

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 24th day of October, 1997

Original Application No. 646 of 1994

District : Varanasi

CORAM:-

Hon'ble Mr. D.S. Bawalia, A.M.

Bishwanath Prasad Tiwari,
Son of Late Shri Brij Narain Tiwari,
Resident of C-30/38-B, Maldahia,
Varanasi.

(By Shri Sanjay Kumar, Advocate)

... , Applicant

versus

1. Union of India through the General Manager, N.E. Railway, Gorakhpur.
2. The Financial Advisor and Chief Accounts Officer, N.E. Railway, Gorakhpur.
3. Chief Personnel Officer, N.E. Railway, Gorakhpur.
4. General Manager, Railway Electrification, (CORE), Allahabad.

(By Shri A.V. Srivastava, Advocate)

... . Respondents

ORDER

By Hon'ble Mr. D.S. Bawalia, A.M.

This OA has been filed praying for the following reliefs:-

- (a) to issue a direction to the respondents not to change the category of the applicant from Pension Optee to Contributory Provident Fund Optee.
- (b) to issue a direction to the respondents to pay the applicant his pension month to month regularly.
- (c) to direct the respondents to pay the applicant arrears of pension w.e.f. August, 1992 till date with interest of 18% per annum.

(9)

2. The applicant retired from service on 31-7-1992 while working as Assistant Commercial Superintendent, North Eastern Railway, Varanasi. The applicant joined Railway Service in 1956. The pension Scheme was introduced ~~from~~ in the Railway in 1958. As per the Railway Board's letter dated 8-5-1987, options were called for from the employees to change either from Contributory Provident Fund Scheme to Pension Scheme. The options were to be exercised before 30-9-1987. This letter provided that those of the employees who had not exercised any option specifically to continue on the Contributory Provident Fund Scheme, will be deemed to have come over to the pension Scheme. The applicant gave his option on 29-9-1987 to continue on the Contributory Provident Fund Scheme while working under the General Manager, Railway Electrification, Allahabad. However, on the same date, after few hours, the applicant withdrew the option submitted earlier to continue on Contributory Provident Fund Scheme. After exercising of option for pension Scheme, the respondents withdrew the amount of Govt. contribution to the Provident Fund as provided in Para 4.2 of the Railway Board's letter dated 8-5-1987 as per the order dated 1-4-1990. Further, as per the letter dated 02-7-1992, the applicant was asked to complete the forms and other formalities for his pension. These forms ^{were} duly filled in/submitted by the applicant and the other associated formalities were also completed. However, to the surprise of the applicant, on 3-8-1992, after ^{a cheque} retirement, he received on 3-8-1992, ~~of~~ Rs.254699/- for the Provident Fund, which included contribution of the Government. Since, the cheque included the provident Fund Contribution of the applicant also, he accepted the cheque, under protest. The applicant made a representation dated 27-10-1992 to the General Manager, North Eastern

Railway, Gorakhpur stating that he was pension Optee but he has been paid on the basis of Contributory Provident Fund Optee and he is ready to return to the Government contribution with interest as per rules. This representation was followed by several reminders but the applicant did not get any response. Feeling aggrieved, the present application has been filed on 19-4-1994. The main contention of the applicant is that as per the documentary evidence brought on record, it is quite clear that the applicant was a pension Optee and, therefore, action of the respondents to treat him as Contributory ^{Provident} Fund Optee is arbitrary and illegal.

3. The respondents have filed two counter affidavits. One counter affidavit has been filed by ^{the} respondent nos. 1 to 3 and the other counter reply has been filed by the respondent no. 4 who had been impleaded as respondent through an amendment application. Respondent nos. 1 to 3 have also filed supplementary counter reply. Respondent nos. 1 to 3 have strongly contested the claim of the applicant. They have asserted that in terms of the Railway Board's letter dated 8-5-1987, the applicant had exercised option on the required form on 22-9-1987 to continue on Contributory ^{Provident} Fund Scheme. The respondents have refuted the contention of the applicant that he had withdrawn the option exercised earlier on the same date stating that no such letter withdrawing the option is available on the official file or on the personal file ^{I have} of the applicant. The respondents further submitted that once the option has been exercised, then the same is final and cannot be withdrawn in terms of the Railway Board letters dated 8-5-1987. In the supplementary counter reply the respondents ^{I have} admitted that the applicant was asked to fill up the forms for Pension Scheme.

(11)

However, the respondents have explained that this action was taken in a routine way before getting the details from Varanasi Division where the applicant was posted at the time of his retirement. On getting the record from Varanasi Division, it was revealed that the applicant had exercised option for continuing on the Contributory Provident Fund Scheme and in view of this position, the applicant has been paid settlement dues treating him as Contributory Provident Fund Optee. As regards entry in the provident Fund Ledger, the respondents have clarified that change over to pension Scheme was done without linking the option exercised by the applicant which was available with the Varanasi Division. The respondents have also averred that the applicant was aware of the fact that he is a Contributory Provident Fund Optee as per the Last Pay Certificate issued when he was transferred out of Railway Electrification to North Eastern Railway. In view of these submissions in the counter reply, the respondents pleaded that the application is devoid of merit and it deserves to be dismissed. The respondents have also opposed the application on the plea that it is barred by limitation.

In no. 4

4. The respondent in the counter reply while endorsing the submission of respondent nos. 1 to 3, has stated that the letter dated 22-9-1987 through which the applicant had withdrawn his earlier option was received by the Clerk and this letter was ^{also} sent alongwith earlier option of the same date when the personal files and other record of the applicant were sent to General Manager North Eastern Railway when the applicant was transferred out of the Railway Electrification Organisation.

(12)

5. The applicant has filed a rejoinder reply for the main and a supplementary counter reply for the respondent nos.1 and 2 and also for the counter reply of respondent no.4. The applicant has controverted the submissions of the respondents and reiterated the grounds taken in the Original Application. The plea of limitation taken by the respondents has been contested by the applicant stating that his representation was replied on 21-12-93 and the present application was filed on 19-4-1994 well within the period of limitation.

6. I have heard Shri S.C. Budhwar, Senior counsel alongwith Shri SK Om, counsel for the applicant and Shri AV Srivastava, counsel for the respondents. The arguments advanced during the hearing have been correctly evaluated and material on record has also been perused.

7. From the rival contentions as detailed above, the short question which emerges to be answered is whether the option to continue on Contributory Provident Fund Scheme exercised on 22-9-1987 was withdrawn subsequently by the applicant on the same date. The applicant has brought on record the application dated 22-9-1987 at A-2 indicating that he had withdrawn the option exercised earlier on the same date. The applicant at that time was working under the General Manager, Railway Electrification, Allahabad. The respondent nos.1 to 3 have denied the existence of this letter stating that it is neither available on the official record or on the personal file of the applicant. The respondents no.1 to 3 contend that only the option exercised on 22-9-1987 to continue on the Contributory Provident Fund Scheme is available on the record. On the other hand, the respondent no.4 in

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- 6 -

the counter affidavit in Para 8 has admitted the receipt of the letter dated 22-9-1987 at A-2, which was received by the Clerk in the Office. The respondent no.4 has also stated that this letter alongwith the original option had been sent to the General Manager, North Eastern Railway, Gorakhpur. Thus submission of respondent no.4 under whom the applicant was working in 1987 contradicts the stand taken by respondent nos.1 to 3. Since the applicant was working under the General Manager Railway Electrification, Allahabad and the receipt of the letter ^{in this office is pertinent and this} has been admitted. Considering these facts, the contention of the applicant that he had withdrawn the option exercised earlier on the same date deserves to be accepted. The documents brought on record by the applicant as Annexures-A-3 and A-4 also substantiate the contention of the applicant that he was treated as a Pension Optee. The document at Annexure-A-3 is the Provident Fund Slip for the period ending 31-3-1990, which indicates ^{under the scheme of Non-Contributory} Provident Fund. Annexure-4 is also a record of Provident Fund Account of the applicant for the period ending 31-3-1991. Here also the applicant has been shown under the Scheme of Non-Contributory Provident Fund and also the bonus of Rs.7196/- being the contribution of the Government has been withdrawn as required to be done as per provisions of Para 4.2 of the Railway Board's letter dated 8-5-1987. The respondents have not denied the authenticity of these documents but have tried to explain in the supplementary counter affidavit that since the option exercised by the applicant on 22-9-1987 was not available at the Headquarters, the Provident Fund Ledger maintained in the Office of Financial Adviser and Chief Account Officer was ^{modified} treating the applicant as

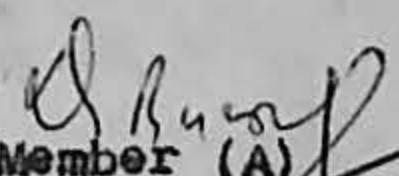
Pension Optee. This contention of the respondents does not stand to reason. The option was executed in September, 1987 while the Provident Fund Ledger had been corrected by withdrawing the bonus being the contribution of the Govt. in 1991. If the Provident Fund Ledger was ^{could} corrected in 1988, it self, then it ^{can} be taken that in the absence of any option, as per Para 4.2 of the Railway Board letter dated 8-5-1987, the applicant was to be treated as Pension Optee. Since the adjustment with regard to bonus has been done in 1991, it can be inferred that this was done after checking the status of the applicant. In fact, the applicant in the rejoinder affidavit in para 10 has made an averment ^{while} ~~by~~ ^{controverting} documentary evidence of the Last Pay Certificate brought on record by the respondents no.1 and 3 at Annexure-CA-2, that when he came to know about the discrepancy in the Last Pay Certificate, he met the Financial Adviser and the Chief Account Officer and also made representation to him. Thereafter, the Provident Fund Ledger was corrected treating the applicant as Pension Optee. This submission of the applicant has not been controverted by the respondents. Considering the facts and circumstances of the case and the documentary evidence brought on record by the applicant as discussed above, I have no hesitation to come to the conclusion that the applicant is to be treated as pension Optee and ^{he} ~~had~~ withdrawn the option exercised earlier on the same date i.e. 22-9-1987, which had been taken into account.

8. The respondents have taken a plea that the application is barred by limitation. I am not inclined

- 8 -

to agree with the contention of the respondents. The applicant represented immediately after his retirement and has been pursuing the matter since then and the representation was finally replied vide letter dated 21/22-12-1993. The present application has been filed on 19-4-1994 and is, therefore, well within the limitation period. Further, the relief pertains to pension and the cause of action is recurring in nature and, therefore, the limitation provision will not apply. In view of this, there is no merit in the submission of the respondents.

9. In the result of the above, I find merit in the OA and allow the same with the direction that the applicant shall be treated as pension Optee and he will ~~was to~~ be allowed pension as per the extant rules. The applicant shall refund the amount of bonus being the Government's contribution to the Provident Fund alongwith interest as per the extant rules as applicable and also as provided for in the letter dated 8-5-1987. The applicant shall ^{however} be entitled for the interest of 12% on the payment of pension from August, 1992 till the date of starting regular pension every month. The compliance of the order shall be done within a period of four months from the date of receipt of the order. No order as to costs.


Member (A)

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