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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR.

Date of Order : 2.3.2001

O.A. No. 100/1997
M.A. No. 107/1999
M.A. No. 15/2000
in
O.A. No. 100/1997

Legal Representatives of Late Shri Keshu Ram S/O Shri Giga Ram, Ex-Assistant Signal Inspector, Northern Railway, Jodhpur, R/O Keshu Bhawan, inside Nagori Gate, Jodhpur :

1. Champa Lal S/O Late Shri Kesu Ram,
2. Prakash Chand S/O Late Shri Keshu Ram,
3. Naval Kishore S/O Late Shri Keshu Ram,
4. Rukma Devi D/O Late Shri Keshu Ram, &
5. Smt. Chandra Kala D/O Late Shri Keshu Ram

... Applicants

Vs

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Chairman, Railway Board, Rail Bhawan, New Delhi.

... Respondents

Mr. Vinay Jain, Adv., Brief holder for
Mr. M.R. Singhvi, Counsel for the Applicants.
Mr. S.S. Vyas, Counsel for the Respondents.

CORAM :

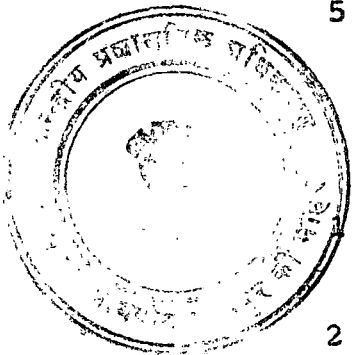
Hon'ble Mr. Justice B.S. Raikote, vice Chairman
Hon'ble Mr. A.P. Nagrath, Administrative Member

ORDER

(PER HON'BLE MR. A.P. NAGRATH)

Applicant, Keshu Ram, had retired on superannuation from Northern Railway on 15.3.1969. He had been contributing to State Railway Provident Fund (in short 'SRPF'). On retirement, he was settled under the Contributory Provident Fund

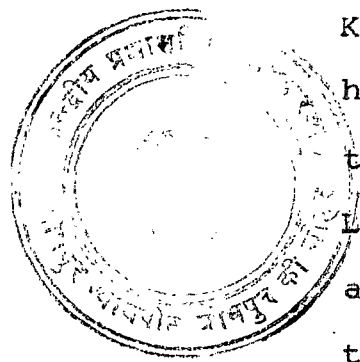
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Schme. He claimed that he had opted for pension scheme when the same was made applicable to the Government servants, who retired from service on or after 01.5.1968. Such persons were asked to exercise their options for pension upto 31.12.69. The applicant's claim is that he opted for pension for February 1969, but no action was taken by the Department despite his repeated inquiries and follow up. He had filed this Application praying for a direction to the respondents to act upon his option for pension or in the alternative to give him a fresh chance of option if the option exercised by the applicant was not traceable.

2. After filing of this application, the applicant Keshu Ram died on 24.6.1998. His three sons and two daughters had filed Miscellaneous Application No.107/99 with the prayer that they may be taken on record as legal representatives of Late Shri Keshu Ram. They submit that they are legal heirs and are entitled to prosecute the matter as they are entitled to any financial benefit accruing to their father after his death. In view of the submission made, this Miscellaneous Application is allowed.



3. Respondents have also filed M.A. NO.15/2000 with the prayer that the name of respondent No.3 in O.A. No.100/97, the Chairman, Railway Board, may be ordered to be deleted because he is not the necessary party and that other respondents on record fully represent Northern Railway Zone. General Manager of Railway/stated to be the only appropriate authority being in control of the Zonal Railway and the powers of General Superintendence vested with him. In view of the submission made, we allow this Misc. Application and direct ~~the~~ deletion of name of respondent No.3 from the O.A. as not being a necessary party.

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4. Thus, M.A. No.107/1999 and M.A. No.15/2000 stand disposed of accordingly.

5. The case of the applicants/^{father}in O.A. is that he had exercised an option for changing over to pension scheme in February, 1969 after completing of formalities. His inquiries with the office revealed that his option papers were not traceable in the department. Thereafter, ~~he~~ filed an affidavit on 19.9.1980. He also submitted a certificate from the office of the Signal Inspector dated 27.9.1982 disclosing the fact that ~~he~~ had exercised the option for pension, but he claimed at his grievance have not been redressed. In his submission, the applicants/^{father}has placed reliance on a judgment pronounced by Hon'ble the Supreme Court in the case of R. Subramaniam Vs. Chief Personnel Officer, Central Railway, Ministry of Railways AIR 1995 SC 983. The Apex Court had allowed pensionary benefits to all persons, who retired between 1969 to 1972, and had further observed that the persons who had been paid the CPF, the amount should be adjusted from the arrears of pension. Further more, the choice of exercise of an Option for pension was allowed to those who had not exercised it before.

6. The respondents in their reply have denied that the applicants' father ever exercised any option for pension in February, 1969. It has been stated that had the applicants' father exercised the option for pension, he would not have waited for such a long period to agitate the matter further. The affidavit filed by him in 1980 has been stated to be manipulated one, and is not admissible. The certificate from Signal Inspector in 1982, is not worthy of being relied upon. It is further submitted by the respondents that there was no reason or legal provision which would have entitled the

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applicants' father to exercise fresh option.

7. We have heard the learned Counsel for the parties, and perused the records.

8. Insofar as the submission of the applicants' father that he had deposited a certificate from Signal Inspector (available at Annexure A/5) and the affidavit in 1980, we do not find them acceptable, and are thus irrelevant as far as this case is concerned.

9. Learned Counsel for the applicants stressed that the applicants' claim is supported by the Apex Court decision in R. Subramaniam Vs. CPO Western Railway AIR 1955 SC 983. In this case the Apex Court had relied upon the earlier decision of the Court in the SLP filed by Union of India against the order of Central Administrative Tribunal, Bombay Bench, in the case of Ghanshyam Das. The Bombay Bench had allowed in that case the Petitioner and all the Railway employees, who retired between 01.4.1969 to 14.7.1972 ~~to exercise fresh option to switch over to the pension scheme any time after their retirement.~~



10. We find this decision has been reviewed comprehensively in the case of Krishena Kumar Vs UOI & Ors by the Constitution Bench of Hon'ble the Supreme Cour 1991 SCC (L&S) 112. In Constitution Bench decision in Krishena Kumar's case, the Apex Court considered the case of a retired Railway employee who was a CPF Pensionary, but after his retirement wanted to switch over to the pension scheme. It was held by the Apex Court that the pension scheme and CPF claim are structurally different and they do not belong to one class. The Petitioners' plea in that case to allow them to exercise fresh option to switch over ~~to pensions scheme~~ to pension scheme was not allowed by the Constitution Bench.

11. In State of Rajasthan Vs Rajasthan Pensioner Samaj 1991 SCC (L&S) 1176, the Apex Court came to hold that CPF retirees form a different class from those who have opted for pension scheme according to the decision of Krishena-Kumar's case and consequently, the CPF retirees are not entitled to the benefits granted to the pension retirees.


12. In All India Reserve Bank Retired Officers Vs. U.O.I. 1991 SCC (L&S) 517, Hon'ble the Supreme Court was considering the case of the pension scheme and CPF scheme and held that in case of an employee governed by CPF scheme, his relations with the employer comes to an end on his retirement and receipt of CPF 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.

13. In view of the aforesaid series of decisions of Hon'ble the Supreme Court, the conclusion is obvious that the applicants' father was not entitled to come over to the pension scheme once he had received benefits under the CPF Scheme. Even otherwise this prayer for change in option, 28 years after the date of retirement badly suffers from latches as held by the Apex Court in Civil Appeal No. 11730/96 (in O.A. No. 143/1992-Jodhpur Bench) Narayan Singh Solanki Vs U.O.I. & Ors. decided on 25.04.2000.

14. In view of the legal position as discussed above, this Original Application is dismissed, but in the circumstances without costs.



 (A.P. NAGRATH)
 Adm. Member


 (B.S. RAIKOTE)
 Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Copy of order dated 25.8.98 passed in MA No. 136/98
in OA No. 100/97.

Keshu R. Ram Vs. U.O.I. & Ors.

Date of order
25.8.98

Mr. M.R. Singhvi, Counsel for the applicant.

Heard.

2. The O.A. in question was dismissed in default for non-prosecution on the part of the applicant on 20.5.98. On the preceding date, i.e. on 26.2.98, the brief holder for the learned counsel for the applicant has appeared and prayed for adjournment. However on 20.5.98, none was present for the applicant. In the circumstances, this M.A. for restoration of the O.A. is allowed. The O.A. No.100/97 is restored to its original position and the same be list for admission on 21.9.1998.

M.A. stands disposed of accordingly.

Copied

Sd/-

(GOPAL SINGH)
ADM. MEMBER.

Sd/-

(GOPAL KRISHNA)
VICE CHAIRMAN.

प्रमाणित
सत्य प्रतिलिपि
25/8/98
प्रतुभाग द. (व्यक्ति)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर न्यायपीठ, जोधपुर