

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.793 of 1996

Present: Hon'ble Dr. B.C. Sarma, Administrative Member

Hon'ble Mr. Paritosh Dutta, Judicial Member

BISWA NATH GHOSH

VS

UNION OF INDIA & ORS.

For the Applicant : Mr. Balai Chatterjee, counsel

For the Respondents: Mr. P.K. Arora, counsel

Heard on 17.7.1996

: :

Date of order: 17.7.1996

O R D E R

B.C. Sarma, AM

The dispute raised in this application is about the grant of pensionary benefits to the applicant who had retired from the Railway service on attaining the age of superannuation on 1.9.1975. The applicant was under the State Contribution to Provident Fund Scheme. The applicant entered into Railway service in 1941 and retired as mentioned here-in-before. The applicant contends that he did not opt for the pensionary scheme but accepted the SCPF benefit and now in view of the judgment of the Hon'ble Apex Court, reported in AIR 1995 SC 983 in the case of R. Subramaniam v. Chief Personnel Officer, Central Railway, Ministry of Railways he has prayed for the benefit of pension scheme instead of SCPF scheme. The applicant contends that he had submitted a representation in this regard as set out in Annexure-A/1 to the application, but no action has been taken by the respondents. Being aggrieved thereby, the instant application has been filed praying for the benefit of pension from the date of his retirement from service i.e., from 1.9.1975 following the judgment of the Hon'ble Supreme Court.

2. The respondents have contested the case by filing a reply. The stand taken by the respondents is that he was given all dues under the SCPF scheme and no representation or option was received by them from the applicant. The respondents have, therefore, prayed for the dismissal of the application on the ground that it is devoid of merit.



3. During the hearing Mr. Arora, learned counsel for the respondents, strongly opposes the application on the ground that a Constitution Bench of the Hon'ble Supreme Court in the case of Krishna Kumar v. Union of India and others along with others, reported in AIR 1990 SC 1782 held that it was not discriminatory to fix a cut off date for the purpose of exercise of option for switch over from SCPF to the pension scheme. Mr. Arora submitted that on the basis of the said judgment, the instant application cannot be allowed. However, Mr. Chatterjee, learned counsel for the applicant invited our attention to the judgment of R. Subramaniam, which we have already referred ^{to} and also two other judgments delivered by us in OA 13856/95 on 3.1.1996 and OA 1110/95 on 25.3.1996. Mr. Chatterjee submits that the disputes involved in these two applications are exactly similar to that of the instant application and on the basis of the Subramaniam's case the benefit of pension was allowed to those applicants. It will, therefore, amount to discrimination, if any similar case is denied such benefit.

4. We have heard the submissions of the learned counsel of both the parties, perused the records and considered the facts and circumstances of the case. First of all, we would like to observe that in Krishna Kumar's case, the dispute arose whether the cut off date fixed by the Union of India for switching over from SCPF to the pension scheme was legally valid. It was held by the Hon'ble Apex Court that such a cut off date was valid. However, in the case of R. Subramaniam's case, we find that the Hon'ble Apex Court had upheld the decision rendered by the New Bombay Bench (since renamed as Mumbai Bench) of this Tribunal to the effect that the benefit of the Pension Scheme introduced by the Railway Board for employees, who retired during the period from 1.4.1969 to 14.7.1972 by its letter dated 16.11.1957, would be available even to those employees who retired on or before pension scheme was introduced and opted for it after their retirement. It is, therefore, clear that the issue involved in Subramaniam's case is quite distinguishable from the issue in Krishna Kumar's case and such being the position, we are not in agreement with Mr. Arora that the ratio of the judgment in



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Krishena Kumar's case will apply in this case.

5. We find in this case that the applicant has averred that he had given an option on 27.5.95 after the judgment was delivered by the Hon'ble Apex Court in Subramaniam's case. The respondents have, however, denied the receipt of any such option. But we find that during hearing Mr. Chatterjee, learned counsel for the applicant, produced before us an acknowledgement and he explained that such acknowledgement was on a postcard which was attached to the registered letter purporting to be an A/D card since A/D card was not available in the Post Office. We have perused the A/D card and we find that the submission of Mr. Chatterjee is correct. We also find that in the two cases, the very same Bench had allowed the benefit, as discussed here-in-before on the basis of Subramaniam's case. We are therefore, of the view that it would be discriminatory if similar benefit is not granted to the instant applicant.

6. In view of the above, the application is allowed. The respondents are directed to consider the representation filed by the applicant in the light of the judgment (Subramaniam's case) of the Hon'ble Supreme Court and pass appropriate order thereon according to rules. If, however, after such consideration it is found that the applicant is eligible to receive the pensionary benefit, the amount to be deposited through refund by the applicant and to be disbursed by the Railway respondents to the applicant shall be calculated and only after making such adjustment, the balance amount shall either be paid to the applicant or he shall be asked to refund the sum as required. The interest at the rate of 10 per cent per annum shall be taken into account in computing the amount to be deposited by the applicant and the amount to be paid by the Railways to the applicant. We further direct that the above action shall be taken by the Railway respondents within a period of six months from the date of communication of this order. No costs. The application is disposed of at the stage of admission itself.

Paritosh Dutta

(Paritosh Dutta)

MEMBER (J)

17.7.1996



(B.C. Sarma)

MEMBER (A)

17.7.1996