

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

No Review

R.A.St.499/92 in

O.A. No./187/91

~~Ex No.~~

DATE OF DECISION 10.2.1993

Shri S.S.Gohel _____ Petitioner

Shri 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. N.V.Krishnan
Vice Chairman

The Hon'ble Mr. R.C.Bhatt
Member (J)

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 Bhawan
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)

ORAL ORDER

R.A.St.4999/92 in
O.A./187/91

Date: 10.2.1993

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

Shri P.H.Pathak, advocate for the applicant.

Shri N.S.Shevde, advocate for the respondents.

This Review Application has been filed for a review of the order dated 13.10.92 passed by us. The applicant has stated in para-2 of the R.A. that when the case was finally heard, we had expressed, the view that the judgment of the Bombay Bench in the Ghanshayam Dass' case is ~~finding~~ but other judgments are also to be seen and therefore, the parties were informed that, in, case the Bench came to the conclusion that the judgment of the Bombay Bench ~~is~~ in Ghanshayam dass' case was not applicable, a further opportunity of hearing would be given to the parties. The learned counsel for the respondents, however, feels that it was stated further hearing ~~was~~ necessary in ^{if} ~~it~~ this case, ~~it~~ would be given to the parties.

2. The applicant states that by passing the final order without giving this opportunity, an apparent error has been committed.

3. As there seems to be some grievance on this score, we are of the view that in the interests of justice, it would be necessary to recall the judgment and parties be given opportunity for further hearing. As this is sufficient reason for ~~reviewing~~ rehearing the order, we allow this R.A.

4. In the circumstances, we recall our

order dated 13.10.92 and the case will
be heard again . Review Application is
allowed.

Raval
(R.C.Bhatt)

Member (J)

Chun
10.2.93

(N.V.Krishnan)

Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

REVIEW APPLICATION NO.

OF 1992

IN

ORIGINAL APPLICATION NO. 187/91

S. S. Gohel

.. applicant

vs

Union of India & ors.

.. respondents

Application for Review of the
Judgement dated 13.10.92

MAY IT PLEASE THE HON'BLE TRIBUNAL :

1. That the present applicant has filed the Original Application challenging the discriminatory treatment given by the respondents in granting of the benefits of Pension Scheme to the applicant. That the case of the applicant is directly covered by the judgement of the Hon'ble Bombay Bench, which is confirmed by the Hon'ble Supreme Court and therefore it has become the law of land which is binding all over the country and to the administration as particularly in light of the last judgement by the Hon'ble Supreme Court in G.C. Ghanshamdas Ghosh case.

*Read copy
W.S.
Adv. J. Kap
26-10-92*

2. That when the matter came up before the Hon'ble Tribunal for final hearing, the advocate of the applicant has pointed out the judgement of Ghanshamdas case as well as is confirmed by the Hon'ble Supreme Court and the respondents have pointed out the judgement of Krishnakumar case but in the said judgement, the Hon'ble Supreme Court has distinguished the case of Ghanshamdas as well as after the judgement of Krishnakumar case when the department has filed

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Review Application before the Hon'ble Supreme Court, the Hon'ble Supreme Court has rejected the review saying that the case of Ghanshamdas is distinguished from the case of Krishnakumar. That looking to all judgements of the Hon'ble Tribunal, the Hon'ble Tribunal was of the *prima facie* view that the judgement of Hon'ble Bombay Bench is binding ~~but~~ the other judgements are required to look into detail and therefore the Hon'ble Tribunal has said that if the Hon'ble Tribunal will come to the conclusion that the judgement of Bombay Bench is not applicable then the matter will be placed before the Bench for further hearing.

3. That the applicant was waiting for the decision and when the matter was placed before the Hon'ble Bench, the parties were under impression that the Hon'ble Tribunal will follow the judgement of the Hon'ble Bombay Bench as further hearing is not given to the parties. But when the judgement was pronounced, the advocates of the parties were shocked and they felt that there is a bonafide mistake on the part of the Tribunal and as it was not mentioned in the order that the matter will be heard in case the Tribunal defer from the judgement of the Hon'ble Bombay Bench. Actually, the matter was required to be placed for further hearing to enable the advocate of the applicant to point out to the Hon'ble Tribunal that on what ground the judgement of the Hon'ble Bombay Bench is binding and whether it will be open to the Hon'ble Tribunal to reject the application because it will be in clear violation of Art.14 of the Constitution of India.

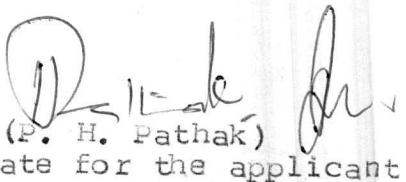
4. In the abovementioned circumstances, I am not entering into ~~whether~~ merit of the case because a fair opportunity to argue ~~with~~ the matter is required to be given by the Hon'ble Tribunal in interest of justice and therefore keeping my right open to point out to the Hon'ble Tribunal in detail, I the applicant pray that :

(A) The Hon'ble Tribunal be pleased to review its order and judgement dt. 13.10.92 and be pleased to direct the office to place the matter for further hearing before the Hon'ble Tribunal.

(B) In the special circumstances of the case, the affidavit of the applicant may be dispensed with as the facts stated above have taken place in the presence of the advocate of the applicant and the applicant's advocate has signed the memo of the application.

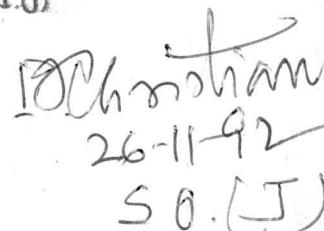
(C) Any other relief to which the Hon'ble Tribunal deems fit and proper in interest of justice together with cost

Date : 13/11/92
Ahmedabad


(P. H. Pathak) for
Advocate for the applicant

P. H. Pathak
Filed by Mr....
Learned Advocate for Petitioners
with second set & ~~one~~ spares
copies copy served/not served to on the
other side

Dt. 26/11/1992 Dy. Registrar C.A.T.O.
A'bad Bench


D. Chintamani
26-11-92
S.O. (J)

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 Bhava,
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)

JUDGEMENT

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 Schem - C.P.F. for short. The applicant states that this dispute stands concluded by an unreported judgment dated 11.8.1987, of the New Bombay Bench of the Tribunal In T.A./27/87, Ghansham Das and another Vs. The Chief Personnel Officer, Central Railway and Ors, the benefits 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 alleged 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."

(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 matters 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

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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 Ghansham Das and one other employee 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 judgement 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 1.3.1971, respectively, (i.e. during the period from 1.4.1969 to 14.7.1991) from exercising the option as provided by the Annexure-R/1 circular dated 15.7.1972 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 Ghansham Das 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~~ fourth respondent a representation dated 6/4/89 (Annexure-A/1), exercising his option for pension scheme from 11.7.1992, i.e. the date of his retirement and he requested for pension to be given to him. This has not been disposed off.

(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 19/2/1972, (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. 11.7.72, 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 three 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, latter.

(iii) The respondents claim that the judgement 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, (Annexure-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 11.1.1973.

(iv) It is finally contended that in Krishna 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 OA/373/89. This is of 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, it is not available.~~

reasons. Firstly, S.E.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 petition. 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. 5913/89. 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 Ghanshamdas'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./155091, for condonation of delay starting 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 Ghanshamdad's case (T.A./27/87) gives an omnibus direction to the respondents to give this benefits to all those who retired between 01/04/1969 and 15/7/1972. 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, 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 be 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. ~~weakly~~ 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 FR-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 ~~it is~~ if it is admitted that he retired between 1/04/1969 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 ~~per~~ 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 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 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 service with effect from a 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 benefits 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 provident Fund Rule's were given opportunities to exercise their option in favour of pension from time to time from 1957 except for the period from 1/4/89 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, the last date fixed for option. A request made 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 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 the 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 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 is the applicants had retired on 15.7.72 or 31.3.69, they could have derived the benefits of the pension scheme by regising 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

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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."

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 judgements. 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 Principal 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."

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

is the conclusion one has to draw from the fact that the Supreme Court rejected the plea made in this behalf in Krishna Kumar's case, as well as be shown separately.

14. The judgement in Krishna Kumar's case (supra) was rendered in a batch of five writ petitions and one S.B.P. as stated in the opening para of that judgements. 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 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 retirement of some of the other petitioner. 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

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annual income towards the Provident Fund and the Railway, as the employer, 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 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 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, therefore, employees opted for either of 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."

Those who had retired before the cut off date and thus they were denied the benefits of the Pension scheme. This was alleged to be discriminatory as follows :-

"It is contended by the 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 Makara case, which according to counsel, is that pension retirees could not be divided by 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) Pension Scheme was introduced on 01/04/1957. It was to apply compulsorily to all employees recruited on or after ~~01.04.1957~~ 01.04.1957

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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 those whom were in service on such date 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 Annexre-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

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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 out-off date indicated therein and also that the prescription of such out-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 judgement of the Central Administrative Tribunal, Bombay. The Tribunal had held the same notification 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 ~~new~~ fresh option as the notifications giving 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 :

" We have perused the judgements, 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 ~~to~~ July 14, 1972 as both the petitioners retired during that period. The Tribunal observed that the 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 ~~to~~ Jodhpur who, after becoming 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 over rule 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

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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~~ shall refer to the issue decided therein.

20. The Supreme Court posed the questions to what was the ~~ratio~~ decidendi 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 judgement). After a detailed discussion the following conclusions were reacked. (Para- 30).

"Thus the Court treated the pension retirees only as a homogeneous class. The PF 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 case 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 Railay contributory Provident Fund is by definition a fund. Besides, the govt's obligation towards an employee under CPF scheme to give the matching contribution beings as soon as his account is opened and ends with his retirement when his rights uga 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 retirees 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 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 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 notification 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 of India 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 as 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 after. 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 retirees was affected or benefits by prices 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. Option 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

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specified date and before and after the date of notification were made eligible. This submission appears to have been substantiate by what has been stated by the successive pay commissions. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down clause 3.1 of the 12th option does not arise. "

22. It is not necessary to advert to the other conclusions reached in Krishena Kumar's case. Suffice it to say that all the five Writ Petitions and the solitary special leave petition were dismissed.

23. We have gone into great detail to show that the judgment in Ghanshamdas's case (TA/27/87), by the New Bombay Bench will apply only to the parties to that case, because it was vehemently canvassed before us that this application should be governed by that decision. It is abundantly clear that the issue has been finally decided in Krishena Kumar's case (1990) 14 A.T.C. 846). In the light of that judgment this application has no merit. It is dismissed. There will be no order as to costs.

Sd/-

(R.C. Bhatt)
Judicial Member

Sd/-

(N.V. Krishnan)
Vice Chairman
3.10.1992.

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