

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

Date of Order : 27.07.2001

O.A. No. 154/2001.

Smt. Kishni W/o Late Shri Sukh Ramji, aged about 58 years, (Ex Trolleyman, Northern Railway, Merta Road), R/o Mataji Ki Colony, Merta Road, District Nagour(Raj.)

APPLICANT...

VERSUS

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Jodhpur.
3. Divisional Personnel Officer, Northern Railway, Jodhpur.

RESPONDENTS...

Mr. S. K. Malik, counsel for the Applicant.

CORAM

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

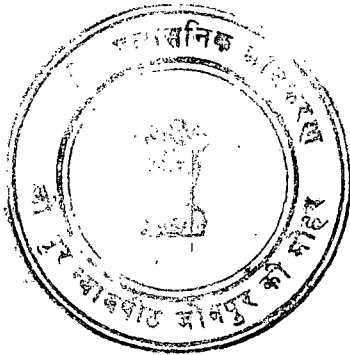


ORDER

(per Hon'ble Mr. A. P. Nagrath)

The applicant is the widow of late Shri Sukh Ram, who expired on 10.07.1969 while working on the post of Trolleyman at Northern Railway. Late Shri Sukh Ram was a State Railway Provident Fund (SRPF, for short) optee. The applicant is claiming family pension, and has been informed by the respondents that since she had not submitted the option for the Pension Scheme at the relevant point of time, she is not entitled to family pension. She submitted a representation to the respondents dated 20.07/04.08.2000 pressing her claim for family pension on the ground that the Railway servant who died, while in service during the period from 01.04.1969 to 15.07.1972, the family of such deceased Railway servant were allowed to opt for liberalised Pension Rules, and that she has

been persuing for grant of family pension ever since, but to no avail. Her representation was disposed of by the respondents vide their letter dated 05.09.2000(Annexure A-1). She also represented her case in Pension Adalat held on 24.10.2000, and that was disposed of by letter dated 06.07.2000, stating since she did not submit option for pension in response to the department's letter dated 31.12.1980, she cannot claim for pension now. She was also informed that she has been sanctioned Ex-gratia payment in response to the application submitted by her in 1988 and she is covered under Ex-gratia Scheme w.e.f. 01.01.1986. She made another representation dated 11.11.2000, which was disposed of by letter dated 01.12.2000(Annexure A-3), informing her that her case had already been disposed of and in this letter a reference was made to the respondents' letter dated 31.12.1980 and 12.10.1987. The applicant has challenged the impugned letters dated 05.09.2000, 06.11.2000 and 01.12.2000.



2. We have heard the learned counsel for the applicant for admission. The learned counsel for the applicant submitted that after the respondents had introduced the Ex-gratia pension for the widows of Railway Servants w.e.f. 01.01.1986, the respondents have granted this Ex-gratia Pension to the applicant but her claim for grant of family pension has not been accepted. The contention of the learned counsel for the applicant was that the applicant's case is covered under the instructions issued vide P.S. No. 7367 which specifically provided that beneficiaries to whom Government contribution and special contribution to Provident Fund was admissible, and who request in writing to opt for benefit under the Pension Rules, they should be directed to refund the bonus and ~~extra~~ gratuity already paid. The learned counsel referred to the respondent's

letter dated 31.12.1980 by which the applicant had been advised about this position and it was also stated that the information in respect of the amount to be refunded would be sent separately. The plea of the learned counsel was that no such separate information about the amount of refund to be deposited has been sent to the applicant till date. In that view he contended that the cause continues to subsist and the applicant has been illegally denied grant of the family pension. The learned counsel for the applicant placed reliance on following cases :-

- (1) 1990(1)SLR 763(P&H) State of Punjab Vs. Amar Singh.
- (2) 1996(1)ATJ 520 Smt. Shakuntala Devi Vs. U.O.I. & Ors
- (3) 1997(1)ATJ 231 Dr. Vijaya Purapu Subbayamma & Ors. Vs. U.O.I.
- (4) 1997(2)ATJ 389 Mahendra Asha Bhai Patel V/s U.O.I. & Ors.



in support of his contention that this application is within limitation, as pension is a recurring cause of action. The learned counsel for the applicant also referred to the judgment of this Bench in OA No. 200/2000 Smt. Zannat V/s U.O.I, CAT Jodhpur, Order dated 16.02.2001. He further cited (1)1996(4) SCC 314 Dr. Kapoor V/s U.O.I. & Ors. to stress that the employee's right to pension is a statutory right.

3. We have perused respondent's letter dated 31.12.1980(Annexure A-4), by which the applicant was informed that in respect of such of the Railway employees, who died during the period of 01.04.1969 to 15.07.1972, their dependents can opt for the Pension Scheme. It was also mentioned that the

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applicant's husband died on 10.07.1969 and in case she was willing to opt for the Pension Scheme she should refund the amount of bonus and gratuity, for which she will be informed separately. In the same letter it has been mentioned that the option form for Pension was also being enclosed and if the applicant was willing to opt, she must fill up the form and return the same to the office early.

4. The issue before us for our consideration is whether, in view of this letter dated 31.12.1980 and the pleadings of the learned counsel for the applicant, ~~xxx~~ this application is within limitation. Learned counsel has placed reliance on the cases mentioned ~~Supra~~ Supra, but we find that these cases do not advance the case of the applicant. In those cases it has been held that the pension is a statutory right and is a recurring cause of action. The issue before us is to first determine whether the applicant is at all entitled to the Pension Scheme under which the family pension becomes payable. This switch over cannot be stated to be a recurring cause, this has to be only a one time action. This issue is no more re-integra. In Krishena Kumar V/s U.O.I & Ors. this matter has been finally decided by the Constitution Bench of Hon'ble the Supreme Court : 1991 SCC (L&S) 112. In this case, the Apex Court considered the case of a retired 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 Petitioner's plea in that case to allow them to exercise fresh option to switch over to pension scheme was not allowed by the Constitution Bench. The same view was reiterated in the State of Rajasthan V/s Rajasthan Pensioner Samaj 1991 SCC (L&S) 1176.



5. In All India Reserve Bank Retired Officers V/s 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.



6. The husband of the applicant was SRPF Optee, which was a Scheme totally different from the Pension Scheme and option was given to the dependents/family members of the employee who died during the period of 01.04.1969 to 15.07.1972 to exercise option to switch over to the Pension Scheme. The applicant was specifically advised to fill up the form for this purpose in case she wanted to opt for the Pension Scheme. This advice was sent to her by letter dated 31.12.1980. It is admitted by the learned counsel for the applicant that the applicant did not fill up the form but he reasoned that she was waiting to be informed of the amount of refund to be deposited. We do not find this argument convincing. The person could not have been waited for 20 years to respond to a communication. It is clear that she did not exercise the option in time and, the law is now well established in view of the cases discussed by us Supra, that if the employee did not opt for the Pension Scheme in time, no further opportunity is admissible to switch over to the Pension Scheme.

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7. The learned counsel stated that the applicant had been making representations but did not get any response. Repeated representations do not create any fresh cause of action. The cause of action in this case would be determined from the letter dated 31.12.1980. In that view this application is hopelessly barred by limitation. The learned counsel also had placed reliance on OA No. 200/2000 Smt. Zannat V/s U.O.I., CAT, Jodhpur order dated 16.02.2001. In that case the applicant had sought grant of Ex-gratia pension being the widow of a CPF optee. It was held by this Tribunal that the applicant in that case was entitled to Ex-gratia pension. In the instant case, the applicant is already getting Ex-gratia pension w.e.f. 01.01.1986. Her claim for grant of family pension is hopelessly barred by limitation.




8. We, therefore, dismiss this application in limine, on the ground of limitation.

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(A. P. NAGRATH)
Adm. Member

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(JUSTICE B.S. RAIKOTE)
Vice Chairman

Rec

S.K. Mallick
ADW
1/8/01

ADW order along with DAR its Annex
Page 1 to 23 is sent to R1 to R3
vide No 287 to 289
ADW with 5th for R-2 & R-3
R-1 accounts
ADW
21/8/01
ADW - found
with R-1
ADW
24/8

Part II and III destroyed
in my presence on 16-5-07
under the supervision of
section officer (1) as per
order dated 13/3/07
Section officer (Record)