

# CENTRAL ADMINISTRATIVE TRIBUNAL

## AHMEDABAD BENCH

R.A.ST.NO. 34 of 1995 in

**O.A. NO.** 187 of 1991

~~T.A. NO.~~

DATE OF DECISION 28-11-1995.

Shri S.S.Gohel Petitioner

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

Versus

Union of India and ors. Respondent

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr. K.Ramamoorthy : Member (A)

The Hon'ble ~~Mr.~~ 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 ?

✓

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD BENCH

AHMEDABAD

Review Application/ Stamp/ 34/95

In  
Original Application No. 187 of 1991

DATE OF DECISION 28-11-1995.

Hon'ble Mr. K. Ramamoorthy, Member ( A )  
Hon'ble Dr. R.K. Saxena, Member ( J )

S.S. Gohel, Plot No. 108A, Sector 19, Gandhinagar,  
Applicant.

Vs.

1. Union of India 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 Administrative Officer, Metropolitan Transport Project(Rly) Churchgate, Bombay-20.

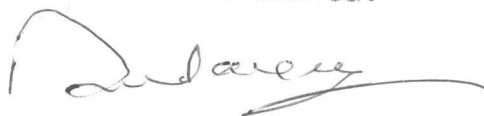
Respondents.

O R D E R

(BY CIRCULATION)

By Hon'ble Dr. R.K. Saxena, Member ( J )

This review application which is numbered as RA/ Stamp/ 34/95 because of being defective, is filed in O.A. 187/91 decided on 02.8.94. The office report points out delay in filing the R.A. There is no application for condonation of delay. As such, the R.A. cannot be entertained.



Member ( J )



Member ( A )

/M.M./

③ Cops

Errett

5/12/88

~~5/12/88~~

Section IX

D.No. 945/96/18  
Supreme Court of India,  
New Delhi.

Dated:- 8-4-97

From:-

Section Officer,  
Supreme Court of India,  
New Delhi.

To:-

To: Registrar,  
Central Administrative Tribunal,  
Gujarat, at Ahmedabad.

PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 7513 OF 1997

(Petition under Article 136 of the Constitution of India  
from the Judgment and Order dated 28-11-95

of the Central Administrative Tribunal, Ahmedabad Bench

in R.A. ST. No. 34/95 in O.A. No. 187/91

S.S. Gohel (dead) by L.R.

..Petitioner(s)

-Versus-

Union of India & an.

..Respondent(s)

Sir,

I am directed to inform you that the Petition  
above mentioned filed in the Supreme Court was/were  
dismissed by the Court on 21-3-97.

For perusal pl.

Yours faithfully,

28/5/97  
D.O. 21/5  
(17)

Section Officer

Hon'ble V.C. 17/5

Hon'ble member (A) 17/5

Hon'ble member (J) 17/5  
9.5.97.



CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD

I N D E X - S H E E T

CAUSE TITLE

RA# 34/95 in OA 187/91

NAME OF THE PARTIES

S.S. Gohe

VERSUS

W.C.I. & O.S.

[illegible]

CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH

Application No. RAst./34/95 in CA/187/91

Transfer Application No. \_\_\_\_\_

CERTIFICATE

Certified that no further action is required to be taken and  
the case is fit for consignment to the Record Room (Decided)

Dated : 05/01/96

Countersign :

51186

Section Officer.

10

Signature of the Dealing  
Assistant

1. Judgment / Order by Hon'ble Dr. R.K. Saxena, JM. dtd 02.08.94  
(i) Hon'ble Mr. K. Ramamoorthy, AM and  
(ii) Hon'ble Dr. R.K. Saxena, JM

2. Both the aforesaid Members are functioning in this Tribunal. 2. Hence to be placed before the said Members i.e., Hon'ble Mr. \_\_\_\_\_ & Hon'ble Mr. \_\_\_\_\_

3. Hon'ble Mr. K. Ramamoorthy, AM still belongs to Local Bench but Hon'ble Dr. R.K. Saxena, JM is not a Member/V.C. of Allahabad Bench. 3. Hence may be sent for consideration by circulation to the said Members i.e., Hon'ble Mr. K. Ramamoorthy, AM & Hon'ble Dr. R.K. Saxena, JM.

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal. 4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any 2 Members of this Bench.

5. Hon'ble Mr. \_\_\_\_\_ has ceased to be Member of Tribunal but Hon'ble Mr. \_\_\_\_\_ is available in this Bench. 5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. \_\_\_\_\_ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely \_\_\_\_\_ and \_\_\_\_\_ Benches. 6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies. 7. Therefore, orders of the Hon'ble Vice Chairman are required to be obtained by Hon'ble Chairman.

Submitted.

Application has been scrutinized and not found in order. There is Delay of 11 Months & 20 Days. (Prayed to condone). If approve, we may sent this RA to Hon'ble Dr. R.K. Saxena, JM to, Allahabad Bench by circulation.

ccclap  
07.08.95

A

✓ before R. Ramamoorthy.  
Better we may place

As at A. In view of  
the prayer in RA itself.  
Submits MA to the purpose  
of condonation as not necessary  
A/Pl-pur & discharge Act in light of Sub Rule (2)

Sin 14/8/95

SAC(J)

6/8/95

8/8/95  
DR(J)

12/8

~~DR/2/5~~ + A

Discussed

May be considered by circulation  
Since the order has been dictated  
by DR. Saxena, may be sent to the  
Hon'ble member for his remarks

12/8

Dr. Lg. (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

REVIEW APPLICATION NO.

OF 1995

IN

O.A. NO. 187 OF 1991

Shri S.S. Gohel

..Applicant.

Versus

Union of India & Ors.

..Respondents.

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ANNEXURE

PARTICULARS.

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| -  | Memo of the application   | 1 to 3  |
| A  | Copy of the judgment of this Hon'ble Tribunal                               | 4 & 10  |
| A2 | Copy of the order passed by the Hon. Supreme Court Writ petition No. 881/93 | 11 & 12 |

Date :- 1/1/95  
Ahmedabad.

(P. K. Pathak )  
Advocate for applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

ORIGINAL APPLICATION NO.

OF 1995

Jagat Narayan Mishra

..applicant

VS

Union of India & ors.

..respondents

I N D E X

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| 1.     | -    | Memo of the application                  |      |
| 2.     | 'A'  | Copy of the order dt.11.9.85             |      |
| 3.     | A/1  | Copy of the order dt.9.9.87              |      |
| 4.     | A/2  | Copy of the order dt.15.3.94             |      |
| 5.     | A/3  | Copy of the representation<br>dt. 3.5.95 |      |
| 6.     | A/4  | Copy of the letter dt.25.4.94            |      |

-0-0-0-0-0-

Date :  
Ahmedabad

(P. H. Pathak)  
Advocate for the applicant



1

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

REVIEW APPLICATION NO.

OF 1995

IN

O.A. NO. 187 OF 1991

between...

S.S. Gohel

Plot No.108A

Sector 19, Gandhinagar

..applicant

vs

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 (Rly)

Churchgate,

Bombay-20.

Respondents.

REVIEW OF THE ORDER DT.

MAY IT PLEASE THE HON'BLE TRIBUNAL :

1. That the Hon'ble Tribunal has rejected the case of the applicant on the ground that the applicant is not entitled to get the benefits of further option for pension. That the applicant rely ont the judgment of Hon'ble Bombay Bench

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in Bhagwandas case. Copy of the judgment of this Hon'ble Tribunal is annexed and marked as Annexure 'A' to this application.

2. That after rejection of the Original Application by this Hon'ble Tribunal, the Pensioners Association has conveyed the applicant that the Hon'ble Supreme Court has reiterated the view taken by Bombay Bench and said that similarly situated employees who have not opted for pension required to be given further chance of option even now. Accordingly the Special Leave Petition was allowed by the Hon. Supreme Court. Copy of the order passed by the Hon. Supreme court in Writ Petition No. 881/93 dt. 16.1.95 is annexed and marked as Annuxre A/2 to this application.

3. That the applicant is retired employee and due to his age, he is facing great difficulty in reading etc. That copy of the Supreme Court's judgment was not available to the applicant at the time of hearing of the Original Application. As stated above, the said copy is received by the applicant recently and therefore the present Review Application is filed by the applicant late by months. That the circumstances beyond the control of the applicant, the delay in filing Review Application is required to be condoned in interest of justice and particularly the judgment of the Hon'ble Supreme Court. That the applicant is being similarly situated required to be extended the benefits of option.

4. In light of the above legal position, in interest of justice, the applicant pray that:

(A) The Hon'ble Tribunal be pleased to review the judgment



and order at Annx.'A' to this application and set aside the same in light of the order of Hon'ble Supreme Court at Annx.A/1 and issue the order to the respondents on the same line, as per the order at Annx. A/1.

(B) Be pleased to direct the respondents to accept the option of the applicant for pension and grant him all consequential benefits with 18% interest.

(C) Be pleased to condone the delay in filing of the Review Application as the order of Hon'ble Supreme Court is received by the applicant recently.

(D) Be pleased to follow the judgment and order of Hon'ble Supreme Court at Annx. A/1 in favour of the applicant and direct the respondents to grant the benefits of pension to the applicant.

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

Date : 1-8-95  
Ahmedabad

(P. H. Pathak)  
Advocate for the applicant

### AFFIDAVIT

I, Shri S.S. Gohel, adult, residence of Gandhinagar, hereby solemnly affirm that what is stated above in para 1, 2, 3 is true to my knowledge and information and I believe the same to be true.

Solemnly affirmed at Gandhinagar on this First day of August 1995

Identified by  
P.H. Pathak

S.S. Gohel  
(S.S. GOHEL)  
DEPONENT

CPTO2



So solemnly affirmed / before me  
by S. S. Vohra  
who is identified by Shri [Signature] Clerk  
or Advocate,  
whom I personally know.

Dt : 11/8/95.

[Signature]  
Clerk of the Court  
Civil Court (J. D)  
Gandhinagar.



Ann. A

4

CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

CORAM

The Hon"ble Mr. K.Ramamooathy

The Hon"ble Dr.R.K.Saxena

Member (JO)

S.S.Gohel,  
plot No.108/A,  
Sector-19,  
Gandhinagar.

Applicant

Vs.

1.Union of India,  
Through:  
Secretary,  
to the Government India,  
Ministry of Railway,  
Rail Bhawan,  
New Delhi.

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

3.Chief Administrative officer,  
Metropolitan Transport Project,  
(Railway),  
Churchgate,  
Bombay.

Respondents

For applicant :- Sri P.H.Pathak, Advocate.

For respondents- Sri N.S.Shevade, Advocate.

J U D G M E N T

IN

O.A.NO.187 OF 1991

DATE: 2/8/1994

per:- Hon"ble Dr.R.K.Saxena, Member (JO.

This case was decided on 13.10.1992, 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

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Ghanshyam Das and another Vs. Chief Personal 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 re-hearing.

The brief facts of the case are that he (applicant) had joined services of princely state Bhavnagar in 1940 as engineer in Public Works Department. He was subsequently transferred to the Railway Department of the same princely state. On merger, the applicant was placed with the Western Railway. 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 opt for the pension scheme but his request was turned down vide letter 4.8.1972 giving reference of Railway Board's order dated 15.7.1972 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 Ghanshyam Dass case in T.A.No. 27/87 of Bombay Bench of the Tribunal. The Judgment was challenged by filing Special Leave petition before the Suprem 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 judgement in T.A. /27/87 and of O.A./373/89 be directed to 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 18% for

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 ground 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 4.8.1972 in vice of the letter dated 15.7.1972 of Ministry of Railways. It was denied that letter dated 30.7.1972 of the applicant was on 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./27/87 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 not no jurisdiction. It is true that the applicant had retired from service on 11.7.1972. His contention that his preparatory to retirement was refused and the salary was paid till 11.1.1973 and thus there was deemed extension of his period of retirement. doesnot 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 11.7.1972. With this date of retirement is attached the retiral 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 condition to those who had retired between 1.4.1969 and 14.7.1972. Though this judgment was given on 11.11.1987 but finality can be attached when S.L.P. was rejected on 5.5.1991. 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 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 1.4.1969 to 14.7.1972 but the relief was not confined to these applicants alone. The Tribunal had directed to give benefit to similarly situated retirees also. The respondents issued a letter dated 5.2.1992 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 direction 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 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 letter 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 this order.
6. The respondents are directed to implement the direction 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 1.4.1969 to 14.7.1972 and who had indicated their option in favour 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 S.L.P. was rejected and a letter dated 5.2.1992 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 of Serial No.6 (referred to above) did not specify the date of option whereas the circular letter fixed not later than 31.12.1972. On examining the judgment of T.A. 27/87, we found that the date 31.12.1972 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 5.2.1992 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 30.7.1972, the photostate 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 this letter cannot be considered as letter of option for pension. The reply was, however, given on 4.8.1972.

The applicant referred to a representation dated 6.4.1989 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 31.12.1972. When the applicant is taking behind the decision in T.A. 27/87, the dictum must be followed, as specified therein. Looking from this angle, we come to the conclusion that through the applicant falls within the category of retirees of the period from 1.4.1969 to 14.7.1972 but he had not exercised the right of option within the stipulated period of time i.e. 31.12.1972. Thus the law laid down in T.A. 27/87 and indirectly approved by the Supreme Court by rejecting the S.L.P., 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 un-sketched. This point was, however, considered by the Supreme Court in Nakara's case (1983) S.C.C. 305 and held that there was discrimination and there was no question of striking down the same. Following the same view, we hold that there was no constitutional issue 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.

Sd/-  
(Dr. R.K. Saxena)  
Member (J)

Sd/-  
(K. Ramamoorthy)  
Member (J)

*Tougeob*



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WRIT PETITION ( CIVIL ) NO. 881 OF 1993

Ver'sus

570496

By this petition the petitioner who was a Railway employee and who retired in the year 1971 but did not opt for Pension Scheme as introduced by the railway Board by its letter dated 16th November 1957, rather opted for the Provident Fund System seeks direction to the opposite party to grant him same benefit as was granted to others by the Central Administrative Tribunal, Bombay by its order dated 11th November 1987. The relevant portion of the order passed by the Tribunal is extracted below:

" The respondents are directed to implement the directions given in clauses (10 to (iv) of this order in receipt of all the Railway Employees who were similarly placed like the applicants i.e., those who retired during the period from 1-4-1969 to 14.7.1972 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."

It is not disputed that the S.L.P. filed by the Union against the Order has been dismissed by this Court and the Review Petition was also dismissed on 6th May 1991. The Union, in our opinion, cannot successfully resist the claim of the petitioner when the Tribunal has directed that this benefits shall be granted even to those employees who retired on or before the Pension Scheme was introduced and opt for it even now. Since the petitioner opted for the Pension Scheme in terms of the order passed by the Tribunal may be in 1990, we are of the opinion that in the facts and circumstances of the case the respondent should extend same benefit to the petitioner as has been extended to others.

In the result, this petition succeeds and is allowed. Rule is made absolute. The respondent is directed to accept the option of the petitioner and grant him benefit of Pension Scheme. The petitioner is further directed to deposit the

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entire amount which he received in lieu of Provident Fund System within three months from the date the Government accepts the option of the petitioner. The option shall be accepted within two months from the date a copy of this order is produced.

Parties shall bear their own costs.

sd/-

(R.M. SAHAI)

Sd/-

(N.P. SINGH)

New Delhi  
January 16, 1995

Tue 1087  
R