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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 732/87
T.A. No.

198

DATE OF DECISION 22.2.1990

Shri J.J.Gonsalves

Petitioner

Shri D.V.Gangal

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri

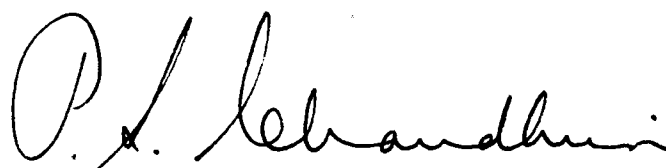
Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

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 ? No


(P.S.CHAUDHURI)
MEMBER(A).

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.732/87.

Shri Joseph John Gonsalves. ... Applicant.

V/s.

Union of India & Ors. ... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Applicant by Mr.D.V.Gangal.
Respondents by Mr.A.L.Kasturey.

JUDGMENT:-

¶ Per Shri P.S.Chaudhuri, Member(A) ¶ Dated: 28.2.1990

This application was filed on 2.11.1987 under section 19 of the Administrative Tribunals Act, 1985. The applicant is an Ex-Railway employee who joined the Railways as a Clerk in the Accounts Office in 1942. At the time of his retirement on superannuation on 30.11.1977 after attaining the age of 58 years he was working as Sub-Head (Efficiency) in the office of the second respondent.

2. The facts are not in dispute. While the applicant was still in service, by a letter dated 16.11.1957 the Railways introduced a Pension Scheme for their employees. Prior to the introduction of this Pension Scheme there was no provision of pension to the applicant and other railway employees similarly situated; they were, instead, entitled to a Contributory Provident Fund Scheme as detailed in the State Railway Provident Fund Rules (for short, S.R.P.F.). Under this scheme both the employee and the Government made contribution to the Provident Fund and the said sum was benefitted by the

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addition of interest at a specified rate and at specified periods. There was also a provision for the payment of a Special Contribution to Provident Fund (for short, SC to PF); this was similar to but not identical with the Death-cum-Retirement Gratuity (for short, DCRG) payable under the Pension Scheme.

3. The Pension Scheme so introduced was 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 between that date and the date of issue of the letter and who would opt for these benefits in preference to their existing retirement benefits. It is pertinent to mention that in para 10 of the letter dated 16.11.1957 it was specifically directed that "For staff who have already retired, arrangements should be made to write to every one individually asking for his option." As far as serving employees were concerned, para 9 directed that the contents of the letter should be published by the railways in their gazettes in an extraordinary issue, within a week at the latest. According to para (4) of the 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 letter was subsequently

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partly modified by ^aletter 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 repeatedly in order to give benefit of the pension scheme to as many employees as possible.

4. However, by his option dt. 17.2.1958 the applicant opted to continue under the S.R.P.F. He did not revise this option at any time prior to his retirement. Therefore, when he retired on superannuation he received his settlement dues under the Contributory Provident Fund Scheme. The Government contribution that he received amounted to Rs.20,029.

5. The extension of the last date of option by railway servants governed by the S.R.P.F. Contributory Scheme to come over to pensionable services and to the Family Pension Scheme, 1964 with which this application is concerned is that in respect of which detailed instructions were issued by the Railway Board in their letter dt. 23.7.1974. The relevant portions of this letter are reproduced below:

" Taking into account the changes (i)
in the pay structure applicable to the Railway

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servants and (ii) in the retirement benefits admissible to Railway servants under the Pension Scheme, based on the decisions of the Government on the recommendations of the 3rd Pay Commission, the Railway Board have decided that another opportunity to opt for the liberalised Railway Pension Rules, including the benefits of Family Pension Scheme for Railway Employees, 1964 as amended from time to time should be allowed to all Railway servants (i) who have retained the S.R.P.F. (Contributory) benefits and (ii) were in service on 1.1.1973, and those who quitted/retired on or after 1.1.1973, and that this option should also be allowed in the cases of Railway servants who were in service on 1.1.1973 but who died/may die during the period from 1.1.1973 to the last date for exercise of the above option. The option should be exercised within a period of 6 months from the date of issue of these orders. The option once exercised shall be final and will be subject to the terms and conditions laid down in Railway Board's letter No.F(F)G3PN1/40 dated 17.1.64.

2(i) In the case of those Railway servants who are eligible for exercising an option under these orders but who have retired and settled up under the S.R.P.F. (Contributory) Rules, the option for pension will be valid if they refund the entire Government Contribution and the excess, if any, of special contribution to provident fund received by them, over D.C.R.G. due to them under Pension Rules. The refund must be received before the last date for exercise of option or within one month of their being advised to do so by the Railway Administration, whichever is later. General Managers may extend the above limit of one month to three months in consultation with the respective FA & CAO on the merits of individual cases.

(ii) Does not concern us.

(iii) The contents of this letter should be brought to the notice of all retired Railway servants who are eligible for this option or to the families of all the deceased Rly. servants who may have died on or after 1.1.1973 before exercising an option within the time limit allowed, and the amount to be refunded should also be advised to them simultaneously. If the retired Rly. servants or the family members in question desires to take advantage of these orders, the request from them to that effect duly accompanied by the amount to be refunded by them, as afore-mentioned must be received before the last date for exercise of option, or within a period of one month from the date of receipt of the communication of these orders to them, whichever is later. General Managers may extend the above limit of one month to three months in consultation with the respective FA & CAOs on the merits of individual cases. It should be ensured that in cases covered under paras 2(i) & (ii) above the requisite advice is issued as early as possible so that it reaches the retired Rly. servants/family in time to enable option being exercised before their expiry of the last date.

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3. Pensionable Rly. servants who were in service on 1.1.1973 including those who have quitted/retired from service on or after 1.1.1973 and had opted not to be governed by the Family Pension Scheme for Rly. Employees, 1964, may be allowed to exercise a fresh option to elect the benefits under the Family Pension Scheme for Railways employees, 1964, as amended from time to time. The option will be current for a period of 6 months from the date of issue of these orders. In case of failure to exercise a fresh option within the stipulated period, the earlier option, if any, will be deemed to subsist. This option will also be available to the beneficiaries, of Railway servants who have died or may die during the period from 1.1.1973 to the last date for exercise of the option. Option once exercised will be final. In cases where settlement has been once exercised will be final. In cases where settlement has been made in terms of the Family Pension Scheme under the Liberalised Pension Rules, 1950, the option shall be further subject to refund of the excess amount of DCRG already paid over the DCRG due after the option now exercised. The other conditions mentioned in para 2(ii) and 2(iii) supra will also apply to these options.

4. The Railway Admn. should take urgent steps to bring the contents of this letter to the notice of all concerned employees under their administrative control including those on leave or on deputation or/foreign service. To facilitate prompt circulation of these orders the Board desire that the contents of this letter should also be published by the Railways in their gazette in an extra-ordinary issue (in English, Hindi and regional language, as necessary) as early as possible and copies furnished to the recognised unions, as well suitable press releases should also be issued."

6. The applicant was still in service when this letter dated 23.7.1974 was issued but even then he did not opt for coming on to pension scheme. The last date for the exercise of an option under this letter was extended by nine letters issued from time to time. ^{extensions} The with which we are concerned are those upto 30.6.1978 and 31.12.1978 by letters dt. 17.4.1978 and 20.5.1978 respectively which were issued after the applicant retired from service. In para 3 of the letter dt. 20.5.1978 it was specifically directed that:-

"3. The Ministry of Railways, therefore, desire that widest publicity should be given to these orders and all steps taken to apprise all categories of staff located over your entire system that this is the final option for coming over to pensionable service and that under no circumstances will any further extensions be sanctioned as in the past".

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However, by a letter dt. 27.12.1978 the Railway Board clarified that the orders extending the date of option originally specified in the letter dt. 23.7.1974 were applicable to serving employees, only. But this letter *was amended by a letter dated 29.12.1979* dt. 29.12.1979, the relevant portion of which is reproduced below:

"On a point having been raised by the AIRF representing that hardship has been caused in the cases of those who retired/died during the various extensions of options granted, the matter has been considered and it has been decided that the extension of time upto 31.12.1978 may be deemed to be applicable in the case of those who having been in service on 1.1.1973 retired, quitted service/died in service during the period from 1.1.1973 to 31.12.1978 may, therefore be treated as valid and the cases regulated accordingly in terms of the provisions made in para 2 of this Ministry's letter of 23.7.1974, referred to above."

7. It is the case of the applicant that the contents of this letter dt. 29.12.1979 were required to be brought to the notice of retired railway servants who were in service on 1.1.1973 but had retired/quit service/died in service during the period from 1.1.1973 to 31.12.1978. It is his contention that it was not brought to his notice. It is his submission that he was staying in a small village at his native place which is very far from the city and so remained in the dark about this new facility. It is his case that some time in January, 1986 he came to know about this letter from one of his ex-colleagues.

8. Immediately thereafter he submitted an application dt. 6.2.1986 seeking to opt for the pension scheme. He submitted various other applications also. However, by letter dt. 8.10.1987 he was informed by the second respondent that his request to allow him to exercise an

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option for pensionary retirement benefits had been examined but had not been accepted. It was stated therein that the Railway Board 's letter dt. 29.12.1979 was applicable to such of the staff who had opted for pensionary benefits after their retirement during 1.1.1973 to 31.12.1978, but whose request had not been considered. It was held that his case was not covered by these orders of the Railway Board for the reason that the option was open while he was still in service and even at the time of his retirement he had not exercised this option.

9. Being aggrieved at this reply the applicant filed this application. The respondents have opposed it by filing their written statement. We have heard Mr.D.V.Gangal, learned advocate for the applicant and Mr.A.L.Kasturey, learned advocate for the respondents.

10. ✓ At the outset Mr.Kasturey pressed the point mentioned above, namely that the Railway Board's letter dt.29.12.1979 was applicable to such of the staff who had opted for pensionary benefits after their retirement during 1.1.1973 to 31.12.1978. But we cannot go along with this line of argument. The question of exercising a fresh option by a retired employee would only arise if he knew that such an option was available. How would he know unless he was intimated? And so the short point on which the case hinges is whether the applicant was required to be informed that he could exercise a fresh option and, if so, whether he had, in fact been so informed. We have quoted the relevant letters above in detail. It is clear from these circulars that the contents of the relevant letters were required to be brought to the notice of all railway servants including retired railway servants and the families of the concerned railway servants who had since deceased. In the letter dt. 16.11.1957 introducing the pension scheme there was a specific provision for writing

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to every one of the retired railway servants concerned individually. In the letter dt. 23.7.1974 it was clearly indicated that a suitable press release should also be issued. In the letter dt. 20.5.1978 it was clearly indicated that the widest publicity should be given to the orders contained therein. The applicant had retired by the time that the letters dt. 17.4.1978 and 20.5.1978 were issued. Mr. Gangal stoutly contended that these letters had not been brought to the applicant's notice. It was his submission that had these letters been given the widest publicity it is possible that the applicant might have accepted the scheme. It is not necessary for us to know the motive which inspired the applicant to file this application. But there can be no manner of doubt that by the letters dt. 17.4.1978 and 20.5.1978 the applicant was entitled to exercise his option for or against the pension scheme. If these letters had been brought to his notice, it is likely that he might have opted for the pension scheme. There is no affirmation in the respondents' written statement that the requisite publicity had been given to any of the concerned letters in so far as retired railway employees are concerned. During the course of oral arguments Mr. Kasturey did tell us that the letters had been given publicity through the railway's gazettes. But this will be of help only so far as serving employees are concerned. We do not see how this can help in so far as retired railway servants are concerned. Based

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on this discussion we cannot help but hold that the applicant was required to be informed that he could exercise a fresh option to come over to the pension scheme and that he had not been so informed.

11. We may also cite Jagan Prasad Srivastava's case* decided by the Principal Bench of this Tribunal. The applicant in that case had retired from service on 15.8.1957 and claimed that he was also entitled to the benefits of the pension scheme because it came into effect while he was still in service. It was his contention that he had not been informed about the pension scheme and had not been asked to exercise his option. It was his further contention that the Railway had a duty to send the scheme to every retired railway servant but this was also not done in his case. He relied on the decision of the Bench of this Tribunal in Smt. Laxmi Vishnu Patwardhan's case.\$ The with which we are in respectful agreement, Judgment in Srivastava's case/was delivered by Mr. Justice Amitav Banerji, Chairman. We may quote paras 14 to 16 of that judgment:-

"We may now refer to the case of Smt. Laxmi Vishnu Patwardhan (supra). The matter came before the New Bombay Bench of the Tribunal was a widow of Vishnu Mahadeo Patwardhan who retired from Railway service on 9.6.1957. Pension Scheme for the Railway servants was introduced on 16.11.1957. In that case also it appeared that no intimation had been given to Vishnu Mahadeo Patwardhan and after his death (13.3.1972) before the claim by Shri Vishnu for pension was finally decided his widow filed the O.A. She claimed that her husband was entitled to get the benefit of pension scheme. The claim was resisted by the respondents who submitted that the applicant husband had not exercised an option to come under the pension scheme and, consequently, the Railway Board rejected the claim.

Reference was made to paragraph 10 of the Pension Scheme dt. 16.11.1957, the same as Annexure A-1 in this case, where a positive action on the part of the department contemplate, namely that the retired servants should be individually informed that they should exercise option. The Single Member Bench

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* 1989(2) ATJ 334

\$ ATR 1988(2) CAT 49.

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observed that "It cannot be disputed that such an intimation has not been given to Vishnu". A plea was taken by the Railways that Shri Vishnu was a Head Clerk in the Accounts Section at the Headquarters of the Central Railway and he would be aware of the scheme and he was required to exercise the option thereunder. The learned Single Member observed that this contention was erroneous, for by that time dated 16.11.1957, Shri Vishnu had retired and as such the applicant husband would not know about the scheme unless intimated.

The same is the position here. The applicant had retired on 15.8.1957. The pensionary scheme was introduced vide circular dated 16.11.1957 (Annexure A-1). How would he know, unless he was intimated. There is no averment in the counter affidavit that copy of the letter (Annexure A-1) was sent to him and he was asked to exercise his option. Thus the Railway Administration cannot claim exemption from the operation of paragraph 10 by saying that the applicant was aware of the provision of option."

12. The question that remains is the date from which the applicant is entitled to be paid arrears of pension. There is no getting away from the fact that the applicant did have many opportunities to opt for pension while he was still in service but he did not do so. This was obviously because he considered that the pension scheme was less favourable to him than the S.R.P.F. Contributory Scheme. In the process he has enjoyed the benefits that this comprehensive alternative scheme affords for the last several years. Besides, had he filed a regular Civil Suit in the matter his relief would have been limited to a period of three years before the date of filing the suit. But as far as limitation is concerned we are bound by the provisions of section 21 of the Administrative Tribunals Act, 1985. This requires an application to be filed within one year from the date of the final order at which the applicant is aggrieved. Taking ~~into~~ ^{The} totality of the circumstances into account, we are of the view that this period of one year would be a reasonable period in this case also. As this application was filed on 2.11.1987, this date comes to

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2.11.1986 which we may, for the sake of convenience, round off to 1.11.1986.

13. The applicant has also prayed for interest at the rate of 18% per annum on all arrears. In view of the fact that the applicant has enjoyed the benefits of the comprehensive alternative scheme and in view of the orders that we propose passing, we do not see any merit in this prayer.

14. In this view of the matter the application partly succeeds. We accordingly pass the following orders:-

ORDER

- i) The respondents are directed to hold that the applicant is entitled to the benefit of the pension scheme and within a period of three months from the date of receipt of a copy of this order to fix the pension payable to the applicant according to the rules in existence on the date of his retirement and also amend the pension so fixed taking into consideration the amendments made to the rules thereafter.
- ii) The respondents are entitled to recover from the applicant all the amounts which would not have been due to him if he had opted for the pension scheme prior to his retirement.
- iii) The respondents shall within a period of three months from the date of receipt of a copy of this order compute the arrears of pension due to the applicant limited to a period of one year before the date of filing this application, i.e. limited to arrears from 1.11.1986.
- iv) No interest is to be charged when computing the amounts due in terms of clause (ii) and the arrears due in terms of clause (iii).
- v) The amounts computed in terms of clauses (ii) and (iii) of these orders shall be set off against each other and the net balance amount due shall be computed by the respondents and intimated to the applicant within three months from the date of receipt of a copy of this order. The net payment due shall

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be made by the party concerned to the other party within one month thereafter.

vi) Regular monthly pension payments shall be made from not later than four months after the receipt of a copy of this order. This shall be subject to the applicant refunding the net balance due in terms of clause (v) in case the net balance is payable by him.

vii) In the circumstances of the case, we direct the parties to bear their own costs.

P. S. Chaudhuri

(P.S. CHAUDHURI)
MEMBER(A)

28.2.1990

M.B. Mujumdar

(M.B. MUJUMDAR)
MEMBER(J).

Judgement dt. 28.2.90
served on Applicant
R. No 1 & 2 on dt. 31.3.90
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9/4/90

C.P. No. 48/90, fixed
on 20/12/90.

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6/12/90