

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No.1212 of 1996

Present: Hon'ble Mr. D. Purkayastha, Judicial Member

B. Jagannathan, S/o late B. Palaya,
Retd. Sr. Record Sorter, CCM (Refunds)
Office, S.E. Railway, Calcutta now
residing at S.E. Railway Colony,
Garden Reach, Calcutta-43

.... Applicant

VS

1. Union of India, service through
General Manager, S.E. Railway, Garden
Reach, Calcutta-43
2. Chief Personnel Officer, S.E. Railway
Garden Reach, Calcutta-43
3. Chief Commercial Manager, E. R.
Railway, Strand Road, Calcutta-1

... Respondents

For the Applicant : Mr. B.C. Sinha, counsel

For the Respondents: Mr. P. Chatterjee, counsel

Heard on 26.5.1999 : : Date of order: 26.5.1999

O R D E R

Applicant, Shri Jagannathan was a railway employee and he retired from service on superannuation from the post of Sr. Record Shorter with effect from 1.7.84. The grievance of the applicant, in short, is that he was treated as SRPF staff, but he subsequently submitted option in duplicate form for Railway liberalised pension on 29.6.84 and that was turned down by the respondents by a letter dated 3.9.84, Annexure/A4 to the application. Feeling aggrieved by and dissatisfied with the said order of refusal at Annexure/A4 to the application, the applicant approached this Tribunal by filing this application on 1.10.96 i.e., after 10 years from the date of refusal on 29.6.84. According to the applicant, though he was treated as employee under SRPF scheme, he was not given proper opportunity to exercise option for liberalised pension rules as per different circulars issued by the Railway authorities and he did not know that the option was to be exercised within a particular period.

In view of the aforesaid circumstances he is entitled to get direction upon the respondents to cancel the order dated 3.9.84, Annexure/A4 to the application and a further direction upon the respondents to pay the retiral benefits of pension, commuted value of pension, DCRG as per pension rules.

2. The respondents denied the claim of the applicant. According to the respondents, the applicant retired from service on 30.6.1984 as a Sr. Record Sorter and he was governed by SRPF Rules and it is understood that the applicant did not accept the payment of his final settlement of PF amount with a plea that he opted for pension in time. It is also stated by the respondents that on correspondence with the concerned officer it was ascertained that the applicant was asked to exercise his option on 22.2.83, but he himself kept the option form in his own custody instead of submitting within the stipulated period namely, 31.8.83, which is date stipulated in CPO's circular letter No. P/R/30/193 Option dated 16.8.83. The respondents also stated that in a letter dated 10.8.84 addressed to the A.C.O., South Eastern Railway, Refund Office, Calcutta-1 the applicant himself admitted that the Option Form in which he is stated to have exercised his option on 22.2.83 was lying with him and the same could not be submitted earlier. Accordingly, he forfeited his chance to switch over from P.F. scheme to Pension scheme. Thereby this application is not maintainable.

3. Mr. Sinha, learned advocate for the applicant strenuously relies on the judgment of the Hon'ble Supreme Court in R. Subramaniam vs. C.P.O, C.R., Ministry of Railway, reported in AIR 1995 SC 983 and submits that since no opportunity was given to the applicant for the purpose of exercising the option under the extant rules, the applicant is entitled to get the benefit and that question was not considered by the Hon'ble Supreme Court in the case of Krishna Kumar v. Union of India, reported in 1990(3) SCR 352. Therefore, the applicant is

entitled to get the benefit of the pension scheme. Mr. Sinha also relies on the letter given by the Sr. Personnel Officer dated 3.9.84. He submits that there was an assurance in the letter at Annexure/A4 page 7 to the present application that application for pension will be considered in due course.

4. Mr. Chatterjee, learned advocate appearing on behalf of the respondents wanted to controvert the submissions of the learned advocate, Mr. Sinha submitting that the present application is not maintainable in view of the judgment in the case of Union of India and others vs. A. J. Fabian, reported in 1997(1) SCSLJ 546 and submits that on the face of the said judgment of the Hon'ble Supreme Court the decision rendered earlier by the Hon'ble Apex Court in R. Subramaniam case, AIR 1995 SC 983 cannot be held to be a good decision on the question of law and thereby the applicant is not entitled to get the benefit of the judgment in R. Subramaniam case and the application is liable to be dismissed.

5. I have considered the submissions of the learned counsel of both the parties on that score and I have gone through the judgments of the Hon'ble Apex Court. In the judgment of A.J. Fabian, reported in 1997(1) SCSLJ 546 it is mentioned as follows:

"This Court had distinguished the decision of the Constitution Bench decision in D.S. Nakara and others vs. Union of India [(1983)1 SCC 305] and accordingly allowed the appeal and held that they are not entitled to those benefits. The same question was again considered by this Court in W.P. 174/96. Therein this court surveyed the entire case law and held thus :

In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara's case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time. The decision of Ghansham Das case on which learned counsel for the petitioner placed reliance, the Tribunal relied upon Nakara's case and granted the relief without considering that Nakara's decision has been distinguished in that Constitution Bench case of Krishna Kumar and other cases referred to supra. Therefore, dismissal of the Special



Leave Petition against the said judgment of the Tribunal cannot be held to be law laid down by this Court, in view of what had been stated in Krishena Kumar's case. The other decisions of this Court, in the case of R. Subramaniam (Writ Petition (Civil) No.881 of 1993) the Court merely relied upon the dismissal and disposed of the matter and, therefore, the same also cannot be held to be a decision on any question of law.

Accordingly the Writ Petition was dismissed."

In the instant case the contention of the learned advocate, Mr. Sinha is that the applicant was given no opportunity to exercise option and for which he did not furnish the option till 1984. Admittedly, it is found that the applicant retired on superannuation with effect from 1.7.84 and from the record it is found that he received the option form and it was signed by him on 22.2.89 and was kept in his custody till 10.8.84, and he did not exercise his option till 10.8.84. As per record it is found that the last date for submitting the option was 31st August, 1983 and he submitted his option on 10.8.84 and that has been considered by the authorities and they rejected the prayer for switching over from SRPF scheme to Pension scheme by a letter dated 3.9.84, Annexure/A4 to the application. On a perusal of the refusal order dated 3.9.84, I find no reason to interfere with the decision given by the authorities on the point of law since the applicant received the option form in time on 22.2.83 and kept it in his custody till 10.8.84. So, the cut off date cannot be extended by the authority. Therefore, the question of further granting opportunity did not arise in this case unless it was extended. It is also contended by Mr. Sinha that the order dated 3.9.84 shows that the applicant was assured by the authority that his case will be considered in due course when further opportunity would be given to the Railway employees. But I find that assurance does not help the applicant in any way in view of the settled position of the law as enunciated by the Hon'ble Apex Court in the case of Krishena Kumar's case. Be it mentioned here that the ratio as enunciated by the Hon'ble Apex

Court in Krishna Kumar's case is binding upon the Tribunal and the applicant under Art. 141 of the Constitution of India.

6. In view of the aforesaid circumstances I find that the present application is devoid of merit and liable to be dismissed. Accordingly, it is dismissed awarding no costs.

10/11/59
(D. Purkayastha)

MEMBER (J)