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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH: JODHPUR.**

**Original Application No. 272/2004.
and Misc Application No 134/2004
Date of decision: 08.04.2005.**

Hon'ble Mr. J K Kaushik, Judicial Member.

Hem Singh, S/O Shri Chunnilal JI Solanki, by caste, Rajput, aged about 75 years resident of Near Shakti Bhawan outside Mahamandir, Jodhpur. The applicant at the time retirement was holding the post of Skilled Fitter in the Railway Workshop, N.W. Rly, Jodhpur.

: Applicant.

Rep. By Mr. Kuldeep Mathur: Counsel for the applicant.

VERSUS

1. The Union of India through the General Manager, North Western Railway, Jaipur.
2. The Deputy Chief Mechanical Engineer, North-western Railway, (Workshop) Jodhpur.
3. The Divisional Personnel Officer, North Western Railway, Jodhpur.

Rep. By Mr. Manoj Bhandari: Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

Shri Hem Singh has filed this Original Application under Sec. 19 of the Administrative Tribunals Act, 1985, wherein he has sought the following reliefs:

1. That the original application may kindly be allowed.
2. The respondents may kindly be directed to release pension to the applicant with effect from the date of acceptance of his resignation i.e. 30.11.1973 along with payment of arrears with interest @ 12% per annum.
3. Any other relief, which this Hon'ble Tribunal deems fit and proper, may be granted in favour of the applicant.
4. Costs of this application be ordered to be awarded in favour of the applicant.

2. The Original Application was heard on the last occasion on 05.04.2005 and the remaining arguments have been concluded

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today. Both the learned counsel had consented for its final disposal at the admission stage itself. I have carefully perused the records and pleadings of this case.

3. The factual matrix of this case indicates that the applicant served the Railway department from 29.11.1950 to 30.11.1973. His services came to an end on his own volition in as much as he tendered his resignation which was duly accepted. At the relevant time he was holding the post of skilled Fitter in the workshop of North Western Railway (erstwhile Northern Railway). He had completed 23 years of service and came to be discharged from service on account of the acceptance of his resignation. It has been further averred that as per para 623 of Railway Pension Rules 1950 and Para 18 of Railway Service (Pension) Rules, 1993, one is entitled to get pension on completion of 10 years or more of qualifying service. Hence he moved the authorities for the grant of pension, which came to be turned down on the pretext that he had tendered his resignation and hence he is not entitled to the pensionary benefits. The Original Application has been filed on various grounds mentioned in para 5 and its sub-paras.

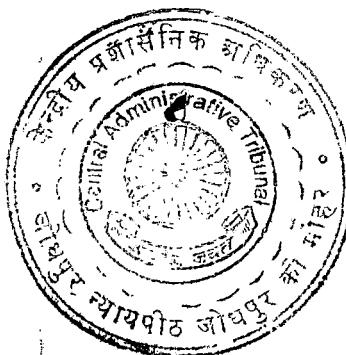
4. The respondents have contested the case and filed a detailed reply to the original application. The primary defence as set out in the reply, indicates that the applicant was neither a pension optee nor the Voluntary Retirement Scheme was in existence; the voluntary retirement scheme was introduced for the first time in the Railways only in the year 1977. Therefore



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para 623 of MOPR and Rule 18 of the Railway Service (Pension) Rules 1993 have no application in his case. Further he was a CPF(popularly known as SRPF in railways) Optee and accordingly a sum of Rs. 4627.67 as PF and Rs. 3335.00 as Gratuity was paid to him. No pension would be admissible to a person who has resigned from service as per rules in vogue. The grounds raised in the O.A have generally been denied. Heavy reliance has been placed on an order of this Bench of the Tribunal which came be passed in O.A. No. 90/2003 on 16.03.2004 [**Mangilal Bhati vs. UOI and ors.**].(Annex. R/2).

5. The learned counsel for the applicant has strived hard to persuade me that a great injustice had been caused to the applicant in as much as the applicant had served the respondents department for more than 23 years and he has not been granted the due pensionary benefits for his past satisfactory service. He has heavily relied on the judgement rendered by the Hon'ble High Court of Rajasthan at Jodhpur in D.B Civil Spl. Appeal (W) No. 585/2004 on 26.08.2004 in **State of Rajasthan and ors. Vs. Smt. Shankuntla Sharma** and submitted that the respondent therein had completed more than 20 years of service and she tendered her resignation, the same was directed to be treated as a notice of voluntary retirement and due benefits were held to be payable. He has contended that the respondents herein also be directed to apply the same principle to the instant case and allow him the pensionary benefits.



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6. On the other hand, the learned counsel for the respondents has strongly opposed the contentions raised by the learned counsel for the applicant and submitted that the applicant never opted for pensionary benefits and his case was to be regulated as per the rules applicable to a SRPF optee. Hence no pension could be granted to him on any count. He has submitted that the complete controversy is covered on all fours by the judgement in **Mangilal Bhati's case** (supra) and no further adjudication is required. He has also submitted that specific averments have been made in the reply that the very scheme of voluntary retirement had been introduced in the Railway for the first time only in 09.11.1977. Even if the version of the applicant is considered to its logical end, no pensionary benefit could be extended to the applicant by treating him as voluntarily retired since the applicant had already left the service as early as on 30.11.1973 when there was no scheme of voluntary retirement. Therefore, the benefits admissible to a person who takes voluntarily retirement from service cannot be extended to the applicant.

7. I have considered the rival submissions put forth on behalf of both the parties. As far as the factual aspect of the case is concerned, there is absolutely no quarrel that the applicant had tendered his resignation from service and the same was accepted. He had also completed 23 years of service. It is also the fact that the applicant had never opted for pensionary benefits and he was SRPF Optee and he had also been paid the due amount towards SRPF as well as Gratuity. As far as the rule



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position is concerned, there is a provision under the Rules to grant pension benefits even on resignation but after one has completed 30 years of regular service, which is not the case here. There are catena of judgements to the effect that a person who tendered his resignation from service after completion of 20 years qualifying service, the letter of resignation could be converted into letter of voluntary retirement. The judgement cited by the learned counsel for the applicant in **State of Rajasthan and ors. Vs. Smt. Shakuntla Sharma** is one in the same direction and supports the contention of learned counsel of the applicant. But the only question arises here is that even if the resignation of the applicant is treated as voluntary retirement, what benefit could be extended to the applicant? Firstly, as rightly contended by the learned counsel for the respondents that there was no scheme of voluntary retirement from service at the relevant time when the applicant tendered his resignation and which was accepted with effect from 30.11.73 and therefore the question of granting any pension to the applicant does not arise. Secondly, unless and until a person opted for pensionary benefits, the same cannot be granted since it is axiomatic that to get pension one must be a pension optee. The matter does not end up here. The episode is moved a little further, in as much as the applicant had accepted the benefits, which are admissible to a SRPF optee without any protest and he had never asked for a change over to pension scheme. In such a situation, he can not be allowed to switch on to the pension scheme. It is well settled proposition of law that if a thing cannot be done directly, the same cannot be



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indirectly also and by now there is an embargo as per the law propounded by the Apex Court in **Krishan Kumar vs. UOI and ors.** [AIR 1990 SC 1782.] wherein their Lordships of the Supreme Court have negatived the claim for change over from CPF scheme to Pension scheme after a long time.

8. I have also gone through the judgement, which is being relied on by the learned counsel for the respondents at Annex. R/2, and I find the same covers fully the controversy involved in the instant case and there is no requirement for any further adjudication in the matter. A copy of the same is already placed on the records of this case and the contents of same shall be read as a part of this order. Therefore I have no hesitation in deciding the instant case on similar lines.

9. In the premises, the result is very unfortunate and I have no option except to dismiss the case, which I do so accordingly. In the facts and circumstances of this case, the parties are directed to bear their own costs.



J K Kaushik
(J K Kaushik)
Judicial Member.

jsv