

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. No.1073 of 1997

Present: Hon'ble Mr. D. Purakayastha, Judicial Member

Ananta Kumar Roy Choudhury, S/O Late  
Satindra Nath Roy Choudhury, Ex-Clerk of  
D.P.O./Sealdah, Eastern Railway in the  
control of D.R.M./Sealdah, Eastern  
Railway, Sealdah Division, residing  
at 64, Thakurpara Road, P.O. + P.S.  
Naihati, Dist.North 24 Parganas,

... Applicant

VS

1. Union of India represented by the  
General Manager, Eastern Railway at  
17, Netaji Subhas Road, Calcutta-1
2. The Chief Personnel Officer, Eastern  
Railway, 17, Netaji Subhas Road, Calcutta-
3. The Divisional Railway Manager, Eastern  
Railway Sealdah Division, P.O. Entally  
Calcutta-700 014
4. The Sr. Divisional Personnel Officer,  
Eastern Railway, Sealdah, P.O. Entally,  
Calcutta-700 014

... Respondents

For the Applicant : Mr. S.K. Dutta, counsel  
Mr. B.K. Banerjee, counsel

For the Respondents: Mr.C. Samaddar, counsel

Heard on 15.1.1999

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Date of order: 15.1.1999.

O R D E R

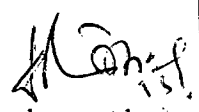
The case of the applicant in short is that he went on voluntary retirement from service with effect from 3.6.72 and he rendered service for more than 28 years from 25.11.44 to 3.6.72 and he was the holder of the provident fund scheme and he did not exercise any option for switch over to the pension scheme by the cut off date despite giving ample opportunities to the Railway employees. According to the applicant, he came to know that in the year of 1995 the Hon'ble Supreme Court extended the benefit of pension scheme to the employees who did not exercise option to switch over to the pension scheme by the cut off date and accordingly he filed this application for getting the benefit of switching over from provident fund scheme to the pension scheme basing upon the judgment of R. Subramaniam's case, reported in AIR 1995 SC 983.

2. The respondents filed written reply denying the claim of the applicant. According to them, as per decision of the Hon'ble Apex Court in the case of Krishena Kumar vs. Union of India and others reported in (1990)14 ATC 846 the applicant is not entitled to get any benefit of the pension scheme. So, the application should be dismissed.

3. Mr. Dutta, learned counsel appearing on behalf of the applicant strenuously argued before me that the applicant did not exercise any option for switching over to pension scheme, nor the applicant made any option for retaining the provident fund scheme by the cut off date as fixed by the respondents. Since he did not opt to retain the provident fund scheme, thereby it would have been treated by the respondents that the applicant had switched over to the scheme for pension from the cut off date. Mr. Samaddar, learned advocate, on the other hand, has relied on the judgment of the Krishena Kumar (Supra) case and submits that the applicant is not entitled to get any pension.

4. I have considered the submissions of the learned counsel of both the parties. I find that the dispute regarding entitlement to switch over to the pension scheme from the provident fund scheme is no longer integer in view of the judgment of the Hon'ble Apex Court in the case of Union of India and others vs. Kailash, reported 1998 SCC(L&S) 1531 wherein the Hon'ble Apex Court has considered all the cases on this matter including the case of Union of India vs. D.R.R. Sastri and after considering all the aforesaid judgments the Hon'ble Apex Court held that "following the decision of the Krishena Kumar case we allow the appeal and set aside the order passed by the Central Administrative Tribunal, Calcutta Bench with the result that the application filed by the respondents before the Tribunal stands dismissed."

5. In view of the aforesaid circumstances, <sup>and</sup> ~~I would like~~ <sup>to refer to the following para of the Hon'ble Apex Court.</sup> On the basis of the said judgment I have no option but to dismiss the application. Accordingly the application is dismissed awarding no costs.

  
(D. Purkayastha)

MEMBER (J)