

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No. O.A.509 of 1996

Present : Hon'ble Dr.B.C.Sarma, Administrative Member.
Hon'ble Mr.D.Purkayastha, Judicial Member.

NEPAL CHANDRA DEY

Vs.

UNION OF INDIA & ORS.

For the applicant : Mr.B.Chatterjee, counsel.

For the respondents: Mr.C.Samadder, counsel.

Heard on : 27.1.1997

Judgment on : 6.3.1997

JUDGMENT

D.Purkayastha, J.M.

This application under section 19 of the Administrative Tribunal Act, 1985, is by a superannuated Railway employee, seeking a direction from this Tribunal upon the Railway Administration-respondents to allow him the pensionary benefits under the pension scheme and for a further direction that the applicant should be granted pensionary benefits w.e.f. the date of his retirement on 2.12.1973, as per the judgment of the Hon'ble Apex Court reported in AIR 1995 SC 983 (R.Subramaniam vs. Chief Personnel Officer, Central Railway & Ors.).

2. The case of the applicant in short is that he retired as a Peon on 2.12.1973, but he did not opt for pension under the

pension scheme as introduced by the Railway Department in the year 1957 and he did not opt for pensionary benefits and as such he was granted SRPF on retirement. According to the applicant, as per the judgment of the Hon'ble Apex Court referred to above, he is entitled to the benefit of pension instead of SRPF Scheme. It is further averred that in view of the judgment of the Hon'ble Apex Court, some benefits were given to the other employees similarly circumstanced by various decisions of this Tribunal. But the applicant was not granted the benefit, hence he has filed this case before this Tribunal.

3. The Railway-respondents filed written objection denying the claim of the applicant, stating inter alia that the applicant was appointed in the Railway service w.e.f. 3.12.1943 and subsequently retired from service w.e.f. 2.12.1973, when he was working as Peon. At the time of his retirement, he was governed under the SRPF Scheme in as much as he did not exercise his option to come into the pension scheme. As such, his settlement payments were made under the SRPF Scheme. It is further averred in the written objection that the staff appointed in the Railway department after 1957 automatically came under the purview of the pension scheme, but the employees who were appointed before 1957 were given adequate chance to opt for pension under the pension scheme with a clear stipulation that the failure to exercise the option for pension scheme, the staff concerned would be governed by the SRPF Scheme. Since the applicant did not opt for pension scheme before his retirement, he was governed under the SRPF Scheme and settlement dues were paid accordingly and thereby after a lapse of 23 years from the date of his retirement on 2.12.1973, the applicant has now come before this Tribunal with a prayer to get pension. The application is, therefore, liable to be dismissed.

4. Heard 1st.counsel appearing on behalf of both the parties.

ld.counsel Mr.B.Chatterjee, appearing on behalf of the applicant submits that the other employees like the applicant were granted similar benefit of pension as per the judgment of this Tribunal in O.A.1110 of 1995 (Gadadhar Chatterjee vs. UOI & Ors.). He further submits that similar benefits should be granted as per the decision of the Hon'ble Apex Court reported in AIR 1995 SC 983, which is binding to all concerned including the respondents.

5. ld.counsel, Mr.C.Samadder, appearing on behalf of the respondents submits that there is no dispute that some benefits were granted to the applicants mentioned above i.e. Gadadhar Chatterjee, as per the judgment of this Court bearing upon the judgment of the Hon'ble Apex Court reported in AIR 1995 SC 983, yet the present applicant is not entitled to get the benefit of the said judgment in view of the latest decision of the Hon'ble Apex Court reported in 1996 (2) SC Service Law Judgment - page 258 (Shri V.K.Ram Murthy vs. Union of India & Ors.). Referring to the judgment of the Hon'ble Apex Court (Supra), ld.counsel Mr.Samadder on behalf of the Railway- Respondents submits that the Hon'ble Apex Court in AIR 1995 SC 983 in Subramaniam's case had overlooked the judgment of the Constitutional Bench of the Hon'ble Apex Court reported in 1990(4) SCC 207 (Krishnan Kumar vs. Union of India & Ors.) where the matter of entitlement of pension under the pension scheme in respect of the employees who were appointed prior to 1957 had been decided. So in view of the latest judgment of the Hon'ble Apex Court, the applicant is not entitled to get any benefit of pension after a lapse of 23 years.

6. In order to controvert the submissions of the ld.counsel for the respondents, the ld.counsel Mr.Balai Chatterjee, on behalf of the applicant further submits that the applicant was

not allowed any opportunity to exercise his option in view of the Railway circulars issued by the Railway authorities and thereby he is entitled to get pension though he did not exercise his option, as submitted by the 1d.counsel for the respondents.

7. The main question that arises for consideration before us is that whether the pension scheme that was in operation u.a.f. 1957 while the applicant was in service and option was not sought for for the same, will be entitled to come under the pension scheme after 23 years of his retirement. In order to dissolve the disputed questions raised before us, we would like to refer to the relevant paragraph of the judgment of the Hon'ble Apex Court reported in 1996 (2) SC Services Law Judgments - 262 where their Lordship held :-

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 the 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 the 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 has been stated in Krishna Kumar's case. The other decision of this court in the case of P.Subramanian (Writ Pension (Civil) No.881 of 1993) the Court merely relied upon the dismissal of special leave petition against the judgment of Tribunal in Ghansham Das case and disposed of the matter and, therefore, the same also can not be held to be a decision on any question of law. In the aforesaid premises and in view of the legal position as discussed above, the writ petition is dismissed but in the circumstances without any order as to costs.

↳ Question 7
Before dealing with the effect of the judgment of the Hon'ble Apex Court in V.K.Ramamurthy case, it is to be considered whether the present applicant was allowed any opportunity to exercise his

option to switch over to the Pension Scheme from the SRPF. We have gone through the application of the applicant, but it is found that the applicant did not make any averment in the application that he was not allowed any opportunity to exercise his option. In paragraph 4.2 of the application, there is a specific averment that the applicant failed to opt for pensionary benefits and as such was granted SRPF on retirement. But during arguments, 1st.counsel Mr.B.Chatterjee, appearing on behalf of the applicant, submits that the requisite notice was not served upon the applicant by the Railway-department as per the circular contained in the notification no.PC 111(73) PN 13 dated 23.7.1974 where there is a specific direction that contents of the letter should be brought to the notice of all retired employees who are eligible for this option or to the families of all deceased Railway servants who may have died on or after 9.7.1973 before exercising any option in time and allowed time for refund should also be advised to them simultaneously. Alongwith the written arguments filed by the 1st.counsel, Mr.B.Chatterjee, for the applicant, he has also submitted a judgment of the Bombay-Bench of the C.A.T. dated 6th of December, 1996 (C.L.Amin & Ors. vs. Union of India & Ors.). In that case a question arose whether personal notice was mandatory or not as contemplated by the 1st.counsel, Mr.Chatterjee, on behalf of the applicant and matter was referred to the Full Bench of the C.A.T. and it was decided that annexure 'A' to the application i.e. Railway Board circular dated 23.7.1974 does not contemplate personal individual notice. Hence all that is needed is sufficient adequate notice. Matters like this cannot be put into a straight jacket. If there is sufficient publication to intimate the affected parties, that should be notice enough. It was further opined by the Full Bench of the CAT that if the modalities envisaged in A/1 are satisfied, sufficient and adequate notice must be deemed. Ultimately, the

Hon'ble Full Bench held that -

"We answer the question referred to us as follows :-

Annexure-1 does not contemplate personal notice in the shape of individual notice, letter or information. Publication in the Gazette and in the press and in prominent places of access to applicants will be sufficient notice for purposes of the rule."

8. In view of the judgment of the Hon'ble Full Bench of the CAT in C.L.Amin's case, it is found that the burden lies with the applicant to show that he was not served with notice and he had no knowledge about the circular or about the benefit entitled to him. In the absence of any categorical averment as regards receipt of notice, as contended by the 1st.counsel for the applicant, we are of the view that the applicant failed to discharge his burden that he had no knowledge of the circular before making this application in getting relief under the Pension Scheme. Since the applicant has failed to discharge the burden of having no knowledge of the circular of the Railway Board and publication of the circular at prominent places was sufficient notice, the arguments advanced by Mr.Chatterjee on behalf of the applicant is not sustainable. We have gone through the judgments carefully of the Hon'ble Apex Court reported in Krishna Kumar vs. UOI & Ors. (1994 SCC 207) and R.Subramanian ^{AIR} reported in 1995 SC 983 and the latest judgment of the Hon'ble Apex Court reported in 1996 (2) SCC 262. It remains an undisputed fact in this case that in the case of R.Subramanian (AIR 1995 SC 983), the decision of the constitutional Bench of the Hon'ble Apex Court reported in AIR 1990 SCC 207 (Krishna Kumar vs. UOI & Ors.), has not been considered. But the Hon'ble Apex Court had categorically opined that the legal effect of the judgment of R.Subramanian (Supra) in paragraph 5 of the judgment in V.K.Ramamurthy's case (1996 (2) SCC 262 is not found. The judgment of the Hon'ble Apex Court in V.K.Ramamurthy's case is

the latest one. Thereby we have no other alternative but to follow the latter judgment of the Hon'ble Apex Court where it has been specifically stated in paragraph 4 that the distinction between those belonging to the pension scheme and those belonging to the contributory provident fund scheme has been rightly dealt with in Krishna Kumar case. So in view of the categorical decisions of the Hon'ble Apex Court, we are constrained to hold that the applicant is not entitled to get the benefits of pension under the Pension Scheme, as claimed in this application. Thereby, the application is devoid of merit and liable to be dismissed.

9. Accordingly, we dismiss the application, without any order as to costs.


(D. Purkayastha)
6/3/87
Judicial Member


(B.C. Sarma)
6/3/87
Administrative Member