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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CAT/J/12

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NEW BOMBAY BENCH

(16)

O.A. No. - 198
T.A. No. 27 of 1987.

DATE OF DECISION 11-11-1987.

Ghansham Das & A.D'Souza

Petitioners.

Mr.D.V.Gangal

Advocate for the Petitioners)

Versus

Union of India & two others.
Ministry of Railways, New Delhi.

Respondent

Mr.D.S.Chopra

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. L.H.A.Rego, Member (A)

The Hon'ble Mr. M.B.Mujumdar, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *Yes*

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Tr.Application No.27/87.

(17)

1. Ghansham Das,
Avadhupuri Co-op.Society,
R.B.Mehta Marg,
Ghatkopar (East),
Bombay - 400 077.
2. A.D'Souza,
C-9, Cyan Co-op.Hsg.Society Ltd.,
Lal Bahadur Shastri Marg,
Bombay - 400 070.

.. Applicants
(Original Petitioners)

Vs

1. The Chief Personnel Officer (Mech)
Central Railway,
General Manager's Office,
Bombay V.T.
2. The Minister of Railways,
Railway Bhavan,
New Delhi.
3. Union of India. .. Respondents

Coram: Hon'ble Member (A) L.H.A.Rego.
Hon'ble Member (J) M.B.Mujumdar.

Appearances:

1. Mr.D.V.Gangal
Advocate for the
applicants.
2. Mr.D.S.Chopra
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 11-11-1987.

¶ Per: M.B.Mujumdar, Member(J) ¶

Writ Petition No.1556 of 1983 filed by the applicants in the High Court of Judicature at Bombay is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. After the writ petition was transferred, the applicants moved an application for amendment of the petition. We allowed it. On our direction they filed a fresh copy of the writ petition incorporating all the amendments which we have allowed them to make.

2. The essential facts for the purpose of this

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judgment are these: Applicant No.1 Ghansham Das was appointed as an Apprentice in 1929 in the Workshop of the Central Railway at Parel. He retired on superannuation on 18.7.1970 while working as a Foreman. Applicant No.2 A.D'Souza was appointed as an Apprentice in Matunga Workshop of the Central Railway. He also retired as a Foreman on superannuation with effect from 1-3-1971.

3. In 1957 the Railway Board introduced the Pension Scheme for railway servants by its letter dated 16-11-1957. The scheme was introduced with the sanction of the President. The scheme was made applicable (a) to all railway servants who entered service on or after the date of issue of the letter and (b) to all non-pensionable Railway servants who were in service on 1-4-1957 or had joined railway service ^{and} between that date and the date of issue of the letter ^{who} would opt for these benefits in preference to their existing retirement benefits. According to para (4) of that letter Railway servants referred to in (b) above were required to exercise an unconditional and unambiguous option in the prescribed form on or before 31-3-1958, electing the pensionary benefits or retaining their existing retirement benefits under the State Railway Provident Fund Rules. Further, any such employee from whom an option form showing the employee's option was not received within the above mentioned time-limit or whose option was incomplete or conditional or ambiguous, was to be deemed to have opted for the pensionary benefits. Para 4 of the above letter was subsequently partly modified by letter dt. 9-5-58. According to the modification it was decided that only such of the above mentioned railway servants who wish to be governed by the pensionary benefits need exercise option therefor and all others who did not

specifically elect by 30th June, 1958 were to be governed by the pensionary benefits or whose option was incomplete, conditional or ambiguous in any way, would be deemed to have retained the then existing retirement benefits under the State Railway Provident Fund Rules. Though the option exercised in terms of the letter was to be final and irrevocable the railways had extended the time 17 or 18 times prior to 1969 in order to give benefit of the pension scheme to as many employees as possible.

4. Both the applicants had exercised the options in favour of the State Railway Provident Fund (Contributory) Benefits in 1958 itself. Applicant No.1 did not revise the option at any time prior to his retirement. However, after his retirement he made a number of representations requesting to allow him to opt for the pension scheme. His first representation was dated 20-8-72. To one of his representations dated 12-8-77 made to the Minister for Railways he was informed by a letter dated 2-11-77 that the railway staff who were governed by the Provident Fund Rules were given opportunity ^{ies} to exercise their option in favour of pension from time to time from 1957, except for the period from 1-4-69 to 14-7-72, and those who had not availed of that opportunity during that period could not be permitted under the ~~extended~~ order to opt for pension. As regards Applicant No.2 A.D'Souza, he had made an application on 6.2.1971 opting for pension i.e. about three weeks prior to his retirement. That request was rejected by the railway authorities by their letter dated 24-2-71 on the ground that the last date for exercising the option was 31-3-69 and he had not exercised his option before that date. Even after

his retirement he had requested the authorities to allow him to opt for pension but that request was turned down.

5. The applicants have prayed that the respondents may be directed to allow them to exercise their option in favour of pension and that the arrears of pension be awarded to them with interest @ 18%. They have shown willingness to deposit the retirement benefits which were given to them on their retirement and to which they would not have been entitled if they had opted in favour of pension before the due date.

6. The respondents have resisted the application by filing exhaustive written statement. Their main contention is that though 18 opportunities were available to the applicants for opting in favour of pension while they were in service they did not choose to opt in favour of pension and hence now they are not entitled to claim the benefits of the pension scheme.

7. Though the letter dt.2.11.77 of the respondents shows that the railway staff who were governed by the Provident Fund Rules were given chances to opt in favour of pension from time to time from 1957 onwards, no such option was available to them ^{during the only period} _{from 1-4-1969 to 14-7-1972}. We were informed on behalf of the Respondents on the basis of the record that no such option was available to the railway staff during 4 other periods also. These periods were 1-1-62 to 31-8-62, 1-7-63 to 30-12-63, 1-10-64 to 30-12-1965 and 1-7-66 to 30-4-68. In other words it was contended before us on behalf of the respondents that those railway employees who had retired during all these five periods were not entitled to revise their option or exercise fresh option in favour of pension. It is true that the IIIrd Central Pay Commission Report declared in 1974 was made effective

retrospectively from 1-1-73. On the basis of that report the pay scales of Government employees were revised with effect from 1-1-73. After the IIIrd Central Pay Commission's Report the period for exercising or revising the option was extended from time to time on 15 different occasions. But unfortunately the benefits of revising the option in favour of pension were not given to those railway employees who ~~were~~ ^{had} retired during the five periods mentioned above.

8. Mr. Chopra, the learned counsel for the respondents, even after taking instructions from the officers of the respondents who were present here, was unable to give any explanation as to why the benefits of revising the option was not given to the employees who had retired during these five periods. In this case we are not concerned with the earlier four periods, but we are concerned with the period from 1-4-69 to 14-7-72 because both the applicants have retired during that period. We may point out that even the employees who had retired on or after 15-7-72 were given opportunity more than once to revise their options. Even assuming that the employees who had retired after 1-1-73 were given the opportunity to exercise option on account of revision of pay scales on the recommendations of IIIrd Central Pay Commission it is not clear as to why ~~the benefit~~ ^{this} was not extended to those employees who had retired from 15-7-72 to 31-12-72.

9. In this connection, we may point out that by a Circular dated 19-9-72 in the case of non-pensionable railway servants who died while in service during the period from 1-4-69 to 14-7-72, the families of such deceased railway servants were allowed to opt for the Liberalised Pension Rules, along with the Family Pension Scheme for Railway Employees, 1964 as amended from time to time, in lieu of the

Contributory State Railway Provident Fund Benefits, provided a request for the same was specifically made by the nominee or nominees validly nominated by the subscriber or in the absence of a nomination, by all the members of the family of the deceased railway servant irrespective of the fact, whether he would have continued in service beyond 14-7-72 or not but for his death. We do not understand as to why the members of the family of the railway employees who had died during that period were given the benefit of the Family Pension Scheme by allowing them to exercise their option in favour of the same, while denying the benefits of pension to the railway servants who had retired during the same period. We have therefore, no hesitation in holding that denial of the benefit of the pension scheme to those employees who had retired during the period from 1-4-69 to 14-7-72 is arbitrary, discriminatory and unreasonable. No explanation whatsoever was given to us nor could we find any such explanation, as to why the benefits of the pension scheme should be denied to those railway servants who had retired during the said period. Needless to point out, that if the applicants had retired on 15-7-72 or 31-3-69, they would have derived the benefits of the pension scheme by revising their options. We therefore reject the stand taken by the respondents that the railway servants who had retired during the period from 1-4-69 to 14-7-72 are not entitled to revise their option in favour of pension, as being violative of Articles 14 and 16 of the Constitution of India.

10. The view taken by us finds support from the judgment of the Rajasthan High Court in the case of Retired Contributory Provident Fund Association, Jodhpur vs. State of Rajasthan (S.B.Civil Petition No.900/84 decided on 3rd September, 1985). The judgment is reported in 1987 (1)

WLN 633 and the applicants have also produced a copy of the judgment. In that case, after referring to the Judgment of the Supreme Court in D.S.Nakara vs. Union of India, AIR SC 1983 130, the Rajasthan High Court has held, that there was no reasonable basis for refusing the opportunity of opting for pension scheme to the retired Contributory Provident Fund holders on the basis of their date of retirement. It appears that the State of Rajasthan had preferred Special Leave Petition in the Supreme Court against the judgement of the Rajasthan High Court but the Supreme Court dismissed the same on 11-8-87 observing that on the facts and circumstances of the case ~~this is not a matter~~ ^{it was} which should be entertained under Article 136 of the Constitution.

11. In the result, we pass the following orders:

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- i) The respondents are directed to hold that the applicants were entitled to the benefit of the pension scheme since their retirement and to determine the pension due to them according to the rules in existence at the time of their retirement taking into consideration/amendments made to the rules thereafter.
- ii) The respondents will be entitled to recover all the amount from the applicants which would not have been due to them if they had opted in favour of pension before their retirement.
- iii) The respondents shall calculate the arrears of pension due to the applicants and after deducting the amounts due from the latter as per clause (2) of this order, pay the

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balance, if any, to the applicants.

iv) No interest is to be charged on the amounts due to each other.

v) The above order should be implemented as early as possible and in any case within four months from the receipt of a copy of this order.

vi) The respondents are directed to implement, (1V) the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1-4-69 to 14-7-72 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme.

vii) Parties to bear their own costs.


(L.H.A. REGO)
Member (A)


(M.B. MUJUMDAR)
Member (J)