

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

(10)

O.A. No. 671 of 1988
~~EX. NO.~~

DATE OF DECISION 30-7-1993

Shri Madhukar Vishnu Zare Petitioner

Shri A.K. Chitnis Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Shri N.S. Shevde Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. N.B. Patel

Vice-Chairman

The Hon'ble Mr. V. Radhakrishnan

Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

No

(1)

Shri Madhukar Vishnu Zare,
95-D, Sarvottam Nagar,
Behind New Railway Colony,
Sabarmati, Ahmedabad - 19.

..... Applicant

Shri A.K. Chitnis

..... Advocate

Versus

1. Union of India through
The Chairman,
Railway Board,
New Delhi.
2. The General Manager,
Western Railway,
Churchgate, Bombay - 400 020.
3. The Dy. Chief Engineer(Engg. W/Shop),
Near Railway 'D' Cabin,
Sabarmati, Ahmedabad - 19. Respondents

Shri N.S. Shevde

..... Advocate

O_R_A_L J_U_D_G_M_E_N_T

Per Hon'ble Shri N. B. Patel

Vice-Chairman

The applicant retired from Western Railway service as Chief Clerk in the Office of the Deputy Chief Engineer, Sabarmati on 31-8-86. On acceptance of the Report of the 4th Pay Commission, the employees were asked to exercise their option latest by 31-3-87 as to any date between 1-1-86 and 31-12-86 for switching-over to the revised pay scales. Accordingly, the applicant selected 1-8-86 as the date of switching-over to the revised scale. The applicant had exercised his option on 28-2-87 ^{i.e.} ~~viz~~ well before the expiry of the

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period within which the employees were required to exercise their option. The option exercised by the applicant to switch-over to the revised scale from 1-8-86 was accepted and, accordingly, his retirement benefits were calculated and, as already stated, he retired from service on 31-8-86. Thereafter the Railway Board issued letter (Annexure - A7) dated 23-6-88 giving one more opportunity to the employees to change the option, earlier given by them and to select any other date between 1-1-86 and 31-12-86 for switching-over to the revised pay scales. This letter of the Railway Board was circulated by the General Manager's letter dated 13-7-88. The time-limit fixed for exercising fresh option was 30-9-88. However, before this letter was circulated in July, 1986, the applicant had, by his letter dated 15-6-87 (Annexure - A2), requested for allowing him to change the date of his coming-over to the revised scale from 1-8-86 to 1-1-86. The Deputy Chief Engineer by his letter dated 11-1-88 had recommended to the General Manager to move the Railway Board for permitting the applicant to change the date of his coming-over to the revised scale from 1-8-86 to 1-1-86. The General Manager had accordingly moved the Railway Board. It appears that the Railway Board refused to accept the request of the applicant on the ground that the option once exercised by an employee was final and, therefore, in the case of the applicant, it was not possible to accept the fresh option offered by the applicant. The General Manager conveyed this decision

of the Railway Board by his letter dated 21-3-88 (Annexure - A). The applicant has, therefore, approached this Tribunal with a prayer that the decision evidenced by Annexure - 'A', refusing to accept his fresh option, may be set aside and the applicant may be permitted to opt for revised pay scale from 1-1-86 instead of 1-8-86.

2. In the reply filed by the Railway Administration, there is not much of ^athe dispute raised about the facts narrated above. It is an admitted position that by Annexure - 'A7', dated 23-6-88 circulated on 13-7-88, the employees were given opportunity to exercise fresh option as to the date from which they would be brought-over to the revised pay scale. It is, however, contended that the terms of this circular (Annexure-A7) did not entitle the applicant to exercise fresh option and the option exercised by him for 1-8-86, by his letter of ~~February~~ ^{June}, 1987, was final.

3. The only question which, therefore, calls for our consideration and decision is, whether the applicant had a right to exercise a fresh option and to change the date of switching-over to the revised scale from 1-8-86 to 1-1-86 under the terms of the circular Annexure - 'A7' dated 23-6-88 circulated by the letter dated 13-7-88. The contention of Mr. N.S. Shevde, on behalf of ~~the~~ Railways, was that the option given by the circular, Annexure - 'A7', was only to those employees who had not at all exercised any option or who had opted to remain in the pre-revised scale. It was also

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contended by Shri N.S. Shevde that a fresh opportunity was given by the circular, Annexure - 'A7' only to those persons who were still in the employment of the Railways and who had not already retired, i.e. to persons like the applicant. In order to find out whether the contention of Mr. Shevde that the circular, Annexure-'A7' does not permit the applicant and other employees like him to exercise a fresh option is correct or not, we have to turn to the circular itself. It appears from paragraph 2 of the circular that the members of the staff in the National Council(JCM) had represented to the Administration that the time-limit for opting for the revised scale of pay from a date subsequent to 1-1-86 was required to be further extended beyond 31-12-86 to rectify certain anomalies that still existed in several cases. In other words, the ground on which members of the staff had pleaded for a fresh opportunity being given to the employees, was that those employees who found it dis-advantageous to have selected a particular date, may select some other date between 1-1-86 and 31-12-86 and avoid financial loss suffered by them. Paragraph 2 further shows that the matter was examined in the Ministry of Finance in consultation with the Department of Personnel and Training and it was also discussed, in the National Council (JCM). Paragraph 3 shows that, after such consideration and examination of the matter by the concerned ministries, it was decided to give one more opportunity to the employees to change their option latest by 30-9-88. The decision was that, such option would be available even to those employees who had already exercised option prior to the issue of "these" orders to switch-over to the revised scales. It

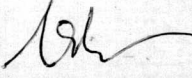



should thus be obvious that employees like the applicant, who had already exercised their option prior to the issuance of circular, Annexure - 'A7', were given one more chance to exercise a fresh option latest by 30-9-88. We do not find any words limiting the right to exercise a fresh option only to those employees who had not exercised any option at all earlier. On the contrary, paragraph 4 of the circular clearly shows that the further option given by the circular Annexure - 'A7' could be exercised also by those Government servants who had already exercised option prior to the issuance of Annexure - 'A7'. There is also nothing in the circular to show that employees, who had already retired before June/July, 1988, were not given further chance under Annexure - 'A7' to exercise a fresh option. In our view, therefore, even though the applicant had retired from service prior to June, 1988, and even though he had earlier exercised an option selecting the date of his switching-over to the revised scale, had a right to exercise a fresh option within the time limit stipulated in Annexure - 'A7' i.e. by 30-9-88. However, it was contended by Mr. Shevde that, since the applicant had not exercised a fresh option ^{pursuant} ~~persistent~~ to Annexure - 'A7' after its issuance, the claim of the applicant, that he may be allowed to change his option, must be rejected. We are not inclined to adopt such a hypertechnical attitude in the matter. The applicant had already requested, for permitting him to change the date from which he wanted to opt for the revised scale, in June, 1987. It is true that his request was turned-down as evidenced by letter, Annexure - 'A'

dated 21-3-88. At the same time, it requires to be mentioned that the request of the applicant was supported by the Deputy Chief Engineer, Sabarmati and the authorities should have taken a broad view of the matter and permitted the applicant to change the date of his switching-over to the revised scale.

4. In the result, therefore, we allow this application and set aside and quash the decision of the respondents, refusing to accept the fresh option by the applicant to switch-over to revised scale from 1-1-86. We direct the respondents to accept the fresh option exercised by the applicant and to take 1-1-86 as the date of switch-over of the applicant to the revised scale and to grant him all consequential benefits subject to necessary adjustments being made. The respondents shall comply with this direction on or before 31-10-1993.

No order as to costs.


(V. Radhakrishnan)
Member (A)


(N.B. Patel)
Vice-Chairman.