

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 187 OF 1991
~~EXXN~~

DATE OF DECISION 13th Oct. 1992.

Shri S.S.Gohel Petitioner

Shri P.H.Pathak Advocate for the Petitioner(s)

Versus

Union of India and Others Respondent

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

CORAM :

The Hon'ble Mr. N.V.Krishnan : Vice Chairman

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

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 ?

Shri S.S.Gohel,
Plot No.108/A,
Sector - 19.
Gandhinagar. 382019

...Applicant.

(Advocate : Mr.P.H.Pathak)

Versus

1. Union of India,
Notice to be served through
The Secretary to the
Government of India,
Ministry of Railway,
Rail Bhavan,
NEW DELHI.

2. General Manager,
Western Railway,
Churchgate,
Bombay - 20.

3. Chief Administration/Officer

Metropolitan Transport Project,
(Railway),
Churchgate,
BOMBAY.20.

...Respondents.

(Advocate : Mr.N.S.Shevde)

JUDGMENT
O.A.NO. 187 OF 1991.

Date : 13.10.1992.

Per : Hon'ble Mr.N.V.Krishnan : Vice Chairman

The applicant is aggrieved by the fact that his option for receiving pension under the Pension Rules applicable to railway employees has not been accepted by the respondents who insist that he is entitled to only the benefits of the Contributory Provident Scheme - C.P.F. for short. The applicant states that this dispute stands concluded by an unreported judgment dated 11.3.1987, of the New Bombay Bench of the Tribunal in T.A./27/87, Ghan

and another Vs. The Chief Personnel Officer, Central Railway and Ors, the benefit of which has to be given to him.

2. The brief facts needed for decision are as follows :

(i) The applicant was an employee of the Bhavnagar State from 1940 and appointed as an Engineer in the Public Works Department. He was later transferred to the Bhavnagar State Railway, which became a part of the Indian Railways in 1950.

(ii) He retired on 11.07.1972, as Chief Administrative Officer (MTP) under the Railway Board. Unless permitted to opt out, he was entitled to only the benefits of the C.P.G.

(iii) Options were provided from time to time to the employees to opt for the pension scheme. The applicant alleges that he had made representation before he retired to opt for the pension scheme, but this was not considered.

(iv) It is stated that one more opportunity to exercise option was given by circular dated 15.07.1972, of the Ministry of Railways, (Resp.no.1), in the following terms :

"The President is pleased to decide that Railway servants who retained the State Railway Provident Fund (Contributory) benefits and (i) who are in service and (ii) who quit service on or after the date of issue of this letter, may be allowed

another opportunity to opt for the liberalised Railway Pension Rules, including the benefits of the family pension scheme for railway employees, 1964 as amended from time to time. This option has to be exercised by 21st October, 1972. 9

(v) A copy of this circular was received by him from the Chief Administrative Officer, Metropolitan Transport, Project Bombay, (Resp.3), along with the letter dated 04.08.1972, (Annexure-A), which dealt with certain other relating to the leave salary for the period for which he was refused leave. The letter concluded as follows : -

"In regard to your query regarding pension option, a copy of Railway Board's letter No.F(E) III 71-3 dated 15.7.72, is enclosed for your information. Your case does not come within the purview of this letter for opting to pension."

(vi) It is stated that one ^{Ghanasham Das and one} ~~and~~ other employees who were also refused the option provided for in the circular dated 15.7.1972, (the circular is produced by respondents as Annexure-R/1), for the same reason, (i.e., they had retired before the cut off date) had approached the High Court of Bombay by filing Writ Petition 1556 of 1983. That petition came to be transferred to the New Bombay Bench of the Tribunal.

which disposed it of as T.A./27/87, by the judgment dated 11.11.1987. By that judgment the petition filed by the two petitioners was allowed by holding that the respondents cannot prevent the two petitioners who had retired on 10.07.1990, and 1.03.1971, respectively, (i.e., during the period from 01.04.1969 to 14.07.1992) from exercising the option as provided by the Annexure-R/1 circular dated 15.07.1972 and deny them pension benefits, as this action is violative of Articles-14 and 16 of the Constitution of India. There was a further direction as follows in the judgment in Ghanshamdas' case : -

" The respondents are directed to implement the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1.4.69 to 14.7.72 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme."

(vii) The Union of India then filed a S.L.P. before the Supreme Court of India (S.L.P.5973/88) which was dismissed on 05.09.1988. Certified copies of the judgment of the New Bombay Bench in T.A./27/87,

and of the order of the Supreme Court have been produced for our perusal and are kept on record. Apparently, the New Bombay Bench followed this decision in O.A./373/89, also, but a copy of that judgment has not been produced.

(viii) Referring to these judgments and the orders of the Supreme Court, the applicant sent to the fourth respondent a representation dated 06.04.1989 (Annexure-A/1), exercising his option for pension Scheme from 11.07.1992, i.e. the date of his retirement and he requested for pension to be given to him. This has not been disposed of.

(ix) The applicant has also adduced a totally different additional ground for his claim. He states that the leave preparatory to retirement was refused by the first respondent by the letter dated 19.02.1972, (Annexure-A/2) which reads as follows :

"The Railway Board have decided that the leave preparatory to retirement to the extent from 02.2.1972 to 10.7.1972, (L.A.P. for 120 days and L.H.A.P. for 10 days) applied by Shri S.S.Gohel should be refused in the public interest under Rule 2127 R.II and that he may be allowed to avail of the refused leave from the date of superannuation viz. 11.7.1972."

He states that he was paid leave salary upto 11.1.1973, upto which date his services were continued. He contends - only by implication and not specifically - that the benefit of option under the Annexure-R/1 circular dated 15.7.1972, cannot, therefore, be denied to him. It is pertinent to note that he has not sought for any declaration/relief on this ground.

(x) Not having received a reply to the Annexure-A/1, representation filed, this application is filed praying for the following reliefs :

(a) To direct the respondents to extend the benefits of the judgment in TA/27/87, and of O.A./373/89, to the applicant and direct to pay the dues with 18% interest.

(b) Hold and declare that the applicant is entitled to pensionary benefits with effect from his date of retirement i.e. 15.7.72, with all arrears and interest at 18% per annum upto date and will be entitled to draw pension and family pension as per rules.

(c) Hold and declare that the orders of the Railway Board providing for opening and closing of options is contrary to law.

(d) Hold and declare that the applicant is entitled to receive pensionary benefits including family pension.

(e) Direct the respondent railway administration to pay the arrears of pension after deducting there from the amount of State Railway Provident Fund Contribution paid to the Applicant and the arrears of pension should be worked out with effect from 11.7.1972."

3. The respondents have filed a reply resisting this application on the following important grounds.

(i) The application is barred by limitation as the benefit is sought from 11.7.1972, for which purpose the application is filed only on 23.1.1991. No doubt, a conditional order condoning the delay has been passed on 07.10.1991, but this will not be of any avail, as the grievance is outside the jurisdiction of the Tribunal, having arisen more than three years before the Administrative Tribunal Act, 1985, came into force from 01.11.1985.

(ii) The respondents deny that prior to his retirement, the applicant opted for the Pension Scheme. The applicant only sought some clarification about the option and this was given to him by the Annexure-A, letter.

(iii) The respondents claim that the judgment of the New Bombay Bench of the Tribunal in T.A./27/87, is not applicable to the applicant, as he is not similarly situated.

(iv) The representation dated 05.04.1989,
(Aneexure-A/1), has not been received. In fact,
the applicant has not produced any proof of its
having been sent by him.

(v) While the refusal of leave preparatory
to retirement is confirmed, it is denied that the
applicant was continued in service till 11.01.1973.

(vi) It is finally contended that in
Krishena Kumar Vs. Union of India (1990 S.J.P. 173)
(Sic) Supreme Court has negatived the judgment of the
New Bombay Bench relied upon by the applicant.

4. We have perused the records and heard the
learned counsel for the parties. Shri P.H.Pathak,
the learned counsel for the applicant has produced
certified copies of the judgments he has relied
on, except the judgment of the New Bombay Bench,
in O.A./373/89. This is of no consequence because
he states that the New Bombay Bench, has only
reiterated its previous judgment in T.A./27/87, a
copy of which is available. The learned counsel
has contended that the judgment in T.A./27/87, was
not interfered with by the Supreme Court on three
reasons. Firstly, S.L.P. 5973/88, filed against the
judgment was dismissed on 08.09.1988. A second
occasion arose when this judgment was cited by
one of the counsel for the petitioners in a batch of
cases in support of those petitions. The judgment of
the Supreme Court in that batch of cases, which is
heavily relied upon by the respondents has since

been reported as Krishena Kumar Vs. Union of India (1990) 14 A.T.C. 846) - did not over rule the judgment in T.A./27/87, but held it was distinguishable on facts. After judgment was delivered in Krishena Kumar's case, the Union of India, applied for a review of the order dated 08.09.1988, dismissing the earlier S.L.P. 5913/88. This was dismissed by the Supreme Court on 06.05.1991. Therefore, the judgment of the New Bombay Bench, ^{as} it is claimed, been affirmed thrice and therefore, it has necessarily to be followed.

5. On the contrary, Shri N.S.Shevde, the learned counsel for the respondents affirms vehemently that the application has to be dismissed in the light of the Supreme Court's Judgment in Krishena Kumar's case, which is squarely applicable to this case. As a matter of fact, no other issue was pressed at the hearing as it was felt by the parties that the fate of the application would depend on whether it is to be disposed of in the light of the judgment of the New Bombay Bench in Ghandhamdas's case or of the Supreme Court in Krishena Kumar's case. That is the principal issue to be decided.

6. Nevertheless, we cannot shut out eyes to the pleadings, particular about the issue of limitation. The applicant filed M.A./155/91, for condonation of delay stating that the application could be filed only after the judgment of the New Bombay Bench in T.A./27/87, became final and another O.A./373/89, was also disposed of by that Bench on the same basis.

Hence he prayed for the condonation of delay. This was considered on 07.10.1991, and after hearing the parties, the following order was passed.

"pension being a continuing cause of action we condone the delay. It is of course open to the respondents to make submissions on this point at the final hearing stage."

7. We have considered the submissions made by the respondents. In so far as the prayer of the applicant viz., that his option for pension scheme from 11.07.1972, should be accepted and he be granted pension is concerned, that will be considered for two reasons, despite the delay. Firstly, the order dated 07.10.1991, has condoned ^{the} delay regarding pension. Secondly, para-11(vi) of the judgment in Ghanshamdas's case (T.A./27/87) gives an omnibus direction to the respondents to give this benefit to all those who retired between 01.04.1969 and 15.07.1972. May be, such a direction was not necessary to dispose of T.A./27/87, but, that judgment has become final, the SLP having been rejected. It is, therefore, not now open to contend, relying on Section-21(2) of the A.T.Act, 1985, that this is a matter beyond the jurisdiction of the Tribunal as it relates to a grievance which was more than three years old when the A.T.Act, came into force on 01.11.1985.

8. But, these considerations will not apply to the averment regarding the refusal of leave preparatory to retirement and its alleged effect. That aspect is clearly barred by limitation. If the applicant was satisfied that refusal of L.P.R. x really meant the postponement of the date of retirement to 11.01.1973, as contended by him in para-5 of his rejoinder, relying on RR-86-, he should have raised the issue as soon as he got the Annexure-A letter dated 04.08.1972 and he should have exercised option in terms of the R/1 letter dated 15.07.1972, claiming that he was due to retire only on 11.01.1973. Not having done so, that matter is beyond our jurisdiction now in terms of Section 21(2) of the Administrative Tribunals Act, 1985. Therefore, we will not look into this matter. Our task has also been simplified by the applicant, who has not sought for any declaration/relief on this basis. Further, his strong reliance on the judgment of the New Bombay Bench in T.A./27/87, will have relevance only if it is admitted that he retired between 1.05.1969 and 14.11.1972, i.e., on 11.11.1972, and not on 11.01.1973.

9. We can now address ourselves to the legal issue about which rival submissions have been made. We have perused the records of the case as well as the judgments relied upon by the parties.

10. Before proceeding further, it is necessary to give the background giving rise to the disputes decided in Ghanshamda's case and Krishena Kumar's case and the dispute in the instant case. To begin with, the only retiral benefits available in the Railways was Contributory Provident Fund Scheme. A pension scheme was also introduced, in addition, from 01.04.1957. Naturally, all the employees were required to exercise an option whether they would continue in the CPF scheme or join the Pension Scheme, it being made clear that the option once exercised was final. Depending on their individual judgment, some preferred to continue with the CPF scheme, while others opted for the Pension Scheme. Subsequently, at various intervals of time, certain decisions were taken by Govt. in respect of service matters, - applicable only to the employees who were then in service on the date from which these decisions were made effective-which would also have an impact on the quantum of pension or quality of pension. These decisions would automatically benefit all those serving employees who have already opted for the pension scheme. But, this was a material change in the conditions of service for those who had earlier decided to continue with the C.P.F. Scheme. They were, therefore, given another opportunity to opt for the Pension Scheme if they so wanted, considering the changes made. Invariably, the changes made in the conditions of services with effect from/ specified date, were made known by the issue of notification after the

specified date. Hence, the notification always had retrospective effect. Therefore, those people who were in service on the specified date, but had retired on the date the notification was issued, were also given the option. This was the only category of retired persons, to whom the benefit of option was given. Twelve such options had been given from 01.04.1987, when Pension Scheme was first introduced till 08.05.1987, as can be seen from the details given in Krishna Kumar's case. With this background, we can consider the facts of Ghansham Das' case and Krishna Kumar's case.

11. The facts leading to the institution of T.A./27/87, are as follows :

i) The first applicant Ghanshamdas, was a foreman and he retired on 10.07.1970. The second applicant D'souza was also a foreman and he retired on 01.03.1971.

ii) When given an option at the time when the Pension Scheme was first introduced from 01.04.1957, both the applicants exercised option, in 1958, in favour of the State Railway Provident Fund (Contributory) benefits. These options, were not revised by the applicants before their retirement.

iii) After retirement, the first applicant sent a representation on 20.08.1972 to opt for the Pension Scheme. To one of his subsequent representations dated 12.08.1977, a reply was sent by a letter dated 02.11.1977, which informed him that -

"That the railway staff who were governed by the Profident Fund Rules were given opportunities to exercise their option in favour of pension from time to time from 1957 except ~~for~~ the period from 1.4.69 to 14.7.72, and those who had not availed of that opportunity during that period could not be permitted under the extention order to opt for pension."

iv) The second applicant made a similar request on 16.2.1971, just before retirement. The authorities rejected this request by a letter dated 24.02.1971, on the ground that he had not exercised such an option, when an opportunity was given earlier before 31.3.69, made the last date fixed for option. A request ~~for~~ after retirement also met with the same fate.

v) It is in these circumstances that Writ Petition No.1556 of 1983, was filed in the High Court of Bombay, which came to be ~~known~~ transferred to the New Bombay Bench after the coming into force of the Administrative Tribunals Act, 1985, and was registered as T.A./27/87.

12. The New Bombay Bench was informed that there were atleast 4 other periods prior to 01.04.1969 in addition to the period 01.04.1969 to 14.11.1972 when also, options were not given. The respondents could not give any reason, whatsoever, why an option was not given to those who retired between 1.4.1969, and 14.4.1972. They could not also explain why

such persons were denied an option, when, on several occasions, the time limit for exercise of option was extended many times. The Bench was satisfied that even if option given to those who retired after 01.01.1973, is justified because of the revision of pay scales from that date, there was no reason why such an option was given for those in service on 15.07.1972 (i.e. by the, R/1 circular in the present case). To cap it all, it also found that what has been denied to retired persons had been given to the widows / members of the family of officials who died in harness during the period from 01.04.1969, to 14.11.1972. No reason was given for this discriminatory treatment. For all these acts of omission and commission, the respondents could not give any explanation at all and the Bench was forced to declare as follows :

"We do not understand as to why the members of the family of the railway employees who had died during that period were given the benefit of the Family Pension Scheme by allowing them to exercise their option in favour of the same, while denying the benefits of pension to the railway ~~servants~~ who had retired during the same period. We have therefore, no hesitation in holding that denial of the benefit of the pension scheme to those employees who had retired during the period from 1.4.1969 to 14.7.72 is arbitrary, discriminatory and

unreasonable. No explanation, whatsoever, was given to us nor ~~we~~ could we find any such explanation, as to why the benefits of the pension scheme ~~should~~ be denied to those railway servants who had retired during the said period. Needless to point out, that if the applicants had retired ^{or} on 15.7.72 or 31.3.69, they would have derived the benefits of the pension scheme by revising their options. We, therefore, reject the stand taken by the respondents that the railway servants who had retired during the period from 1.4.69 to 14.7.72 are not entitled to revise their option in favour of pension, as being violative of Articles 14 and 16 of the Constitution of India."

The Bench allowed the petitions and declared that the petitioners were entitled to the benefit of the pension scheme from the date of their retirement and gave them consequential benefits. It also gave the following directions to the Railways.

The respondents are directed to implement the directions given in clause (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. who retired during the period from 1.4.69 to 14.7.72 and who had indeed revised their option in favour of pension either at any time while in service or

after their retirement and who now
desire to opt for the pension scheme."

13. It is in this background that the orders of the Supreme Court have to be understood. The Supreme Court has stated in para - 37 of its judgment in Krishna Kumar's case as follows : -

"We have perused the judgments. The Central Administrative Tribunal in Transferred Application No. 27 of 1987 was dealing with the case of the petitioners' right to revise options during the period from April 1, 1969 to July 14, 1972 as both the petitioners retired during that period. The Tribunal observed that no explanation was given to it nor could it find any such explanation. In State of Rajasthan V. Retired CPF Holder Association, Jodhpur, the erstwhile employees of erstwhile ~~Princely~~ State of Jodhpur who, after becoming government servants, opted for Contributory Provident Fund, wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court relying on Nakara which was also followed in Union of India V. Bidhubhushan Malik, subject matter of which was High Court Judges pension and as such both are distinguishable on facts."

The obvious implication is that the judgment of the New Bombay Bench was correct only in its place and only in the context in which it was delivered. The dismissal of the S.L.P. against this judgment does not mean that this judgment is absolutely correct for all situations. It is only correct in the circumstances in which it was delivered and is not fit for adoption generally. That, obviously, is the conclusion one has to draw from the fact that the Supreme Court rejected the plea made in this behalf in Krishena Kumar's case, as will be shown separately.

14. The judgment in Krishena Kumar's case (*Supra*) was rendered in a batch of five writ petitions and one S.L.P., as stated in the opening para of that judgment. The petitioner in the Writ Petition No. 352 of 1989, is the President of the All India Retired Railwaymen (P.F.Term) Association and the petition has been filed in a representative capacity on behalf of all the member of the Association, who retired with Provident Fund benefits. It is unlikely that none who retired between 1.4.1969 and 14.7.1972, was not a member of the Association, Granting this highly improbable possibility, we notice from the same para that petitioner no.5, in Writ Petition No.1575 of 1986, retired on 19th June, 1972, which falls within the period under consideration. Therefore, atleast ~~the~~ one petitioner before the Supreme Court had the same grievance as the applicants in T.A./27/87, or as the present applicant. This para also gives the dates of

other

retirement of some of the / petitioners. Thus, the petitioner in Writ Petition No. 285/89 retired on 07.1.1968. There were 8 petitioners in W.P. No. 1575 of 1986 of whom the fifth retired on 19.06.1972. The others retired on 05.11.1960, 01.03.1988 (SIC for 01.03.1986) 5.12.1960, 30.06.1977, 28.08.1962, 17.2.1968, and 15.10.1966. In other words, the petitioners retired on various dates but their grievance was common.

15. The case of these petitioners as mentioned in that judgment is as follows :

"It is the petitioner's case that before 1957 the only scheme for retirement benefits in the Railways was the Provident Fund Scheme, wherein each employee had to contribute till retirement a portion of his annual income towards the Provident Fund and the Railways, as the employer, would make a matching contribution thereto. This Provident Fund Scheme was replaced in the year 1957 by the Pension Scheme, whereunder, the Railways would give, posterior to his retirement, certain monthly pension to each retired employee, instead of making prior contribution to his Provident Fund. It is stated that the employees who entered Railway service on or after April 1, 1957 were automatically

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covered by the Pension Scheme, instead of the Provident Fund Scheme. Insofar as the employees who were already in service on April 1, 1957, they were given an option either to retain the Provident Fund benefits or to switch over to the pensionary benefits, on condition that the matching Railway contribution already made to their Provident Fund accounts would revert to the Railways on exercise of the option.

2. It is the petitioner's case that till April 1, 1957 or even some time thereafter, the pensionary benefits and the alternative Contributory Provident Fund benefits were considered to be more or less equally beneficial, wherefore, employees opted for either or them. That the benefits of the two were evenly balanced was evidenced by the Railway Board circular dated September 17, 1960 which gave an option to the employees covered by the Provident Fund Scheme to switch over to pension scheme and vice versa. "

It is then alleged that, over the years, the pension scheme became more attractive, due to the repeated improvements made in the pension scheme directly or indirectly. Therefore, option was given to persons in service on a cut off date to exercise a fresh option. This opportunity is every time denied to

those who had retired before the cut off date and thus they were denied the benefit of the Pension Scheme. This was alleged to be discriminatory as follows :

" It is contended by the ~~petitioners~~ petitioners that each of the above notifications including the last one, dated May 8, 1987 had given a fresh option to some of the PF retirees while denying that option to other PF retirees who were identically placed but were separated from the rest by the arbitrary cut-off date. Each of the notifications specified a date and provided that the PF retirees who retired on or after that date would have fresh option of switching over to the pensionary benefits even though they had already retired, and also had already drawn the entire Provident Fund benefits due to them. It is also contended that the specified dates in these notifications, having formed the basis of the discrimination between similarly placed PF retirees, those were arbitrary and unrelated to the objects sought to be achieved by giving of the option and were clearly violative of Article 14 and also of the principle laid down in Nakara case, which according to counsel, is that

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pension retirees could not be divided by ~~any~~ such arbitrary cut-off dates for the purpose of giving benefits to some and not to other similarly situated employees; and that by analogy the rule is equally applicable to the Provident Fund retirees as a class."

16. These allegations were denied by the respondents. Shri Kapil Sibal, the learned Additional Solicitor-General gave a detailed account of the manner in which the Pension Scheme was introduced in the Railways and the steps taken to permit the employees to opt for the scheme. Inter alia, it was pointed out as follows :

i) Pensions Scheme was introduced on 01.04.1957. It was to apply compulsorily to all employees recruited on or after 01.04.1957. Employees in service on 01.04.1957 who were all governed by C.P.F. terms had to state whether they opted for the Pension Scheme. The option was to be exercised before 31.3.1958. This last date was extended upto 30.09.1959.

ii) After this first option, 11 more options were given on different dates (i.e. option II to XII), because the terms and conditions of service were changed. Employees, governed by the C.P.F. terms, who were in service on the date with effect from which the condition of service was changed had, therefore, to be given an opportunity

to reconsider the matter in the changed circumstances. Therefore, an option was given to those who were in service on the date on which the change in service condition came into force. Such an option was also given to those persons who, though in service on that date, had retired on or after this date but before the later date, on which the notification containing the change of service condition was issued.

iii) The time limit for exercise of the option, consequent upon the decision taken on the basis of the Third Pay Commission Report (Option VIII, in Krishna Kumar's case), was extended on a number of occasions. This is due to the fact that the actual pay scale for various categories were notified piecemeal and without this information the option could not be exercised.

iv) An option is necessitated only when a change of condition in service takes place, which has a direct bearing on the quantum/quality of pension. A time limit is given within which the option has to be exercised. None gets a right to any option after the expiry of this time limit, whether he is in service or has retired after the time limit. An opportunity for another option will be given only if the need to give such an option arises i.e., if there is a change in condition of service and the option will be restricted to those who are in service on the date the change takes place and to these who were in service on such date ~~had~~ but had retired before the notification introducing the change, was issued.

Therefore, in the period that falls between the date upto which the last option is permitted to be exercised and the date from which the next option is permitted, no person, whether serving or retired, has a right to exercise an option. We may note that the period 1.4.1969 to 14.4.1972, is one such period.

v) The option given by the R/1, circular dated 15.11.1972, (Option VII in Krishna Kumar's case), was not given due to any change in condition of services on 15.11.1972. It was given on the representation from the recognized labour federations that many employees had not clearly understood the liberalization introduced in the Pension Scheme. In other words, this is in the nature of an extension of the original time limit for exercise of option, but was given after a long break.

17. We can conveniently dispose of one more point at this stage. The New Bombay Bench expressed surprise why dependents and families of those who died between 01.04.1969 and 14.11.1972, were given an option, while denying it to those who retired in this period. Though, not stated by the respondents, there are two possible reasons. Undoubtedly, the dependent family of an employee, who has only retired but is alive, is much better placed than the dependent family whose head has died in harness. Secondly, in terms of the R/1, circular dated 15.11.1972, one who has retired before 15.11.1972 is not entitled to the option. But, if a person had not died between 1.4.1969 and

14.11.1972, and had lived till 15.11.1972 (i.e., when the R/1 circular was issued) / he could have given his option. His death has thus put the family to double disadvantage. It is perhaps, to soften the blow suffered that the Annexure-A/3, circular was issued, to give the dependents an opportunity to exercise the option. Such an option was not given to those who had retired, like the applicant, probably because there was no such demand for it from any Association.

18. It is thus clear that, in T.A./27/87, and the present application, the dispute is about the right of the applicants to get the benefit of the R/1, circular, though they had retired before the date (15.11.1972), on which it was issued and made effective, on the other hand, Krishna Kumar's case, decided by the Supreme Court, deals with the same issue in respect of a number ^{of} petitioners who had retired on various dates. All of them, however, claim the right to exercise an option to come over to the Pension Scheme, by contending that the specific circular granting an option, cannot confer this right only to those persons who were in service on the cut-off date indicated therein and also that the prescription of such a cut-off date is violative of the Constitution. It is for this reason, - viz. that the issues in both T.A./27/87, and Krishna Kumar's case are similar - that Shri Shanti Bhushan, the learned counsel for some of the petitioners submitted as follows in the latter case : -

"Mr. Shanti Bhushan then submits that the same relief as is being canvassed by the petitioners herein has been upheld by this Hon'ble Court by dismissing the SLP NO. 5973 of 1988 of the government in the case of Union of India Vs. Ghansham Das and Ors., against the judgment of the Central Administrative Tribunal, Bombay. The Tribunal had held the same notifications as were impugned herein to be discriminatory and had directed that a fresh option be given to all PF retirees subject to refund of the government contribution to Provident Fund received by adjusting it against their pensionary rights. Similarly, it is submitted, in a Rajasthan case, both the Single Judge and the Division Bench have held that all the retirees would have to be given a fresh option as the notifications giving the option only to some retirees are clearly discriminatory. This view has, it is urged, again been upheld by this Hon'ble Court by dismissing the Special Leave Petition No. 7192/87 of the government by order dated August, 11, 1987."

This was not accepted by the Supreme Court which turned down this request with the following observations:

(b)

"We have perused the judgments.

The Central Administrative Tribunal in Transferred Application No.27 of 1987 was dealing with the case of the petitioners' right to revise options during the period from April, 1, 1969 to July 14, 1972 as both the petitioners retired during that period. The Tribunal observed that no explanation was given to it nor could it find any such explanation. In State of Rajasthan V. Retired CPF Holder Association, Jodhpur, the erstwhile employees of erstwhile Princely State of Jodhpur who, after becoming government servants opted for Contributory Provident Fund, wanted to be given option to switch over to Pension Scheme, were directed to be allowed to do so by the Rajasthan High Court, relying on Nakara which was also followed in Union of India Vs. Bidhubhushan Malik, subject matter of which was High Court Judges pension and as such both are distinguishable on facts."

19. The inference is therefore, very clear that the Supreme Court did not overrule the judgment in TA/27/87, only because it was found to be a correct judgment in the light of the pleadings in that case, but that it cannot be taken as a decision to be relied upon. Therefore, the New Bombay Bench Judgment will apply only to the applicants who were

parties thereto. The present applicant cannot be given a deal better than what was given by the Supreme Court to the various petitioners before it, in Krishna Kumar's case. In other words, this application is squarely governed by the decision of the Supreme Court in that case. We shall refer to the issue decided therein.

20. The Supreme Court posed the question as to what was the ratio decided in Nakara's case (1983) 1 S.C.C. 305), and how far that would be applicable to the P.F. retirees. (Para-18 of the Judgment). After a detailed discussion the following conclusions were reached. (Para - 30).

"Thus the court treated the pension retirees only as a homogeneous class. The PR retirees were not in mind. The court also clearly observed that, while so reading down, it was not dealing with any fund and there was no question of the same cake being divided amongst larger number of the pensioners than would have been under the notification with respect to the specified date. All the pensioners governed by the 1972 Rules were treated as a class, because payment of pension was a continuing obligation on the part of the State till the death of each of the pensioners and, unlike the case of Contributory Provident Fund, there was no question of a fund in liberalising pension."

"In Nakara it was never held that both the pension retirees and the PF retirees formed a homogeneous class and that any further classification among them would be violative of Article 14. On the other hand, the court clearly observed that it was not dealing with the problem of a "fund". The Railway Contributory Provident Fund is by definition a fund. Besides, the government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand, under the Pension Scheme, the government's obligation does not begin until the employee retires when only it begins and it continues till the date of the employee. Thus, on the retirement of an employee, government's legal obligation under the Provident Fund account ends while under the Pension Scheme it begins. The rule governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being

the legal position, the rights of each individual PF retiree finally crystallized on his retirement ~~whereafter~~ no continuing obligation remained while, on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was ~~xi~~ the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the pension retirees. An imaginary definition of obligation to include all the government retirees in a class was not decided and could not form the basis for any classification for the purpose of this case. Nakara cannot, therefore, be an authority for this case."

21. The next question considered was whether the specification of a cut off date in the notifications giving option (15.11.1972, in the case of the impugned R/1, notification in the present case) is in violation of Article-14 of the **Constitution** for the very reason, for which a similar cut off date was read down in Nakara's case. Their Lordships' findings are as follows: -

"The next argument of the petitioners is that the option given to the PF employees to switch over to the pension scheme with effect from specified cut off date is - bad as violative of Article 14 of the Constitution for the same reasons for which in Nakara, the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the facts that while in case of pension retirees who are alive the government has a continuing obligation and if one is affected by dearness the others may also be similarly be affected. In case of PF retirees, each one's rights having finally crystallized on the date of retirement and receipt of PF benefits and there being no continuing obligation thereafter, they could not be treated at par with living pensioners. How the corpus after retirement of a PF retiree was affected or benefited by price~~s~~ and interest ~~rise~~ was not kept any track of by the Railways. It appears in each of the cases of option, the specified date bore a definite nexus to the object sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reasons for giving the option and only the employee who retired after the specified date

13-10-1992.
Vice Chairman
(N.V. Krishnan)

Judicial Member
(R.C. Bhatt)

dismissed. There will be no order as to costs.

that judgment this application has no merit. It is Kumar's case (1990) 14 A.T.C. 846). In the light of that issue has been finally decided in Krishna that the issue should be canvassed before us that this application should be governed by that decision. It is abundantly clear parties to that case, because it was vehemently

by the New Bombay Bench will apply only to the that the judgment in Ghanashamdas' case (T.A./27/87),

23. We have gone into great detail to show

and the solitarily special leave petition were dismissed. sufficient. It to say that all the five writ petitions conclusions reached in Krishna Kumar's case.

22. It is not necessary to advert to the other

3.1 of the 12th option does not arise."

striking down or reading down clause no discrimination and the question of fund holders. There was, therefore, benefits were also granted to the President also appear that corresponding compensation successful Gay Commissions. It would

submissioon appears to have been substanti- ate by what has been stated by the notificatiion were made eligible. This and before and after the date of

OFFICE REPORT

ORDERS

17/6/93

Adjourned to 15-7-93.

(R.C.Bhatt)

Member (J)

ss

15/7/93

This is a D.B. matter

The other Hon'ble member is
not available. Adj. to 9/8/93

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

10/8/93

Learned advocates are present.

Mr.Pathak, learned advocate for the applicant
relies on circular No.E(G)/88/PN-1/6 dated
2nd January, 1992 . The respondents should keep
this circular ready on the next date. because,
it is on the basis of this circular , the
applicant seeks relief now. in this O.A.

Call on 1/9/93.

(M.R.KOLHATKAR)

Member (A)

(R.C.BHATT)

Member (J)

ssh

DATE	OFFICE REPORT	ORDERS.
1/9/93		<p>Learned advocate Mr. Shevde to produce the Railway Board circular No. E(G) Gaz./88/PN-100 issued -6- dated 2nd January, 1992 with a copy to the learned advocate for the applicant.</p> <p>Call on 16/9/93.</p> <p><i>M.R.Kolhatkar</i> <i>Nes</i> (M.R. KOLHATKAR) (R.C. BHATT) Member (A) Member (J)</p> <p><i>AT</i> <i>ss</i></p>
16.9.1993.		<p>The matter is adjourned for want of time to 16.9.1993 29.9.1993.</p> <p><i>M.R.Kolhatkar</i> <i>Nes</i> (M.R. KOLHATKAR) (R.C. BHATT) Member (A) Member (J)</p> <p><i>AIT</i></p>

DATE	OFFICE REPORT	ORDER
29/9/93		<p>By consent of the parties, the matter is adjourned to 20/10/93.</p> <p>Call on 20/10/93</p> <p><i>M.R.Kolhatkar</i> <i>NB</i></p> <p>(M.R.KOLHATKAR) Member (A)</p> <p>(R.C.BHATT) Member (J)</p>
20.10.93		<p>ssh</p> <p>Learned advocate Mr. Sheyde for the respondents submits that on 1.9.93, the respondents were directed to produce Railway Board circular, dated 2.1.92 as the learned advocate Mr. P.H. Pathak for the applicant relies on this document. The respondents therefore, produce the same with M.A.568/93. We allow the production of this document, which may be given Annexure number as R-2. M.A. is disposed of.</p> <p>Call on 15.12.93.</p> <p>*** <i>NB</i></p> <p>This matter is adjourned to 4.11.93. This date is given due to the mention by Mr. Pathak after the date in December was given. Mr. Pathak to intimate about this change of date to the respondents' advocate.</p> <p>Call on 4.11.93.</p> <p><i>M.R.Kolhatkar</i> <i>NB</i></p> <p>(M.R.KOLHATKAR) Member (A)</p> <p>(R.C.BHATT) Member (J)</p>
		<p>ssh</p>

X

Date	Office Report	Order
4.11.1993.		<p>Learned advocates are present. Call on 21.12.1993.</p> <p><i>Mr. Kolhatkar</i> (Mr. Kolhatkar) Member (A)</p> <p><i>R.C. Bhatt</i> (R.C. Bhatt) Member (J)</p>
	AIT	
21-12-93		<p>Want of time the matter is adjourned 22.12.93</p>
22/12/93		<p>K. RAMAMOORTHY MEMBER (A) (N. B. Patel) Vice Chairman</p> <p>As the learned Member of the Bench is not available, the matter is adjourned to 23.12.93.</p> <p>K. RAMAMOORTHY MEMBER (A)</p>
23-12-93		<p>With the consent of the advocates adjourned to 29-12-93.</p> <p><i>K. Ramamoorthy</i> (K. Ramamoorthy) Member (A)</p> <p><i>N. B. Patel</i> (N. B. Patel) N. B. Patel</p>
		<p>pkk</p>

DATE	OFFICE REPORT	ORDER
29/12/1993		<p>Annexure-A, which is produced by the applicant and which is a letter dated 4.8.1972 received by the applicant from the Railways, shows that the said letter is with reference to the applicant's letter dated 30.7.1972. On behalf of the applicant, it was stated that this letter dated 30.7.1972, the applicant had indicated, if not exercised, an option in favour of Pension Scheme. It is not clear from Annexure-A as to whether there was any indication by the applicant in his letter dated 30.7.1972 to opt for being governed by Pension Scheme. The Railways should have produced this material document. We, therefore, direct ^{them} to produce the said letter as also representation, if any, earlier made by the applicant while in service indicating or exercising option in favour of Pension Scheme. In connection with the latter part of our direction, we may mention that the applicant has made a clear averment in his application to the effect that he had made such a representation before he retired from service. This averment</p>

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Date	Office Report	Order
		<p>made in para VI (1) of the application is not specifically controverted in the reply filed by the Railways. Hence, the latter part of direction to produce such a representation, if any, also, along with the letter dated 30.7.1972. This order for production shall be complied with latest by 17.1.1994. If production is not made accordingly, an affidavit explaining non-production may be filed within the said stipulated period.</p> <p>Call on 17.1.1994.</p> <p> </p> <p>(K. Ramamoorthy) Member (A) (N.B. Patel) Vice Chairman</p> <p>a.a.b.</p> <p><i>1-9-1-94</i></p> <p><i>For want of time the matter is adjourned</i> <i>3-8-94</i></p> <p> </p> <p>K. RAMAMOORTHY MEMBER (A) (N.B. Patel) Vice Chairman</p>

OA

184/91

Date	Office Report	Order
3/2/94		<p>For want of time the matter is adjourned to 25/2/94....</p> <p><i>R</i></p> <p>K. RAMAMOORTHY MEMBER (A)</p> <p><i>(N. B. Patel) Vice Chairman</i></p>
25.2.1994.		<p>At the request of Mr. N.S. Sheyde and with the consent of Mr. P.H. Pathak, adjourned to 03.03.1994.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p><i>(N. B. Patel) Vice Chairman</i></p>
3-3-94		<p>For want of time, the matter is adjourned to 24-3-94.</p> <p><i>R</i></p> <p>(K. Ramamoorthy) Member (A)</p> <p><i>(N. B. Patel) Vice Chairman</i></p>
24/3/94		<p>For want of time the matter is adjourned to 21/4/94.</p> <p><i>R</i></p> <p>K. RAMAMOORTHY MEMBER (A)</p> <p><i>(N. B. Patel) Vice Chairman</i></p>

Date

Office Report

OA 187/91

ORDER

MR

21/6/94

other
As the learned Member of
the Bench is not available
the matter is adjourned
to 29/6/94

R

RAMAMOORTHY
MEMBER (A)

29-6-94

At the request of learned counsel for
the parties, the case is adjourned to 8-7-1994.

frh

(Dr. R.K. Saxena)
Member (J)

IR
(K. Ramamoorthy)
Member (A)

vtc.

8-7-94

Time being over adjourned to 22-7-94.

frh

(Dr. R.K. Saxena)
Member (J)

R
(K. Ramamoorthy)
Member (A)

*AS.

22-7-94

on 8-7-94 filed by
Respondent is allowed.
Heard learned advocates for
the applicant & Respondent.

Judgement Reserved.

frh

(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

PA. Raval
(O/T II)

The Judgement pronounced
in open Court

WZ

PA. Raval
(O/T II)
(Dr. R.K. Saxena)
Member (J)

(K. Ramamoorthy)
Member (A)

N7

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 187/91

T.A. NO.

DATE OF DECISION 2-8-94

Shri S.S. Gohel

Petitioner

Mr. P.H. Pathak

Advocate for the Petitioner (s)

Versus

Union of India and Others.

Respondent

Mr. N.S. SHEVDE

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K. Ramamoorthy

Member (A)

The Hon'ble Dr. R.K. Saxena

Member (J)

JUDGMENT

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

No.

S. S. Grobel,
Plot No 108/A,
Sector - 19,
Ganesh Nagar,

— Applicant

Vesves

1. Union of India,
through, Secretary
to the Govt of India,
Ministry of Railways
Rail Bhawan, New Delhi.

2. General Manager,
Western Railways,
Churchgate, Bombay.

3. Chief Administration Officer,
Metropolitan Transport Project,
(Railway) Churchgate, Bombay.

— Respondents

For applicant — Sri P. H. Patilak Advocate.

For respondents — Sri N. S. Shinde, Advocate.

JUDGMENT

In

O.A. No 187 of 1991

For Hon'ble Dr. R.K. Saxena Date 21/8/94
Member (J).

This case was decided on 13.10.92, dismissing the application. The applicant then moved the review application on 13.11.1992 on the ground that the decision of Bombay Bench of Central Administrative Tribunal in Ghanashyan Das and another vs Chief Personnel Officer and others had binding effect but this Tribunal while deciding the present case, missed it. In view of these facts, the judgment dated 13.10.1992 was

recalled on 10.2.1993 and the matter was fixed for rehearing.

The brief facts of the case are (applicants) that he had joined services of princely State Bharanagar in 1940 as engineer in Public Works Deptt. He was subsequently transferred to the Railway Department of the same princely state. On merger, the applicant was placed with the Western Railways. He was working as chief Administrative officer at the time of his retirement on 11.7.1972. On the date of retirement, the applicant had requested to allow him off for the pension scheme but his request was turned down vide letter 4.8.1972 giving reference of Railway Board's order dated 15.7.72 under which the case of the applicant was not covered. Since this point was raised in the court of law by some retired railway employees, the applicant waited for the result.

Ultimately came the decision of Gaurishankar Dass case in T.A. No 27187 of Bombay Bench of the Tribunal. The judgment was challenged by filing special leave petition before the Supreme Court but the same was rejected. The applicant was under the impression that the respondents should extend the benefit of the decision to other similarly situated retirees but it was not done. Hence this application was moved with the prayer that the benefits of judgment in T.A. 27187 and of O.A. 373189 be directed to



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A6

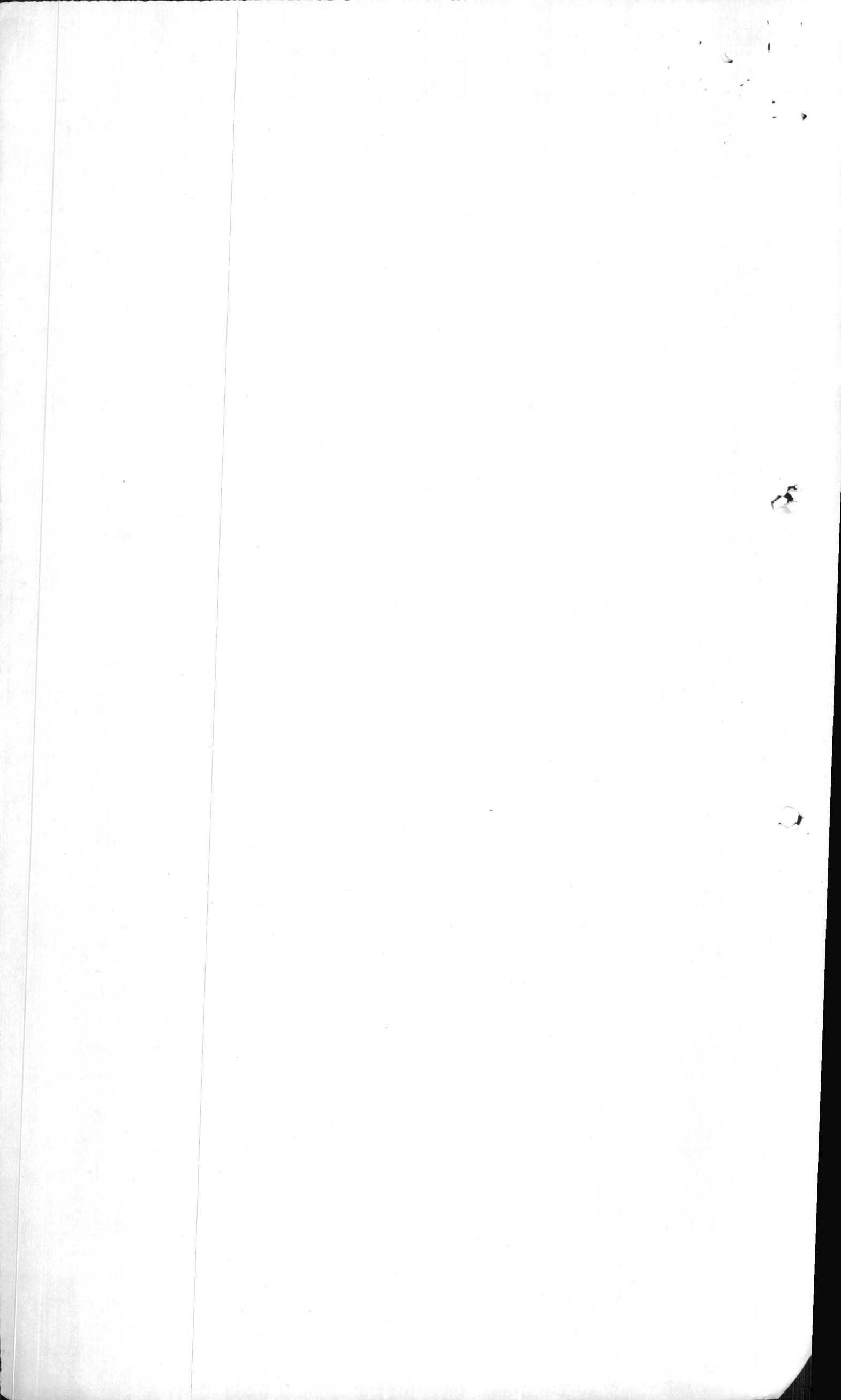
be extended to the applicant. He should also be held entitled to pensionary benefits from the date of his retirement i.e. 11.7.1972 along with interest @ of 12% per annum, and to hold that the orders of Railway Board providing for opening and closing of option is contrary to law.

The respondents contested the case on the grounds of limitation, jurisdiction and entitlement of the reliefs. It is averred that the applicant had retired on 11.7.1972 and his representation was rejected on 4.8.72 in view of the letter dated 15.7.72 of Ministry of Railways. It was denied that letter dated 30.7.72 of the applicant was an option. It is contended that the applicant by the said letter had sought information if the pension scheme was beneficial to him. The respondents also averred that the ratio of the decision in T.A. 27187 was not applicable to the applicant.

It is contended that option of contributory provident fund or pension cannot remain open throughout the service and some limit ^{of time} will have to be fixed.

The controversy raised by the respondents is that the application is barred by limitation and the Tribunal has got no jurisdiction.

It is true that the applicant had retired from service on 11.7.72. His contention that his leave preparatory to retirement was refused and

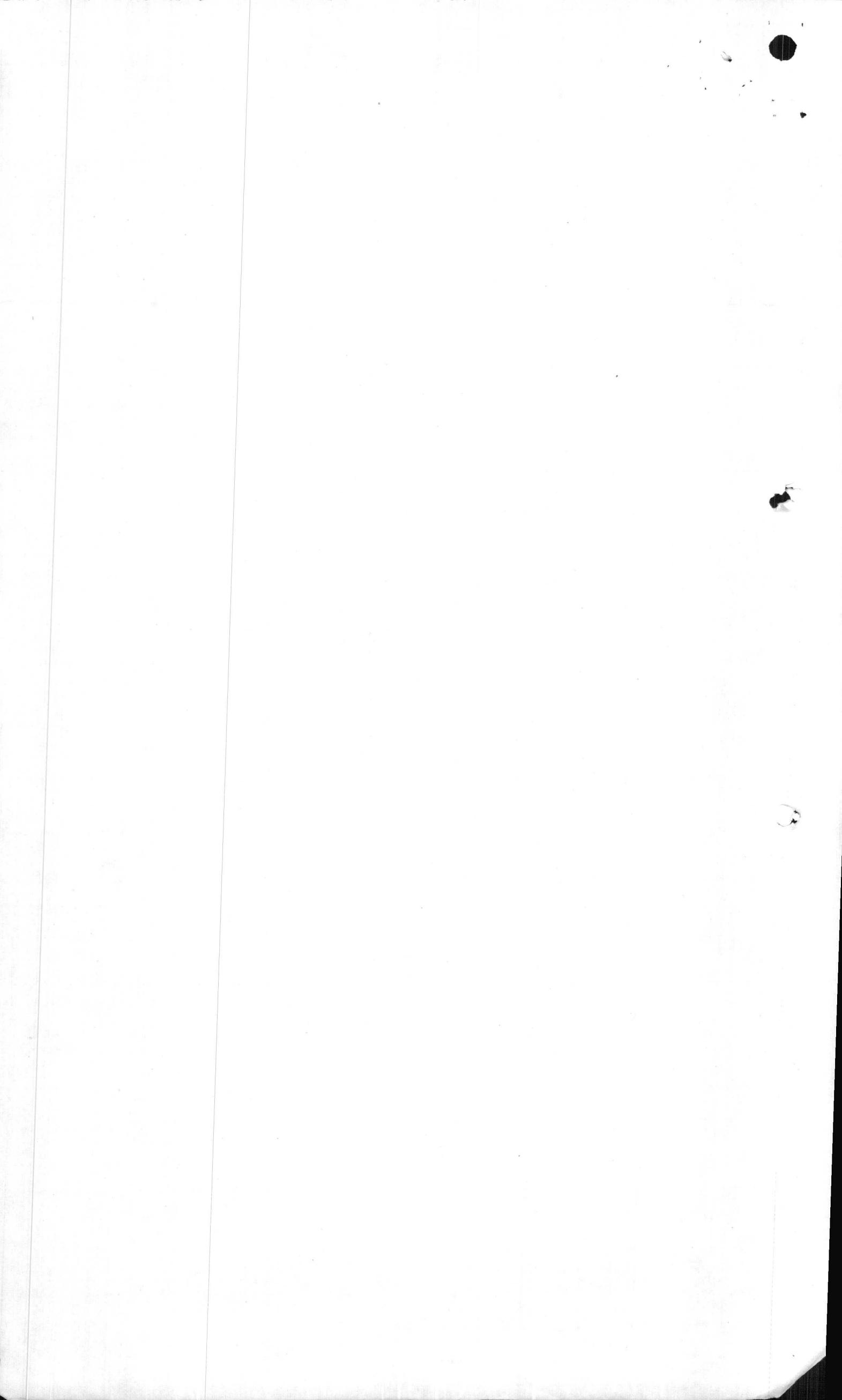


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the salary was paid till 11.1.73 and thus there was deemed continuation of his period of retirement, does not hold good. Since there was no provision of encashment of leave in those days, the salary was paid on monthly basis. Thus the period of retirement came to an end on 11.7.72. With this date of retirement is attached the retirement benefits. The matter of pension is a continuing cause of action and thus the limitation does not come in the play. Assuming that there is limitation bar in the case, it is removed when the directions were given by the Tribunal in T.A. No 27/87 that pension scheme could be available ~~subject~~ to certain conditions to those who had retired between 1.4.69 and 14.7.72. Though this judgment was given on 11.11.87 but finality can be attacked when S.L.P. was rejected on 5.5.91. Thus those who take shelter behind this judgment, can seek remedy by filing application. If the period of limitation is counted from 5.5.91, this application is filed within the period of limitation.

So far as the question of ~~the~~ jurisdiction of the Tribunal is concerned, we hold that when it is a matter relating to service, the jurisdiction is automatically there.

The crux of the matter is whether the view taken in T.A 27/87 is applicable in this case. In the earlier judgment of 13.10.92 of this case (which was recalled

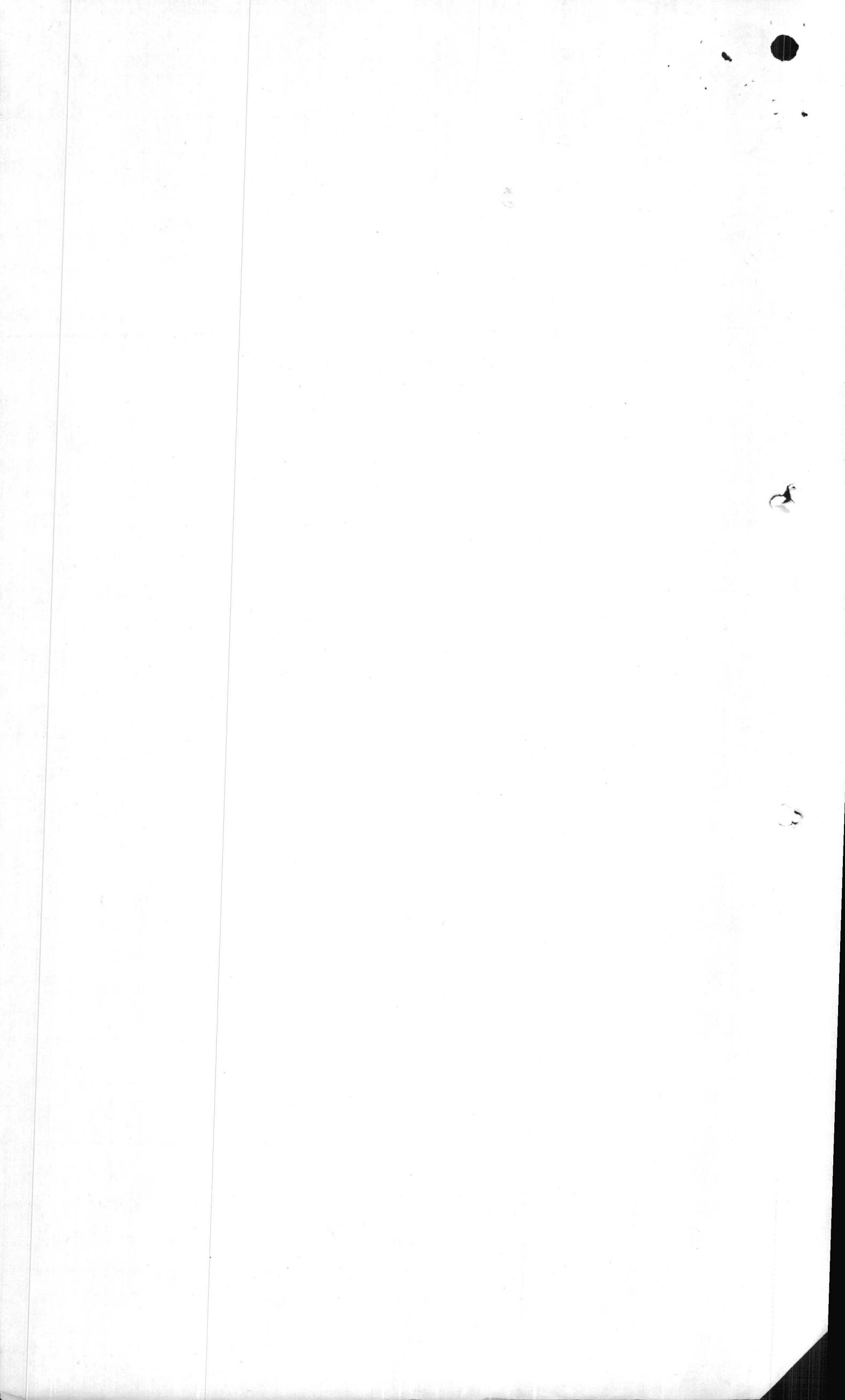


on review application being moved), the detailed discussion was made and it was concluded that the judgment of Ghanshyam Das case T.A. No 27/87 was applicable to the parties of that case only because it concerned to special facts and circumstances. The view which was of general application was one taken by the Supreme Court in Krishna Kumar vs Union of India (1990 S.J.P. 173). It is true that the Tribunal in the case T.A. 27/87 Ghanshyam Das and another vs Chief Personnel Officer and others considered a special category of retirees of the period of 1.4.69 to 14.7.72 but the relief was not confined to those applicants alone. The Tribunal had directed to give benefit to similarly situated retirees also. Similarly the respondents issued a letter dated 5.2.92 accordingly. Thus the judgment of T.A. 27/87 does not remain confined to the parties of the case alone.

Now the question arises as to what are those directions which were given by the Tribunal and whether they are fully applicable to the facts and circumstances in the present case. The directions given in T.A. 27/87 are as under:

"In the result, we pass the following orders:

1) The respondents are directed to hold that the applicants



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are entitled to the benefit of the pension scheme since their retirement and to determine the pension due to them according to the rules in existence at the time of their retirement taking into consideration the amendments made to the rules thereafter.

- 2) The respondents will be entitled to recover all the amount from the applicants which would not have been due to them if they had opted in favour of pension before their retirement.
- 3) The respondents shall calculate the arrears of pension due to the applicants and after deducting the amounts due from the latter as per clause (2) of this order, pay the balance, if any, to the applicants.
- 4) No interest is to be charged on the amounts due to each other.
- 5) The above order should be implemented as early as possible and in any case within four months from the receipt of a copy of the order.
- 6) The respondents are directed to implement the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants.

i.e those who retired during the period from 1.4.69 to 14.7.72 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme.

7) Parties to bear their own costs."

The perusal of the above directions shows that 1 to 5 and 7 are related to the parties of the case concerned and at serial no 6 was of general nature. It is this direction at serial no 6 which was taken into consideration for compliance after SLP was rejected and a letter dated 5.2.92 was issued by the respondents. In this circular letter the respondents laid down all those conditions which were spelled out in the judgment. The direction at serial no 6 (referred to above) did not specify the date of option whereas the circular letter fixed not later than 31.12.72. On examining the judgment of T.A. 28187, we found that the date 31.12.72 was suggested by the Tribunal itself.

The learned counsel for the respondents argued that the present applicant does not satisfy the requirement of circular letter dated 5.2.92 and, therefore, he is not entitled to the benefit of pension scheme. It is contended that the applicant had never opted for this scheme. The applicant had referred to his letter dated 30.7.72, the

the photostat copy of which has been brought on record by the respondents.

It is a personal letter written in the name of Sri Kulkarni and information was sought whether pension option has been extended to those who had just retired. The contention of the respondents is quite correct that these letters cannot be construed as letters of option for pension. The reply was, however, given on 4.8.72.

The applicant referred to a representation dated 6.4.89 in his application in connection with the exercise of option for pension. The respondents denied receipt of this letter in their office. Even if it is assumed that such a representation was given and was not traceable with the respondents or is being suppressed, it does not strengthen the case of the applicant because then the option was not exercised upto 31.12.72. When the applicant is taking shelter behind the decision in T.A. 27187, the dictum must be followed, as specified therein. Looking from this angle, we come to the conclusion that though the applicant falls within the category of retirees of the period from 1.4.69 to 14.7.72 but he had not exercised the right of option within the stipulated period of time i.e 31.12.72. Thus the law laid down in T.A. 27187 and indirectly approved by the Supreme Court by rejecting the SLP, is not applicable to the applicant.

It has been urged on behalf of the applicant that the Railway Board's order fixing cut off date of option be declared illegal. By not fixing date of option, the things cannot be allowed to remain unsettled. This point was, however, considered by the Supreme Court in Nakasat Case (1983) 1 S.C.C. 305 and held that there was no discrimination and there was no question of striking down the same.

Following the same view, we hold that there was no unconstitutionality in fixing the cut off date of option.

On the consideration of all the facts and circumstances of the case, we find no merit in the application and the same stands rejected. Cost is made easy.

Subserves

(Dr R.K. Sarma)

R.S.

(K. Rammoorthy)