

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 182/91
T. A. No.

199

DATE OF DECISION 12.2.92

Mr. C.A. George Applicant (s)

M/s K.Ramakumar & V.R.Ramachandran Advocate for the Applicant (s)

Versus

U.G.I rep. by General Manager, Respondent (s)
Southern Railway & 3 others

Mr. M.C.Chcrian Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V.Krishnan, Member (Administrative)

The Hon'ble Mr. N.Dharmadan, Member (Judicial)

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement? ✓
4. To be circulated to all Benches of the Tribunal? ✓

JUDGEMENT

N.V.Krishnan, AM

The applicant was a Chief Ticket Inspector in the Southern Railway at Coimbatore and who has retired from service on 29.2.88. The revised pay scales had come into force from 1.1.86 and the Revised Pay Rules 1986 governed its application to the employees. Accordingly, he had exercised an option and he has got the benefit of the revised pay scale.

2. Subsequently, all persons, serving and retired, whether they had exercised an option earlier or not, were given a further opportunity to exercise a fresh option in terms of the letter dated 23rd June 1988 of the Railway Board, which was notified by the respondents in the Southern

Railway Gazette vide Ann. 'A'. According to this letter a fresh option could be exercised. This is clear from para 4 of the circular which is reproduced below:

"4. The option in the format appended as the second Schedule to the Railway service (Revised pay) Rules, 1986 may be exercised by 30th September 1988. The option once exercised shall be final. The option available under these orders can be exercised afresh even by those Railway servants who have already exercised option prior to the issue of these orders to switch over to the revised scales. However, the pay of Railway servants who still opt to switch over to the revised scales from any date subsequent to 31st December 1987 shall be fixed in those scale under Rule 9 of the Railway servants (Revised Pay) Rules, 1986."

3. The applicant states that the aforesaid circular was published only in October 1988 i.e. after the last date fixed for the exercise of option had expired. The applicant came to know of this matter only in December 1989. When he exercised his option on 26.12.89 (Annexure-B), it was rejected by the fourth respondent (Annexure-C) on 13.3.90. His further representation was forwarded to the Chief Personnel Officer, Madras by the third respondent (Annexure-E) but this was also turned down by the Annexure F letter dated 5.9.90.

4. In the meanwhile, the applicant sent a detailed representation dated 2.8.90 (Annexure-G) to the second respondent (Secretary, Ministry of Personnel, Public Grievances & Pension) ventilating his grievance. On receipt of this representation from the second respondent, the Railway Board has forwarded the same to the AGM/Southern Railway, Madras Directorate of the Railway Board (Ann.I). No further reply has been received to this representation. Applicant states that, in the past, in such circumstances, opportunity to

u *fresh*
exercise ~~first~~ option was given (Annexure-J).

5. Hence, this application has been filed seeking the following reliefs:

"(i) To direct the respondents to permit the applicant to exercise an option to come to the revised pay scale recommended by the Fourth Pay Commission.

(ii) To direct the respondents to grant all the benefits to the applicant pursuant to the option."

6. The respondents have filed a reply stating that the applicant is not entitled to any relief. The Revised Pay Rules 1986 originally provided that only those persons who opt for the revised pay scales from 1.1.86 (i.e. the date on which they came into force) will be given the benefit of the liberal pay fixation as provided in Rule 7. It is now provided that any person who opts for the revised pay scale with effect from any date, after 1.1.86 but before 31.12.87, on which he gets his next increment in the existing pay scale applicable to the post held by him on 1.1.86, will also get the benefit of liberal pay fixation under Rule 7. For this reason all persons--serving and retired, whether they exercised an option earlier or not--were to be given an opportunity to exercise the option before 30.9.88. It is stated that wide publicity was given to the letter dated 23.6.88 of the Railway Board granting a further opportunity to exercise an option in regard to the revised pay scales.

7. In their reply the respondents have stated as follows in this connection:

u "Wide publicity and circulation were given to the new right of option conferred upon the Railway employees. This was published in the Palghat Division on 1.8.88. A true copy of the letter dated 1.8.88 of this respondent along with the order of the Railway Board dated 23.6.88 is

produced herewith as Exbt. R1. It can be seen from exbt R1 that wide publicity and circulation were given to Railway Board's order throughout the division. It was later published in the Southern Railway Gazette also, as could be seen from Annexure-A. The reproduction of it in the Gazette was only to serve the purpose of an authentic record. True that the said gazette publication was on 1.10.88. But the date of publication in the Gazette was not of much significance in so far as the said provision was given wide publicity all over the Railway even before-hand and on 1.8.88 in the Palghat Division! (*emphasis added*)

8. The respondents contend that in view of the publicity given, the applicant should have exercised the option in time. It does not make any difference whether one is a retired employee or a serving employee. In any case, the matter was referred to the Railway Board and that authority advised that the applicant need not be given an extension of time for exercising a reoption. On that basis, the Exbt.R2 letter dated 22.3.91 was issued by the Chief Personnel Officer to the 4th respondent.

9. It is claimed that in these circumstances, the application has no merit and has to be dismissed.

10. I have perused the records and considered the arguments of the counsel.

11. When the decision to give one more option was taken, (Ex.R-1) the Railway Board issued the letter dated 23.6.88 and directed the General Managers of all the Zonal Railways as follows:

"5. All your field offices may be directed to bring the content of these orders to the notice of all concerned expeditiously well within time so that the need for extending the date of exercising option under these orders may not arise."

The persons concerned with this circular includes pensioners also who may have retired prior to the issue of the circular. The respondents, perhaps, forgot that pensioners were also entitled to exercise the option because, publicity to the circular was given by Exbt.R1 dated 1.8.88 by the fourth respondent by sending a copy of that circular to all supervisory officers. No step was taken to inform pensioners, either individually or through their association.

12. The learned counsel for the respondents contended that, by publication in the Southern Railway Gazette, the respondents have discharged their responsibility and the applicant ought to have known about this circular immediately thereafter. I am not convinced by this argument for 3 reasons:

(i) In the counter affidavit it is stated that the letter was published in the Gazette which was "only to serve the purpose of an authentic record". Therefore, respondents did not intend this to serve the purpose of wide publicity.

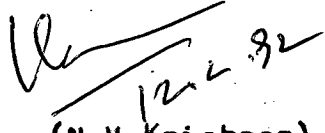
(ii) Para 5 of the circular expected the General Manager to direct the field officers to bring the contents of these orders to the notice of all concerned. If publication in the Gazette was intended by this direction, the Board itself could have published it in the Gazette. Therefore, the executive supervisory staff were ^{then fact,} expected to take other kind of action.

(iii) If publicity was the objective, the Government Gazette is the least effective method of publicity. Among the periodicals it has the least circulation and its readership is extremely limited. Publicity could have been given through newspapers or the AIR or Doordarshan.

13. I am disappointed to see that though the Board's attention was drawn by the Annexure-G representation to the manner in which publicity was given in Southern Railway, it did not probe into the matter further to see whether para 5 of ~~the~~ its letter dated 23.6.88 was complied with or not. Instead, it referred the representation to the A.G.M, Southern Railway (Annexure-I). Though it is stated in the counter that orders of the Board were obtained, on the basis of which Exbt.R3 was issued, no such order has

been produced. The Railways have also not cited the case of even one pensioner who had exercised his option in time to prove their point that sufficient publicity had been given by Exbt. R2 and even pensioners got apprised about this letter and exercised their option in time. That apart, it is clear from Ann.J letter dated 7.4.1985 of the first respondent, that in similar circumstances, when, due to lack of publicity options could not be exercised in time, the Board had directed in its letter dated 4.1.85 that each case has to be examined on merits and the delay in filing the option should be condoned.

14. In the light of the foregoing discussion, I find that the applicant has a legitimate grievance which has to be redressed. The option exercised by the applicant at Annexure-B is lacking in some details such as the post held by him on 1.1.86 and the date on which his next increment fall due prior to 31.12.87, which would be the date on which he would like to come on to the revised pay scale. Thus I allow this application with a direction to the applicant to send a proper option to the 4th respondent, in terms of the Ann.G letter, within 2 weeks from the date of receipt of this judgement and if such an option is received, we direct the 4th respondent to accept it and treat it as an option exercised in time, in terms of the Ann.R2 circular and grant all consequential benefits to the applicant within 2 months from the date of its receipt by him.


(N.V. Krishnan)
Member (Administrative)

N. Dharmadan, M(J)

15. I have gone through the judgment of my learned brother and I fully agree with his conclusions. However, I felt it necessary to add my opinion to arrive at the same conclusion.

16. The facts of this case have been discussed in detail by my learned brother. The only question that arises for consideration is whether on the facts and circumstances of the case, the applicant is entitled to ^{get him} benefit of one more option on the basis of the decision taken by the Railways dated 23-6-88 (Annexure R-I).

17. The applicant ^{has} retired as Chief Ticket Inspector from the Southern Railway, while working at Coimbatore. His retirement was on 29-2-88. Nevertheless he claims that he should have been given personal notice of the contents of the Railway Board's letter for exercising the option within the time viz. 30-9-88. The Railway Board passed Annexure R-I ^{which} contains the following directions:

".....The contents of this circular may please be notified to all staff individually and ensure that no complaints from staff of their ignorance arises at a later date....."

XXXXXXX

XXXXXXX

XXXXXXXXX

"...All your field officer may be directed to bring the content of these orders to the notices of all concerned expeditiously well within time so that the need for extending the date of exercising option under these may not arise....."

...../

18. The respondents in their reply statement submitted that by publication in the Southern Railway Gazette, they had discharged their duty of bringing the contents of the circular to the notice of all concerned. The directions in Annexure R-I are not in any way special to the applicant but of universal application to all the employees irrespective of the question whether they are serving or retired employees. By publication in the Railway Gazette having circulation in the concerned area there can be due publicity.

19. On the facts of this case there is some difficulty in accepting the contention of the respondents. It is brought to our notice that the General Manager Southern Railway published contents of the notification only in Supplement No. 19/88 to Gazette Col.38 No.19 of 1st October 1988. This is indicated in the representation Annexure-G submitted by the applicant. Except the publication of

and also in the notice board of the offices to which it is addressed,

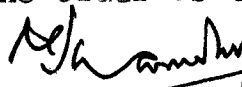
circular in Annexure R-I in the Railway Gazette ~~no~~ ^{another} ² action had been taken by the Railway for giving intimation to all persons including the applicant about the right of giving further option as indicated in Annexure R-(1).

Because of the delay in publication in the gazette, the applicant could not submit the option ~~with~~ ² the prescribed period. The applicant submitted Annexure-G representation to the Secretary Department of Personnel and Training. This was duly forwarded to the Railway Board for necessary action. The applicant was also given intimation that the papers have ² been forwarded to the Additional General Manager, Southern

Railway for proper action. According to the applicant no further action has been taken so far on any of the representation submitted by him.

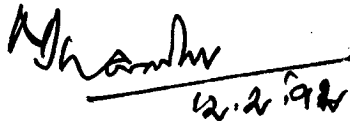
20. From the reply statement filed by the respondents it is not clear ^{as to} ~~that~~ whether a decision had been taken on Annexure-G ^{or not} and communicated to the applicant with due acknowledgement even though there is a statement to the effect that the Railway Board have taken final decision ^{holding} ~~that~~ the applicant need not be given extension of time for facilitating to make re-option. Ext- R-II is the letter containing a statement that the applicant's request cannot be agreed to at this stage. This decision cannot be upheld on the facts of the case. As indicated above the circular in question was published in the Railway Gazette dated 1st Oct. 1988 and it may not be taken as due publication satisfying the requirements so as to hold that the applicant had been given intimation about the circular so as to enable him for submitting his option within the time limit in terms of Ext. R-I before the 30th September 1988.

21. Under these circumstances, the applicant is entitled to relief as prayed for and the application is allowed, directing the respondents to allow the applicant to exercise option to come to revised pay scale as recommended by the Fourth Pay Commission. There shall be no order as to costs


(N. Dharmadan)
Member (Judicial)
12.4.96

Order of the Bench

For reasons mentioned in our judgements, this application is allowed with a direction to the applicant to send a proper option to the 4th respondent, in terms of the Annexure-G letter, within 2 weeks from the date of receipt of this judgement and if such an option is received, we direct the 4th respondent to accept it and treat it as an option exercised in time, in terms of the Ann.R2 circular and grant all consequential benefits to the applicant within 2 months from the date of its receipt by him.


12.2.92

(N.Dharmadan)
Member (Judicial)


12.2.92

(N.V.Krishnan)
Member (Administrative)