined Railway Service at Gorakhpur on 29.5.1946 as Clerk Grade II in the scale of Rs. 26-2-50 in the Accounts Office of the erstwhile Awadha and Triahut Railway, which subsequent to the nationalisation of the Railways became North Eastern Railway. He was sent on deputation on 1.3.1959 to the N.E.Railway Primary Co-operative Bank Ltd. as Ist Assistant. On being absorbed in the regular cadre of the said Bank, the applicant ceased to be a Railway employee w.e.f. 4.10.1969. He finally retired from service of the Bank on 31.1.1979.

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3. When the applicant joined the Railway Service, pensionary benefits were not available and he was governed by SRPF Rules. With the introduction of a Scheme of Pension in 1957 (Annexure-I) he opted for the same. Subsequently, however, the applicant requested for and was allowed reversion to the SRPF w.e.f. 28.9.1961. Accordingly, on his permanent absorption with the Bank, the Railway Administration finalised his Provident Fund Account and paid a sum of Rs. 11903/- which included a sum of Rs. 6251 being the Government's Contribution to the fund.

4. Much later on 15.3.1982 the applicant, perhaps realising the advantage of the liberalised pension scheme, made an application requesting for reversion from S.R.P.F. to the pension scheme. The application which was addressed to the Director (Establishment) Railway Board, New Delhi was not accepted for the reason that he could not have exercised such option at that belated stage.

5. The main question for consideration in this case is whether the applicant was entitled to make an option to be governed by the pension scheme in 1982, although he had retired from the Railway Service in 1969. At the time he changed his option from pension scheme to the Provident Fund Scheme, the disparity between the two schemes was not much. However, with the subsequent improvements and liberalisation in the pension scheme, it became more attractive than the old Provident Fund Scheme. Several similarly placed individuals had approached the Supreme Court contending that the liberalised pension scheme should be available to all the retired personnel of the Railways irrespective of whether they

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were pensioners or optees for Provident fund and irrespective of their date of retirement. While negating the contention of the petitioners, the Hon'ble Supr-eme Court has observed in Krishena Kumar and others Vs. Union of India, AIR 1990 S.C. 1982. as noted below:

"The next argument of the petitioners is that the option given to the P.F. 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 others may also be similarly affected. In case of P.F. retirees each one's rights, having finally crystallised on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefited 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 Commission. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders.

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There was, therefore, no discrimination and the question of striking down or reading down Cl. 3.1 of the 12th option does not arise.

6. The 12th option referred to above applies only to those in service on 1.1.1986, and the Hon'ble Supreme Court thus declined to extend its benefit to all those who were not in service on 1.1.1986.

7. Our attention has been drawn to the case of Ghanshyam Das and others Vs. Union of India decided by the Bombay Bench of the Tribunal. In that case the applicants' contention was that they were denied the benefit of revising their option during the period from 1.4.1969 to 14.7.1972. That case can be of no assistance to us as the applicant in the instant case had of his own volition changed his option from pension scheme (which he elected originally) to S.R.P.F. on 28.9.1961 and sought to change that option once again in 1982.

8. It is now well settled, in view of the decision of the Hon'ble Supreme Court in Krishena Kumar's case, that the various pension options given to Railway employees would be available only to those for whom they were specifically intended and such options were to be exercised before the dates specified for each option. The applicant cannot, therefore, claim as a matter of right to be reverted, at this belated stage, to pension scheme retrospectively from the date of his retirement.

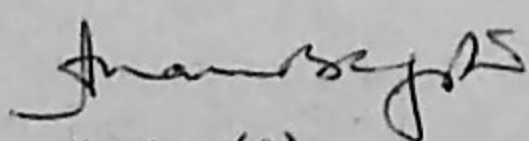
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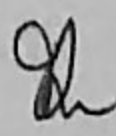
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9. The Learned Counsel for the applicant contended that the decision of the Railway Board to accept the request of the applicant for change of option from Pension Scheme to S.R.P.F. in the year 1961 was admittedly erroneous and hence the applicant should not be made to suffer on account of the said error committed by the Railway Authorities. Annexure IV, which is a communication from the Additional F.A. and C.A.B. to the Secretary (ESTT) Railway Board, states that "there was no authority to allow Sri Mishra to opt for S.R.P.F./C.P.F. benefits on 28.9.1961 and that it appears to have been done due to an administrative error." We do not, however, agree that there was no authority or opportunity for making an option by Railway employees as on 28.9.1961. From the "Statement showing Pension Options given to Railway Employees", In para 6 of the judgment in Krishena Kumar's case, it is seen that consequent to revision of pay based on the Second Pay Commission Report, an option was given to all those who were in service on 1.7.1959 and the said option was to be exercised on or before 31.12.1961. Therefore, the acceptance of the revised option made by the applicant on 28.9.1961 seems to be in order as he was in Railway Service on 1.7.1959.

10. We are, therefore, of the view that the applicant had no right to claim to be reverted to Pension Scheme in the year 1982, he having retired from the Railway Service in 1969. Accordingly the application is dismissed.

Parties to bear their own costs.


Member(A)


VICE-CHAIRMAN

Dated: 23-4-1991
Allahabad.