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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
XXXXXX XXXX XXXX XXXX

O.A. No. 532 OF 1987.
~~Kxxxxx~~

DATE OF DECISION 22-12-1989

Smt. Nirmalaben W/o. V.J. Joshi. Petitioner

Mr. Y.V. Shah Advocate for the Petitioner(s)

Versus

The Union of India & Ors. Respondents

Mr. B.R. Kyada Advocate for the Respondent(s)

CORAM.

The Hon'ble Mr. M.M. SINGH, ADMINISTRATIVE MEMBER.

The Hon'ble Mr.

Yes 1. Whether Reporters of local papers may be allowed to see the Judgement?

No 2. To be referred to the Reporter or not?

No 3. Whether their Lordships wish to see the fair copy of the Judgement?

No 4. Whether it needs to be circulated to other Benches of the Tribunal?

Mrs. Nirmalaben W/o.

Mr. Vishwanath Joshi,
son of Jadavji Joshi,
Retired Senior Goods Clerk,
Ramnik Ashram,
Opp. Musli Lane,
Near City Bridge,
Rajkot.

..... Petitioner.

(Advocate: Mr. Y.V. Shah)

Versus.

1. Union of India & Ors,
notice to be served through,
The General Manager,
Western Railway,
Churchgate, Bombay.

2. Divisional Railway Manager (E),
Western Railway,
Rajkot.

3. Senior Divisional Commercial
Superintendent,
Western Railway,
Rajkot.

..... Respondents.

(Advocate: Mr. B.R. Kyada)

J U D G M E N T

O.A. No. 532 OF 1987

Date: 22-12-1989.

Per: Hon'ble Mr. M.M. Singh, Administrative Member.

Mr. Vishwanath Joshi son of Jadavji Joshi, retired senior Goods Clerk, had filed this original application under section 19 of the Administrative Tribunals Act in which ^{EC/V/32} Court case, Respondents have neglected to grant pensionary benefits, gratuity and other benefits etc. ^{figured} as the order under challenge and date of the order shown as ^{on} 11.7.86, but right to get pension arises month to month". After the applicant's death, his seven heirs were allowed to be brought on record as applicants as per Tribunal's order

dated 3.4.1989.

2. Mr. Vishwanath Joshi who had retired as senior Goods Clerk, Western Railway, Rajkot, was recruited with effect from 1.6.1937 as clerk in the Gondal-Porbandar state railway when princely states existed. His birth date being 28.2.1917, he was retired from service on attaining the age of 58 years and as he claimed right to continue ⁱⁿ the service upto 60 years, he questioned the retirement by filing R.C.S.No. 697/74 in the Court of the Civil Judge Senior Division, Rajkot. The application gives an account of the long course of litigation between Mr. Joshi and the Railway Administration which, starting in 1974, has apparently still not come to an end as the decree passed by the Civil Court challenged by the Railway administration in the Gujarat High Court has yet to be decided. This application has been filed to claim the right of pensionary benefits stated to be arising by virtue of the respondents' circular of 1964 extended to such employees also as were governed by the SRPF (Contributory Scheme) (CPF Scheme) provided the employees exercised the required option. The applicant's claim to be governed by the pension scheme is, however, not based on a candid claim that he had exercised the required option but ^M the rests on certain ancillary or auxiliary developments from which a declaration that the applicant had as if exercised the required option and therefore eligible to be governed by the pension scheme is sought and relief to the effect that the respondents be directed to fix and to pay the arrears of the retirement benefits of pension, including new family

pension scheme of 1964 from the date of the retirement, namely, 30.4.76 and on wards and amount of gratuity with running interest of 12 per cent till the date the actual payment, ^{requested} has been made. These auxiliary and ancillary developments consist of (i) Railway Board's circular dt. 16.6.85 by which the Board is stated to have granted further opportunity to opt for pension scheme; (ii) the applicant challenging in Civil Court the order of alleged premature retirement from service resulting in protracted Court proceedings upto the High Court of Gujarat; (iii) no opportunity to exercise option for pensionary benefits scheme granted to the applicant after the conclusion of the Court proceedings; (iv) that the applicant had exercised option for the pensionary benefits including new family pension scheme 1964 during and before the completion of all the legal proceedings; and (v) the applicant returning to the respondents P.F. Bonus amount of Rs. 8004/- paid to the applicant as a result of the judicial orders.

3. The applicant filed M.A. 158/88 praying for issue of mandatory stay against the respondents to pay minimum amount of provisional pension to the applicants at the rate of Rs. 400/- per month and release the amount of gratuity. The Tribunal directed that such emoluments including gratuity as considered justified by the respondents may be released and the reply in original application to be filed within 3 weeks. The respondents chose to file a reply dated 24.10.89 in M.A. 283/88 dated 5.4.89 but no reply to the original application,

their averments in the reply to the said M.A. that they are filing separate reply on merits notwithstanding.

This M.A. was moved by the applicant for production of Railway Board's circular of 8.5.87 either by the respondents or to permit the applicants to place it on record. The said letter has not been disputed by the respondents in their reply.

4. At the final hearing the learned advocates for the parties were fully heard.

5. Mr. Shah for the applicant, besides pressing his case on the basis of the record already submitted, argued that even if it is presumed that the late Mr. Joshi had not exercised the option, the intention of the instructions of the Railway Board circular of 8.5.87 is that opportunity to him to exercise the option could still be given but was not given.

6. Mr. Kyada for the respondents argued that no date of the respondents' order under question has been mentioned; that the applicant had retired on 30.4.74; and that no details of the 1964 scheme and the rights of the applicant under the scheme have been mentioned in the application. He drew pointed attention to the admitted fact that P.F. Bonus amount of Rs. 8004/- which was sent to the applicant by respondents in compliance of High Court's order was not accepted by the applicant. In this connection he strongly relied upon Annexure 'A-4' dated 11.7.86 of the applicant's documents which is respondents' reply to the applicant and says that "you have been paid all settlement dues (except difference of SC to PF) salary

etc. as per court's orders and thereby you cannot claim more than that what is awarded by the Hon'ble Court.

As regards pension option you did not accept Administration's orders retiring you on attaining the age of 58 years and you filed a suit claiming that you were in service upto 60 years of age. If as per your claim you were in service upto the age of 60 years, you should have given option in time which you failed to do so, now you are not entitled for settlement under the pension rules. It is also advised that you are retired and settled on pay Rs. 488/- p.m. and hence you have no claim for first class complimentary pass. A cheque No. RK-0117616 dt. 19-3-86 for Rs.8004/- received under the above said notice has been returned to your Advocate." Mr. Kyada also said that the applicant brought the issue of the circular of 1964 for the first time before this Tribunal and not in earlier judicial proceedings. He said that the application before this Tribunal is the fourth round of the litigations on more or less the same matter. Mr. Shah disputed this by saying that the issues taken before the Courts in earlier proceedings pertained to the order of retirement and not on the subject of retirement benefits. He also argued that the Railway administration had not given opportunity to the applicant for exercising option and as this opportunity was not given the applicant should be deemed to have exercised the option. He argued that he relied upon the Railway's scheme of 1957 as brought out in C.A.T. Bombay Bench Judgment in Smt. Laxmi Vishnu Patwardhany Secretary, Railway Board, 1988(2) A.T.R. 49, though he had not relied upon it earlier at any stage and made no reference to it

in the original application.

7. As reliance has been placed on the pension scheme introduced on 16.11.57 with effect from 1.4.57 as referred to in C.A.T. Bench Judgment in Smt. Lakshmi Vishnu Patwardhan, supra, I will start dealing with the applicant's case starting with this scheme of 16.11.57. It is obvious that when the scheme of 1957 came to be promulgated, the applicant who admittedly joined service on 1.6.37 and was retired on 30.4.76 (which retirement he questioned in Civil Courts as premature), was very much in service. In terms of this scheme, he should have exercised the option within the period laid down for the exercise of such options. Apparently he did not exercise the option which implies that the applicant did not wish to be governed by the new scheme. The judgment of C.A.T. Bombay Bench therefore does not cover the applicant's case as it is about Railway administration not discharging its duties by individually informing every retired government servant to exercise the option. Admittedly, the applicant was in service in 1957. Regarding the 1964 rules, though the details of such rules and their applicability to the applicant have not been brought out, it seems that the 1964 rules gave another opportunity to the railway employees to opt for pension scheme. It seems that the applicant not having availed of the 1957 scheme did not change his earlier decision and did not avail of 1964 scheme also. The benefits of 1987 circular of the Railway Board do not accrue to the applicant ~~what~~ for the reason that this circular has been made applicable to those in service on

January 1986 for exercise of option and to those who were in service on 1.1.86 but retired thereafter. The applicant was neither in service on 1.1.86 nor retired thereafter. He retired in 1976. The further arguments of the applicant that as the matter of his retirement in 1976 was questioned in Courts and the litigation going on, the benefit of hypothetical exercise of option to be governed by pension scheme should be extended to him is untenable. No scheme of the Railways extending the benefits of such option to railway servants in the category of the applicant existed. In any case, existence of no such scheme has been pointed out by the applicant. Regarding the argument that the Railway administration did not specifically give opportunity to the applicant ^{to} exercise the option, during the period the option could be exercised, the applicant was in service both in 1957 and in 1964. The specific opportunity visualised in the circular of 8.5.87 is to be given to the railway employees who retired between the date of notification of the scheme and date of its coming into effect. This is also clear from the arrangement in this regard in 1957 scheme as it figures in C.A.T. Bombay Bench Judgment supra. The further arguments that the applicant had exercised option for the pensionary benefits including new family pension scheme 1964, during the completion of legal proceedings is also most untenable as that was not the period during which the exercise of such option was permissible to the applicant. The applicant returning the cheque of Rs. 8004/- to the respondents has no bearing on the exercise of option

as the said amount was sent to the applicant pursuant to the judgment of the High Court.

8. The Judgment of the Supreme Court in D.S. Nakara v/s. Union of India, A.I.R. 1980, S.C.A. does not cover the applicant's case. In Nakara's case the issue involved was of giving revised pension to those who retired ^{before} ~~after~~ a certain date. Devki Nandan Prasad v/s. State of Bihar, A.I.R. 1983, S.C. 1134 involves defaulting State Government to pay arrears of pension alongwith interest. The question of pressing of this case in service can arise only if the claim of the applicant is found tenable. The same is the case with the judgment in State of Kerala v/s. M. Padmanabhan Nair, A.I.R. 1985 S.C. 356.

9. In view of the above the application has no merits and is liable to be dismissed.

10. The application is hereby dismissed with no order as to costs.

M M *See*
22/4/04
(M.M. SINGH)
ADMINISTRATIVE MEMBER.