

Shri F.R.Solanki
Room No.12/T
Pratapnagar,
Near Railway Crossing,
Vadodara-390 004.

: Applicant

Versus

1. General Manager,
Western Railways,
Churchgate,
Bombay-400 001.
2. Divisonal Supdt.,
Western Railways,
Vadodara Division,
Pratapnagar,
Vadodara.

: Respondents.

Coram : Hon'ble Mr. N.Dharmadan

: Judicial Member

Hon'ble Mr. M.M.Singh

: Administrative Member

O R A L O R D E R

Date: 19/4/1990

Per : Hon'ble Mr. N.Dharmadan

: Judicial Member

The applicant who is an illiterate low paid employee, retired from Railway Service as Safaiwala. While he was in service he had claimed that his actual date of birth was 1.2.1922 and on that basis he should have been ^{deemed to be} in service upto 1.2.1980. For the correction of the date of birth, he filed a Regular Civil Suit No.631/1978 in the Court of the Civil Judge (S.D.), Vadodara. The ^{suit} stay was ultimately decree.

The applicant has also alleged that he is entitled to exercise the option for getting ^{pensionary} beneficiary benefits ^{as he was} in service upto 1.2.1980. He would have ^{been} well within the time for exercising the option for getting the beneficiary benefits in 1979. ^{if he was deemed to be in service as per decree in his Civil Suit.} Since he was actually retired on 20.2.1978 reckoning the date of birth entered in service, he lost the opportunity of exercising the option in 1979. In the light of the judgment of the Civil Court if he is deemed to be in service till 1.2.1980 and if the department recognised its ^{effect} fact that he should have been able to submit the option before the year 1979 within the stipulated period as referred to in the circular

of the railway issued in 1979. The applicant exercised the option only at a later date namely 9.3.1983 and this is clear from Annexure II, the recommendation sent by the Divisional Officer to the Chief Personnel Officer(W), Churchgate, Bombay. In that recommendation, the Divisional Officer has stated that even though the applicant failed to exercise the option within the time prescribed in the Railway Circular he is entitled to exercise the option in the light of the Civil Court Judgment. Accordingly, he recommended for granting of the pensionary benefits to the applicant. The applicant's counsel also brought to our notice ^{that} a direction issued in this behalf by the High Court while disposing of the Civil Revision Application on 12.9.1986. The direction reads as follows:

"Notice discharged at this stage with a direction that Railway Board would decide the application, within three months from today, which may be filed by the petitioner for necessary relief under the new circular. Railway Board should grant the said application if he fulfils necessary conditions. Respondent No.2 would forward the papers of the petitioner to the Railway Board immediately.

Notice discharged with a direction that it would be open to the petitioner to file an application for revival of this revision application if proper orders are not passed by the respondents".

In light of these facts, the applicant contended that even though there is a delay in the exercise the option the respondents ^{did not} ~~not~~ ^{to have been} ~~considered~~ his case sympathetically, ^{He was not} ~~and~~ granted his rights for getting pensionary benefits as if he has exercised his option within time. ^{But} ~~But~~ his request was rejected by the railway as per the impugned order at Annexure V. The reasons given in that impugned order are not satisfactory.

The railway has filed a counter affidavit and supported ^{of} the impugned order on the ground that the applicant failed to exercise the option either in the year 1979 as per the railway circular ~~or even subsequently within the~~

or even subsequently within the time in light of the subsequent circulars issued by the railway. Hence according to the reasons the applicant is not entitled to any other reliefs.

We have heard the counsel on either side and perused the documents placed on record. The applicant is an illiterate low paid employee and his case deserves a sympathetic consideration. It is true that the applicant has not exercised the option within the time stipulated as per the circulars issued by the Govt. but this cannot deprive the applicant of the benefit of getting pensionary benefits in the light of the option because the Civil litigation and the decision in his favour. It is on the basis of the decision of the Civil Court, his date of retirement is extended upto 1.2.1980. His right to exercise the option also to be taken into consideration in the light of the aforesaid judgment.

Having regard to the facts and circumstances of the case, we are of the view that the respondents have not considered the relevant aspects and decided ^{in times} solely on technical grounds ~~have taken~~. This according to us is not a proper approach to the genuine grievance of the applicant. Hence we quash the impugned order at Annexure V and direct that the option exercised by the applicant as referred in Annexure II should be treated as an option exercised by the applicant within time. The applicant should be granted the pensionary benefits ^{as per rules} after taking all consequential steps by the railway. ^{in this behalf} Accordingly, we also direct that the railway to take consequent steps for granting the pensionary benefits to the applicant. ^{within one month from this} With this direction, the case is disposed of. No order as to costs.

M M Singh
(M.M.Singh)
Administrative Member

N. Dharmadān
(N.Dharmadān)
Judicial Member