

Date of Decision: 24.9.97

OA 02/96

Late Shri Sukan Raj Mathur, Ex-CTI, Northern Railway, Jodhpur, through his legal representatives namely Narain Prakash, Dr. Sudhir Prakash, Suman Prakash, Smt. Lalita Mathur and Smt. Sushila.

... Applicant

Versus

1. Union of India through General Manager (P), Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.

... Respondents

CORAM:

HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

For the Applicant

... Mr. Chandra Shekhar, brief holder for Mr. M.C. Bhoot

For the Respondents

... Mr. S.S. Vyas

ORDER

PER HON'BLE MR. GOPAL KRISHNA, VICE CHAIRMAN

This application u/s 19 of the Administrative Tribunals Act, 1985, was filed by Shri Sukan Raj Mathur, praying for a direction to the respondents to grant the benefit of the Pension Scheme to him as also for a direction to pay the arrears thereof. Applicant had also claimed interest @ 12% per annum on the arrears from the date when the benefit of the Pension Scheme had become due.

2. The case of the applicant is that he was serving as a CTI in the Northern Railway, Jodhpur, when he had retired on superannuation on 7.10.71. It is stated by the applicant that while he was in service in the Northern Railway, the Railway Board vide its letter dated 16.11.57 had introduced a Pension Scheme to railway employees after retirement but the scheme was not implemented for a long period and no options were invited for switching over from the Provident Fund Scheme to the Pension Scheme by the Railway Administration. Since there was a decision of the Central Administrative Tribunal, New Bombay, in TA. 27/87 (Ghansham Das & D'souza v. CPO, Central Railway), rendered on 11.11.87, and the same was upheld by Hon'ble the Supreme Court of India, some persons who had retired as railway employees during the period from 1.4.69 to 14.7.72 and who had exercised their options for pension at the relevant point of time were granted the benefit of the Pension Scheme. Shri Sukan Raj Mathur (original applicant) was a PF optee and after the judgements were delivered in the cases referred to above, he had made a representation on 14.6.95 vide Ann.A-1. Applicant had retired on 7.10.71. Applicant, Sukan Raj Mathur, died during the

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pendency of this application and his legal representatives have been brought on the record. It is contended on behalf of the original applicant that the action of the respondents in not extending the benefit of the Pension Scheme to the original applicant is arbitrary.

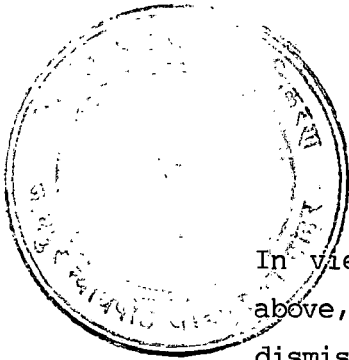
3. The respondents have resisted this application. It is stated by the respondents that no option was exercised by the applicant within the stipulated time. He did not exercise his option for switching over to the Pension Scheme during the period from 1.4.69 to 14.7.72. He did not exercise his option for switching over to the Pension Scheme after his retirement. His first representation was received by the respondents on 13.2.92 i.e. after about 21 years of his retirement. The learned counsel for the respondents has relied on an authority, reported in 1997 (1) SCT 38, V.K.Ramamurthy v. Union of India, in which Hon'ble the Supreme Court of India laid down, at pages 39 and 40, as follows :-

"4. In State of Rajasthan v. Rajasthan Pensioner Samaj, 1991 Supp (2) SCC 141, this Court also came to hold that the contributory provident fund retirees form a different class from those who had opted for Pension Scheme according to the decision in Krishena Kumar's case and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefits granted to the Pension Retirees. In yet another case of All India Reserve Bank Retired Officers Association and others v. Union of India and another, 1992 Supp (1) SCC 664, the Court was also considering the case of the Pension Scheme and Contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his relations with the employer come to an end on his retirement and receipt of the contributory provident fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether. It is for this reason in case of pensioners it is necessary to revise the pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitate an adjustment of the pension amount but that is not the case of employees governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those belonging to the pension scheme and those belonging to the Contributory Provident Fund Scheme has been rightly emphasised by this Court in Krishena Kumar's case.

5. 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. In 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 Krishena 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 law laid down by this Court, in view of what has been stated in Krishena Kumar's case. The other decision of this court, in the case of R. Subramanian (Writ Petition (Civil) No. 881 of 1993) the Court merely

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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 cannot 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."

In view of the decision of Hon'ble the Supreme Court of India, referred to above, I find no merit in this application. This application is, therefore, dismissed with no order as to costs.

*G. Krishna*  
(GOPAL KRISHNA)  
VICE CHAIRMAN

VK