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(Jud.)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 179 OF 1988
~~T.A. No.~~

DATE OF DECISION 29.7.1991

Som Dutt Mahindra, Petitioner

Mr. S.V. Raju, Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

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

CORAM :

The Hon'ble Mr. M.M. Singh, Administrative Member.

The Hon'ble Mr. R.C. Bhatt, Judicial Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *yes*
2. To be referred to the Reporter or not ? *yes*
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. *yes*

Som Dutt Mahindra,
son of Gangaramji,
currently residing at
3-G-20, Sector III,
Vaishalinagar, Ajmer.

.... Applicant.

(Advocate: Mr.S.V. Raju)

Versus

1. General Manager,
Western Railway, having
Office at Churchgate,
Bombay.
2. Divisional Commercial
Superintendent,
Western Railway,
Rajkot;
3. Divisional Rail Manager,
Western Railway,
Rajkot Division,
Rajkot.
4. Divisional Accounts Officer,
Western Railway,
Rajkot Division,
Rajkot.

..... Respondents.

(Advocate: Mr.B.R. Kyada)

J U D G M E N T

O.A.No. 179 OF 1988

Date: 29.7.1991

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

The applicant's main allegation in this original application filed in this Tribunal under section 19 of the Administrative Tribunals Act, 1985, is that although he, as Railway employee, had opted for Liberalised Pension Rules (LPR for short) his application was deliberately not submitted for vindictive reasons as he had not vacated his rented premises the landlord of which premises was a close relative of C.D. Badgel, the Divisional Commercial Superintendent. He therefore prays for direction to respondents to pay him retiral benefits on the basis of L.P.R all through.

2. The material facts of the applicant's case are that the applicant was due for superannuation on completion of 58 years of age on 6.1.1971. But before that, he was, by order dated 5.3.1968 of Divisional Personnel Officer allegedly issued on direction of the Divisional Commercial Superintendent (DCS for short), compulsorily retired with effect from 4.6.1968. He successfully challenged this order by filing Civil Suit No. 561 of 1971 in the Court of the Civil Judge, Senior Division, Rajkot. The suit was, only on the issue of retirement, decreed in his favour on 28.2.1975. As a result of the decree, he was deemed to have retired on superannuation on 6.1.1971.

3. After the decree above, the applicant wrote to the Divisional Superintendent Rajkot on 4.8.1975, to quote from the application, "to honour the applicant's option for pension submitted earlier...." This letter was followed up by reminders and representations which remained fruitless. In his Second Appeal No. 58, the Gujarat High Court observed in order dated 19.4.1979 that if the applicant has rendered his pension as per the rules, absence of declaration of continuance of service in a case where the servant has actually been reinstated and served till he has retired cannot prevent him from pensionary benefits. This observation is consistent with the position that the applicant is to be deemed to have remained in continuous service upto the date of his superannuation. Further representations from the applicant followed. It was only by letter dated 16.1.82 that the respondents informed the applicant that he had given no option and also by letters dated 4.6.1984 and 10.11.1986 that he therefore cannot be

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paid pension. Replies on similar lines to applicant kept coming by letters dated 11.12.1987, 21.12.1987 and 2.2.1988. Intervention of the Western Railway Employees Union failed to get him pension. The applicant avers that had he known that his representation had not been forwarded, he would have given an additional option in 1975. Principle of promissory estoppel is raised against the Railway. The applicant argues that in any case the objection against grant of pension is technical. He also avers that he had returned to the Railways the benefits he had received under the SR PF Rules which amount remained with the Railways for more than one year only to be taken back ^{by the applicant} because of his ^{economic} compulsions as pension was not paid. He had expressed his readiness to return this money again. The applicant further argues that the Railway had given further opportunities for option which were however not brought to his notice and he could not give fresh option.

4. The decree in the Civil Suit above gave relief to the applicant against the order of compulsory retirement but says nothing about pension. Applicant's representation dated 4.8.1975 after the decree addressed ^{says} to the Divisional Superintendent Rajkot/on the subject of pension:"..... please honour my option of pension submitted to you already in time and arrange for my pension arrears of pension on refixation of my salary" We notice that no date of option of pension figures in his representation. It does not figure in the application either which nevertheless contains the allegation that his option was not deliberately submitted. To which authority the applicant gave the option and to which authority this authority was required to submit the option is also

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not stated in the application. The underlying allegation is against the DCS/^{that he}was acting vindictively. But was the option submitted to the DCS or was to be submitted to the DCS by the authority to whom the applicant submitted is not disclosed. In the second appeal in the High Court only a declaration of continuity in service was sought perhaps because of the apprehension that if treated as not continuous, the applicant may not be given pension. The appeal was in fact withdrawn. It is only in representation dated 22.4.1981 (Annexure-J) made after one Dholakia, API Rajkot, met the applicant and asked query about the option that the applicant first disclosed the date of his option as 1.12.1967 sent to DCS office Rajkot with papers like leave application. It is also for the first time disclosed in this representation that the applicant had, on direction of DS Rajkot, approached Munir Khan, DPO Rajkot who had called his clerk concerned and he referred to the records and said that the pension option cannot be finalised till the question of illegal retirement of the applicant is not finalised - implying thereby that the pension option was in the papers at that time. Now this averment gives a lie to the averment that the DCS had not submitted the option of the applicant. It seems to us that with passage of time, exchange of correspondence and conference with API, more and more circumstances came to be originated in representations obviously aimed to strengthen, the weak stand that he had submitted his option for LPR. In a latter representation dated 25.5.81 (Annex. J colly.) position was further improved by saying that the applicant had shown postal receipt to API Dholakia of having sent his option to Badgel, DCS Rajkot, who was out to

victimise him. If the applicant possessed such a postal receipt, he would have furnished this most important ^{piece} evidence with this OA and in other representations before. This receipt would have clinched the issue perhaps even before the respondents. Representation dated 25.4.1982 states that if the DRM office Rajkot has lost his option form of "December 1967, a special case for sanction of pension should be made out". With the applicant having accepted his retiral benefits under the SRPF Rules without any protest, as averred in the respondents' reply and as discernible from applicant's averments and record, and the fact that fresh circumstantial grounds kept originating bit by bit in progressive representations, there is reasonable probability for and circumstantial evidence for us to take the view that the applicant has failed to show that he had exercised the option. The fact that he had returned the amount of the retiral benefits he received under the SRPF Rules only suffices to show his conduct under the pressure of second thoughts. The Government of India launched measures to improve the retiring pensioners' lot with effect from 1.1.1973 and pension scheme started appearing financially more attractive. It is natural that at that juncture those who did not opt for LPR would suddenly have found themselves left a great deal financially disadvantaged and therefore various efforts, including through court petitions, to come on to the LPR. Earlier, perhaps the lumpsum payment of retiral benefits under SRPF Rules appeared attractive. This alone might explain why the railways had to extend the last date for options eighteen times stretching over several years. However, it is clear

that the representation dated 4.8.1975 the applicant submitted to the Divisional Superintendent Rajkot does reveal the applicant's desire to come on to LPR and this appears to be the first expression of such desire of the applicant conveyed to the authority.

5. Mr. Raju, learned counsel for the applicant relied upon (unreported) judgment dated 11.11.1987 of Bombay Bench of this Tribunal in T.A.No. 27/87, Ghanshamdas Vs. Chief Personal Officer, Central Railway, against which the Railways had filed Special Leave to Appeal No. 5973/88. The Supreme Court did not find the case fit for interference under Article 136. The ratio decided discernible in this judgment is that denial of opportunity to exercise option for certain spells of periods was arbitrary in the light of the fact that the opportunity for option existed before and after these spells. As it is not the contention of the applicant that he had exercised the option during any such blank spell which came to be rejected and our finding above being that the applicant has failed to substantiate that he had infact exercised the option during the period of his service, the ratio in the Bombay Bench case does not apply to his case.

6. Giving our anxious consideration to the facts and aspects of the case, we notice that the implications of the fact that the applicant was due to superannuate on 6.1.1971 but was compulsorily retired with effect from 4.6.1968 which order was held by the Civil Court judgment dated 28.2.1975 to be illegal, inoperative and void and the applicant directed to be deemed to be in service upto the time he reached the age of 58 years, on the question of exercise of option were not

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taken up by Mr. Raju. The application is also silent about the same. This perhaps because of the position taken but not substantiated that the applicant had given the option before while in service.

7. In terms of the Civil Court order dated 28.2.75, the applicant was deemed to have retired on 6.1.71 instead of on 19.6.1968, the date of his compulsory retirement. This necessarily implies that the period between 4.6.1968 and 6.1.1971 which would have been available to the applicant to exercise his option became unavailable because of the compulsory retirement order. As the applicant was deemed to have continued in service during this sep11, whatever service benefits he could avail during this period would also be deemed to be available to him. This should naturally envelop the opportunity to exercise the option for LPR application and therefore and thus viewed the contents of the applicant's representation dated 4.8.1975 addressed to Divisional Superintendent Rajkot Division, Rajkot, unmistakably articulating the applicant's desire to come over to LPR is liable to be taken as his option though the representation may not contain the option in proper form presumably prescribed for exercising such option. We feel that compliance with exercise of option in proper form if prescribed can be waived in the above peculiar circumstances of the applicant's case who seems to have adopted an illadvised posture in vainly trying to appear credible in saying that he had exercised the option before. He should have been frank and candid in this regard. The opportunity to make such option in 1975 as if made between 4.6.1968 and 6.1.1971 constructively fell to the applicant necessarily as a result of the Civil Court judgment

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above dated 28.2.1975. We therefore hold and direct that the applicant shall be deemed to have exercised the option for LPR application between 4.6.1968 and 6.1.1971 though he made the articulation thereof in his representation dated 4.8.1975 addressed to the Divisional Superintendent, Rajkot Division, Rajkot. We take note here that the respondents have not objected to the application on grounds of limitation may be because of the since undisputed position in law that pension is a recurring payment liable to be received every month.

8. In view of the above, we allow the application with following directions to respondent No.3, Divisional Railway Manager, Rajkot Division, Rajkot and the applicant :-

- (i) The applicant shall be paid all retiral benefits including arrears thereof on the basis that he had validly opted for application of LPR within three months of the date of the applicant's returning to respondent No.3 all the retirement benefits received by him on the basis of SRPF Rules.
- (ii) The applicant shall make the above payment within three months of this order failing which this order will become inoperative with no consequences thereof on the Railways.
- (iii) No interest shall be charged on the amount falling due to the Railways from the applicant or due to the applicant

from the Railways as a result of this order provided the respective payments are made within the above prescribed periods.

There are no orders as to costs.

R.C. Bhatt

(R.C. Bhatt)
Judicial Member

M.M. Singh
29/7/91

(M.M. Singh)
Admn. Member