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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR.**

**O.A. No. 212/2002 & M.A. No.102/2002.**

**DATE OF DECISION :** 05.06.2003

Smt.Jamku Devi : Petitioner

Mr.Kuldeep Mathur : Advocate for the  
Petitioner

Versus

Union of India & Ors. : Respondent (s)

Mr.S.S.Vyas : Advocate for the  
Respondent(s)

**Coram : Hon'ble Mr.J.K.Kaushik, Judicial Member.**



1. Whether Reporters of local papers may be allowed to see the Judgment? *m*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgment? *K*
4. Whether it needs to be circulated to other Benches of the Tribunal? *yes*

*J.K. Kaushik*  
(J.K.KAUSHIK)  
JUDICIAL MEMBER

I/7

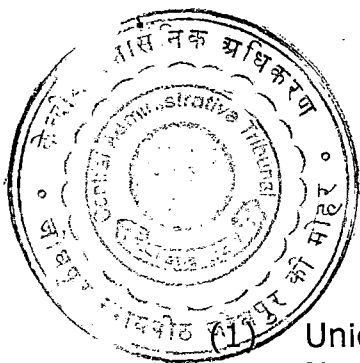
**CENTRAL ADMINISTRATIVE TRIBUNAL,  
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO: 212/2002 & M.A. No.102/2002.

**DATE OF ORDER: June 5 ,2003**

Smt. Jamku Devi W/o. Late Shri Sheokanwar, aged about 79 years, resident of Near Government Middle School, Post Degana, Tehsil Degana, District Nagaur.

...Applicant



**V E R S U S**

Union of India through the General Manager,  
North Western Railway, Baroda House,  
New Delhi.

- (2) Divisional Rail Manager,  
Office of the Divisional Rail Manager,  
Northern railway,  
Jodhpur.
- (3) The Divisional Personnel Officer,  
Northern Railway,  
Jodhpur.

.....Respondents.

Mr. Kuldeep Mathur, counsel for the applicant  
Mr. S.S.Vyas, counsel for the respondents.

**CORAM:**

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER**

**O R D E R**

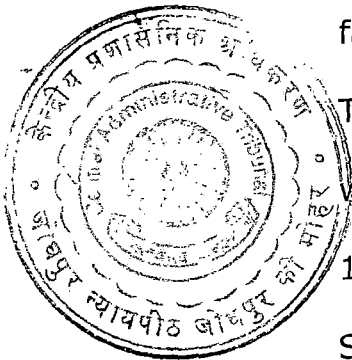
**(Per J.K.Kaushik, Judicial Member)**

Smt. Jamku Devi has assailed the impugned order dt. 20.10.2000 and 28.11.2000 (Annexures - A-1 and A-2 respectively) and has further prayed for release of Family Pension along with all consequential benefits including interest at the rate of 12% on the delayed payment.

2. The brief facts of the case leading to filing of this OA are that the applicant is the wife of one Shri Shiv Karan (sic Shri Sheokanwar). Shri Shiv Karan was employed on the post of MSM Khalasi at Makarana in the Respondent Department and while in active service Shri Shiv Karan expired on 27.5.1969. The husband of the applicant was governed by C.P.F. Scheme as per the Railway Provident Fund Rules. The third respondent issued an order dt. 15.11.1972 informing the applicant to opt for family pension as per the Railway Board Circular dt. 19.9.1972.

This was meant for grant of option for pensionary benefits to the widow of Railway Servant who died during the period from 1.4.1969 to 17.7.1972 without exercising option for pension. She was also asked to deposit a sum of Rs.1,932 (vide Annexure A-6).

3. The further case of the applicant is that the applicant vide communication dt. 21.12.1972 submitted her option to the Divisional Personnel Officer (for short, D.P.O.), Northern Railway, Jodhpur along with a forwarding letter (Annexure A-5 and A-6). A copy of the acknowledgement is also annexed thereto. The matter was reminded vide letter dt. 16.11.1980 (Annexure A-7). In 1988 applications were invited for grant of ex-gratia pension to the family of Central Government



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employees who were governed by CPF Scheme and who retired/died while in service prior to 1.1.1986. The applicant who was faced with peculiar financial hardships applied for the same on the prescribed proforma and she was granted the same vide order dt. 24.8.1989 (Annexure - A-9).

4. Thereafter, number of representations were made for release of family pension in her favour and the same was followed by certain communications from Akhila Bharatiya Pensioner Bandu Sanghatan (for short, ABPBS) a registered union. The Union specifically requested the Competent Authority that the applicant was entitled for family pension as per the Judgment of various Benches mentioned therein. The matter was taken up with the Pension Adalat, but the same has been turned down vide impugned orders dt. 20.10.2000 and 28.11.2000 (Annexures A-1 and A-2 respectively). The O.A. has been preferred on multiple grounds intermixing the facts of the case and the same shall be dealt with at appropriate place in this order.

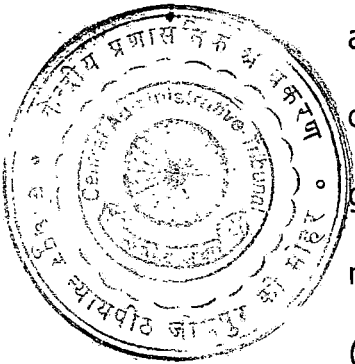
5. The Respondents have filed a detailed counter reply to the O.A. and have contested the case. The main defence as set out in the reply is that the applicant was asked to submit her option for family pension before the relevant date i.e. 31.12.1972 with a further condition that if she was so willing then she should submit first the amount of Rs.1,932/-. But, neither she preferred any option within the fixed time nor deposited the amount as directed and her representation preferred at a later date for family pension was rightly rejected. The applicant never claimed family pension till the year 1998, when for the first time



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a representation was received through ABPBS. She applied for ex-gratia pension in the year 1988 with an affidavit that she had not applied for family pension prior to the application for ex-gratia pension and therefore, the claim of family pension is barred by limitation.

6. Another ground of defence of Respondents as averred in the reply is that Annexure A-5 and A-6 seems to be fabricated one, inasmuch as, Annexure A-6 is addressed to D.P.O. Northern Railway, Jodhpur and option is said to have been sent by registered post, but acknowledgement submitted indicates that it was addressed to and acknowledged by Senior D.P.O., whereas in the year 1972 there was no post of Senior D.P.O. in existence at Northern Railway, Jodhpur. The applicant did not make any correspondence from the year 1972-1988 when the claim for ex-gratia pension was made. In para 5.6 also it has been mentioned that representation dt. 16.11.1980 (Annexure - A-7) (sic Annexure A-2) was never received by the Respondents and the same also seems to have been fabricated one just to overcome the objection of limitation. The representation dt. 11.8.1992 and 5.12.1996 were also never received by the Respondents. However, for the first time along with Annexure A-8 certain representations were received in the year 1998. The applicant was replied vide letter dt. 24.4.1998 that since she was receiving ex-gratia pension, she was not entitled for family pension. The claim put up before the Pension Adalat was rightly rejected vide Annexure A-1 and A-2 by stating all the reasons for rejection and the applicant has tried to mis-lead the Court by twisting the fact in order to get an order of family pension in her



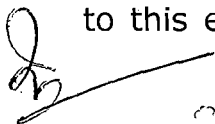
*dh*

favour. The grounds raised in the O.A. have been categorically denied. The applicant has not filed any rejoinder to the reply.

7. With the consent of the parties, the case was taken up for final disposal at the stage of admission. The original records were made available by both the Learned Counsel at the time of hearing. I have heard the Learned Counsel for both parties at a considerable length and have bestowed my earnest consideration to the pleadings and records of this case.

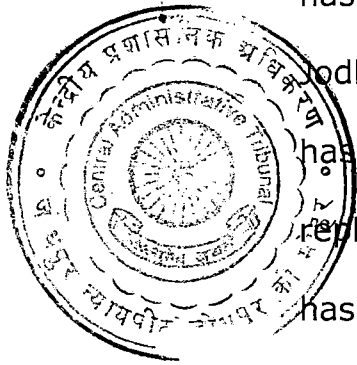
8. The Learned Counsel for the applicant has reiterated the facts and grounds mentioned in the O.A. He has specifically drawn my attention towards Annexures A-6 and A-5 wherein it has been argued that the applicant has specifically submitted her option and also submitted for adjustment of the due amount which was required to be deposited by her with the family pension which would have become payable after acceptance of her option. He has also drawn my attention to the acknowledgement, photocopy of which is produced at Annexure A-5 and has submitted that the option form was duly served on the respondents. I have also compared the acknowledgement with the original acknowledgement. The Learned Counsel for the applicant has next submitted that grant of ex-gratia pension cannot become an obstruction in release of family pension, since the very family pension is not a bounty, but a property of the applicant. It was specifically inquired from him as to the acknowledgement which has been placed on record, must have a postal receipt which is issued by the Post Office in case a letter is sent by a registered post. The learned counsel had no answer to this except that the applicant is a poor widow and whatever





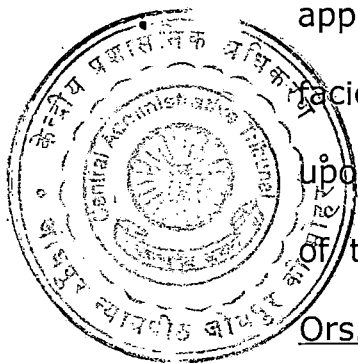
papers she had with her have been placed before this Tribunal. It was also inquired from the learned counsel for the applicant as to whether he had any acknowledgement in respect of subsequent communications like reminder (Annexure A-7), A-10, A-10A etc. He expressed his inability of the same.

9. On the contrary, the learned counsel for the respondents strenuously opposed the contentions raised on behalf of the applicant. It has been categorically submitted that the applicant never submitted any option and the so called acknowledgement can neither be relied nor is genuine, inasmuch as, it does not contain complete date, especially the year. Secondly, the same has been addressed to Senior D.P.O., Southern Railway, Jodhpur, whereas in the year 1972 there was no such post. He has submitted that this position has been clearly amplified in the reply to which there is no rebuttal, inasmuch as, no Rejoinder has been filed. He has further submitted that (Annexure A-6) is also a fabricated document which is ex-facie evident from the copy which has been filed certain portion from the top is missing. He has submitted that a copy of the actual letter which was received by them along with representation sent through the Trade Union in the year 1998 (the same was shown to the learned counsel for the respondents and have been found to be true). Thus a copy of the same is placed on record. From this copy my attention was drawn to the effect that a reference number has been given and it is indicated as Dak Praman Patra May Prashit and these have been deliberately hidden from the knowledge of the Tribunal since the tribunal could have otherwise asked for such certificate.



10. The Learned Counsel for the Respondents has next submitted that, as a matter of fact, the applicant for the first time submitted an application and that too for ex-gratia pension in the year 1988 with a very specific affidavit (page 44) wherein it has been stated that the applicant has never submitted any application for family pension. Thereafter, it is only on 5.12.1996 vide Annexure A-10 (which is also not served on the respondent) the applicant submitted her option for grant of family pension, that too in reference to certain CAT Judgments. It has specifically been mentioned in this letter that this application should be treated as her written option for grant of family pension. Therefore, the averments made by the applicant that she submitted her option earlier in 1972 is ex-facie concocted and a mis-statement of fact and cannot be relied upon. He has also placed reliance on a Judgment of this Bench of the Tribunal decided on 27.07.2001 Smt.Kishni Vs. UOI & Ors. wherein a similar controversy has been adjudicated upon and the same was turned down on the ground of limitation itself and the same controversy involved in the present case is fully governed by the said judgment. In that case, certain judgments of the Supreme Court especially that of Krishena Kumar Vs. UOI & Ors. (1991 SCC (L&S) 112) have been referred to and it has been held that the pension scheme and CPF scheme are structurally different and they do not belong to one class. The fresh option to switch over to pension scheme was not allowed by the Constitution Bench.

11. I have considered the rival contentions raised on behalf of the parties. Mainly four issues are involved in this case viz. i)



whether the applicant has at all submitted any option for family pension, ii) whether she fulfilled the eligibility condition for switching over from CPF Scheme to Pension Scheme and grant of family pension thereof, iii) whether the case of the applicant is hit by law of limitation and iv) whether rejection of her claim considering the above three issues in her favour can be said to be justified.

12. As far as the first issue is concerned as to whether the applicant at all submitted any option as per the Rules in force, I have scrupulously scanned the various communication in this matter. Adverting to Annexure A-5, the learned counsel has heavily relied on an acknowledgement. The said acknowledgement makes it evident that the same is addressed to the Senior Divisional Personnel Officer, Northern Railway, Jodhpur having some date 23/12 and received date 25.12. Firstly, the admitted position of the case is that at the relevant time i.e. in the year 1972 there was no post of Senior D.P.O. so the question of acknowledging any such letter by Senior D.P.O. does not arise. Secondly, this acknowledgement does not contain any year. Even the Post Office delivery stamp is also not clear. Nextly, authentic proof is the postal receipt i.e. a receipt is given by the post offices at the time of sending the registered letter and the acknowledgement cannot be considered to be the conclusive evidence in the absence of the postal receipt. The applicant has not given any reason as to why the postal receipt has not been made available. The version of the learned counsel for the respondent that deliberately some portion of the Annexure A-6 has been hidden has a substantial



*[Signature]*

force which contains the Dak Pramn Patra May Prashit, but there is no such certificate available. As regards the so called acknowledgement, such acknowledgements are freely available and the same can be even fabricated by getting some favour from the lower level officials and if the same is put in a letter box it gets stamped by the delivery post office and thus the same can otherwise also be not considered as conclusive evidence in absence of a corroborating evidence; rather main evidence of postal receipt issued by the post offices. In case of sending of registered letter even there is a presumption that after 30 days the letter shall be deemed to have been reached the destination in case it is not returned back. In the present case, no postal receipt is available so no inference of service can be drawn. This position is also evident from subsequent communications like Annexure A-7, A-10 and A-10A. These letters i.e. so called reminders do not contain any reference to so called option letter which is said to have been submitted on 21.12.1972. Had the applicant really submitted those letters there would have been a cross reference. Since the reminder letter invariably should have reference to the main letter. But, in the present case there is none as such. Nextly, no proof of service of all these letters have been produced. Even mode of service has not been indicated and the learned counsel for the applicant had absolutely no answer to the specific question in this regard.

13. It has been further revealed that letter dt. 5.12.1996 Annexure A-10 at page 29 from clearly indicates that the applicant has submitted her option for grant of family pension on the said date and had she submitted such option earlier, the



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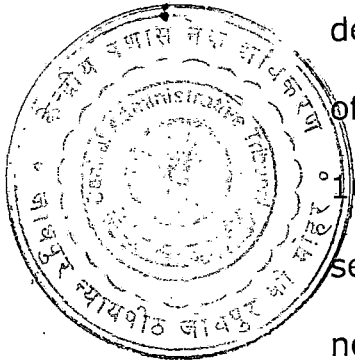
same ought to have been referred to at least in this letter, but since there was none, reference has not been made and this letter came to be originated only because there were certain decisions of CAT for switching over to Pension Scheme. There is no answer as to why the applicant has given an affidavit in the year 1988, that she never applied for family pension and it is rightly pointed out by the learned counsel for the respondents that the same has not been refuted by way of Rejoinder. It is amazing to note that an application was routed through the ABPBS (Annexure A-11) for grant of certain relief as per the order of the Railway Board dt. 4.11.1996 and the relief has been sought in accordance with this circular. That was a case for grant of ex-gratia pension to living CPF retirees prior to 1.1.1986 and denial of ex-gratia pension to living CPF retirees prior to 1.1.1986 was held to be justified. Thus the same has absolutely no relevance to the controversy involved in the present case. The consequence is of the events and the documents submitted in the present case as regards the submission of option clearly shows the existence of certain manipulations. In this view of the matter, an inevitable and inescapable conclusion is that the applicant did not submit her option for switching over to the pension scheme as per the orders issued in the year 1972 and there is no reason to dispel the version of respondents that the documents relating to so-called option have been fabricated/manipulated.

14. Now, coming to the next question as to whether the applicant fulfilled the eligibility condition for grant of family pension, as per the very letter issued by the department the




applicant has admittedly not deposited the amount which she was asked to deposit and which was a pre-condition for grant of family pension. Thus, there can hardly be any quarrel on this issue and admittedly the applicant has not fulfilled the requisite conditions for grant of family pension.

15. Now, advertent to the third point i.e. whether the O.A. can be said to be within the law of limitation, keeping in view the aforesaid observations, it can be safely concluded that the applicant has never submitted any option till date for switching over from CPF scheme to pension scheme, inasmuch as, the so called option dt. 5.12.1996 Annexure A-10 has also never been served on the respondents and other communications through the Trade Union are only the correspondence with the department and cannot be construed as an option by no stretch of imagination.

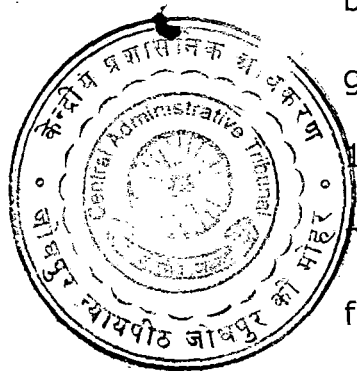


16. A Miscellaneous Application No.102/2002 has been separately filed for condonation of delay. The application does not make any specific mention as regards the actual delay. In the present case the applicant has not at all submitted any option for pension scheme. However, the cause of action could be said to arise in November, 1972 and there is a delay of about 27 years in filing of the O.A. The main ground for condonation of delay plead that it is a recurring cause of action and no third party rights are adversely affected. Further the applicant is a poor and an illiterate widow. It is not a case of grant of family pension simpliciter, rather it is a case of switching over from CPF Scheme to Pension Scheme which is one time <sup>exception</sup> ~~except~~ and this does not give rise to recurring cause of action. There is no

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explanation for the delay, least to say good and sufficient reasons. Beside this, the applicant has used dubious means and even has good the records' manipulated and does not deserve any sympathy. The M.A. No.102/2002 does not merit acceptance.

17. The Judgment passed in Smt.Kishni's case (supra) cited on behalf of the Respondents squarely covers by all force the controversy involved in this case. I can only assert at this stage, that if I were to examine the matter independent of the aforesaid authority, I would have also reached to the same conclusion besides the fact that I have absolutely no hesitation in following the said decision. Thus, the O.A. is also hopelessly barred by limitation and in fact, deserves to be dismissed on this ground alone.



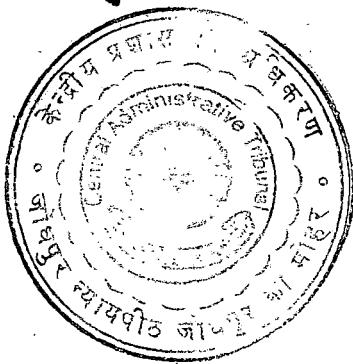
18. Now for academic sake, even examining the case on merits and taking the aforesaid issues in favour of the applicant for a moment, the applicant has absolutely no case even on merits. The issue regarding switching over from CPF scheme to Pension scheme has already been adjudicated upon and stands settled by the Supreme Court in V.K.Ramamurthy Vs. Union of India & Anr. (AIR 1996 SC 2658). Their Lordships of Supreme Court have relied upon the Judgment in Krishena Kumar's case (supra) para 30, which is reproduced as under :

"The Railway Contributory Provident Fund is by the definition a fund. Besides, the Government's obligation towards an employee under CPF Scheme to give the matching contribution begins as soon as his accounts is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under

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the Pension Scheme the Government's obligation does not begin until the employees retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government's legal obligation under the Provident Fund Accounts ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retirees finally crystallized on his retirement whereafter no continuing obligation remained while, on the other hand, as regards Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of Pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the Pension retirees."

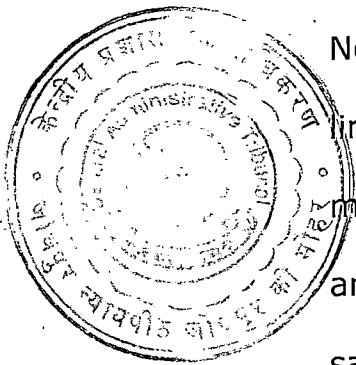
The case was turned down with the following order :



In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara's case (AIR 1983 SC 130) 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 Krishena Kumar's 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 Krishena Kumar's case (AIR 1990 SC 1782). The other decision of this Court, in the case of R.Subramanian (1995 AIR SCW 963): (Writ Petition (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 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."

19. Keeping in view and examining the case by applying the aforesaid statement of law, once the applicant's husband was retired from service and during his service he was given options for about six times there was no question of grant of any further option to him for switching on to pension scheme benefits and the applicant can have no better right than her husband had who was the government servant. In this view of the matter, the contentions of the applicant are not sustainable on any count and there is no infirmity or illegality with the action of respondents.

19. The upshot of the aforesaid discussion is that M.A. No.102/2002 stands rejected and the O.A. is badly hit by law of limitation, there has been ex-facie fabrication of the documents, mis-statements of facts and the same is otherwise also meritless and thus stands dismissed accordingly. The applicant is saddled with a cost of Rs. 1,000/- which may be recovered from the Dearness Relief payable to her on the ex-gratia pension.



  
(J.K.KAUSHIK)  
JUDICIAL MEMBER

B.

Received copy  
by Amyas  
for S.S. Nyas  
S.S. Nyas  
A 6.6.13

soaveen  
mohan  
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(R)

R. Cor.  
BCK

2/6/03.

Part II and III destroyed  
in my presence on 13.2.09  
under the supervision of  
section officer (J) as per  
order dated 5/2/08

V. G. S. K.  
Section officer (Records)