

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 97/88

198

T.A. No.

DATE OF DECISION

15.2.90

Shri J.T.Shukla

Petitioner

Shri G.S.Walia

Advocate for the Petitioner(s)

Versus

Union of India &amp; Another

Respondent

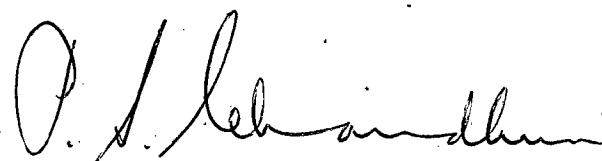
Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. G.SRIDHARAN NAIR, VICE-CHAIRMAN,

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).

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

Original Application No.97/88.

Shri J.T.Shukla.

... Applicant.

v/s.

Union of India & Another.

... Respondents.

Coram: Hon'ble Vice-Chairman, Shri G.Sreedharan Nair,  
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:-

Mr.G.S.Walia, for the  
applicant and  
Mr.R.C.Kotiankar (for  
Mr.M.I.Sethna) for the  
respondents.

JUDGMENT:-

(Per Shri P.S.Chaudhuri, Member(A)) Dated: 15-2-1990

This application was filed on 1.2.1988 under section 19 of the Administrative Tribunals Act, 1985.

In it the applicant prays for quashing and setting aside the order dt. 19.10.1987 by which the applicant's request for coming over from Contributory Provident Fund (CPF) to the Pension Scheme has not been agreed to. He also prays for a direction to the respondents to accept the applicant's option for coming over to the Pension Scheme.

2. The facts. The applicant was an employee of the Employees State Insurance Corporation from January, 1957 till his retirement on superannuation on 31.1.1979 A.N. This Corporation has been notified under section 14 of the Administrative Tribunals Act, 1985, the specified date being 12.5.1986. At the time of the applicant's appointment, the employees of the Corporation were governed by the Provident Fund Scheme

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By Regulation 8 of Employees State Insurance Corporation (Staff and Conditions of Services) Regulation, 1959, employees of the Corporation are entitled to Pensionary benefits on the same scale and same terms and conditions as laid down in Central Civil Services (Pension) Rules, 1972 and other connected rules. On 4.12.1959 the Corporation issued a communication calling upon the existing employees to give their option as to whether they would like to continue in the CPF Scheme or they would prefer to join the Pension Scheme. By his option dt. 14.9.1964 the applicant intimated that he would prefer to continue under the CPF Scheme. By a memorandum dated 17.6.1974 the Government stated that in view of the liberalisation in the provisions of the Pension Rules on the recommendations of the IIIrd Pay Commission the President had been pleased to decide that Government employees who had retained CPF benefits may be allowed another opportunity to opt for the Pension Scheme. This option was available to all Government servants who were in service and those who retired on or after 1.1.1973 and also covered Government servants who were in service on 1.1.1973 but who died before the issue of these orders. These orders of the Government were circulated to the applicant by a communication dt. 9.10.1974. In this communication it was stipulated that the last date for exercise of option was 16.12.1974. It was also stipulated that in case of failure to exercise a fresh option within the stipulated period the earlier option, if any, would be deemed <sup>to</sup> subsist. The applicant did not exercise any option by the stipulated last date viz. 16.12.1974. In the meantime, on receipt of instructions

regarding the implementation of the recommendations of the IIIrd Pay Commission, the applicant's pay had been fixed w.e.f. 1.1.1973 on 17.1.1974. Subsequently, in pursuance of instructions dt. 19.7.1976 (10% formula) the applicant's pay was re-fixed in the cadre of Head Clerk and Insurance Inspector on 1.2.1977. By a letter dt. 9.8.1977 the applicant submitted that his pay had been fixed in the revised scale and that he now found that pension was more beneficial to him. He therefore, made a request to opt for pensionary benefits and mentioned that he could not give this option earlier as his pay had not been fixed till recently. By a reply dt. 31.10.1977 he was informed that he would be allowed to come over to the Pension Scheme only when a fresh option was called for. Thereafter, the applicant retired from service w.e.f. 31.1.1979 A.N. and was treated as having retired under the CPF Scheme. By a memorandum dt. 25.5.1979 the Government further liberalised the Pension Scheme by the introduction of a slab system; this scheme was applicable to Government servants who were in service on 31.3.1979 and would be retiring from service on or after that date in keeping with this liberalisation. By a memorandum dt. 9.8.1979 the President was pleased to decide that Government employees who had retained CPF benefits may be allowed another option to opt for the Pension Scheme. This option was open to Government servants who were in service on 31.3.1979 and retired on or after that date. The option was to be exercised within a period of six months from the date of issue of these orders. By a letter dt. 19.11.1979 the

applicant submitted a representation in this regard. By a reply dt. 4.12.1979 he was informed that the Government's instructions were applicable to employees who were in service on 31.3.1979 and retired on or after that date and that as he retired from 1.2.1979 the question of allowing him to opt for pensionary benefits did not arise. His further representations in this regard, in which he drew attention to D.S.NAKARA's case \* were rejected. Thereafter, he filed Writ Petition No.300/86 in the Bombay High Court under Articles 14, 16, 226 and 309 of the Constitution regarding illegal denial of his option to come over to the Pensionery Scheme from the CPF Scheme. We are informed that this was rejected on 8.4.1986 with the order "No interference called for. Petition rejected". The applicant thereafter, filed O.A. 221/87 before this Bench of this Tribunal. This application was allowed to be withdrawn with liberty to file a fresh application in case his representation fails. The applicant made a representation to the respondents, but this was rejected by an order dt. 19.10.1987. The applicant then filed this application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr.G.S.Walia, learned advocate for the applicant and Mr.R.C.Kotiankar, holding the brief of Mr.M.I.Sethna, learned advocate for the respondents.

4. Mr.Walia's first submission was that the Government's instructions of 1974 were based on the implementation of the recommendations of the IIIrd Pay Commission. It was his contention that the last

\* AIR 1983 SC 130

date of 16.12.1974 specified therein was based on the presumption that the Pay Commission's recommendations would be implemented by that date. It was his contention that in the case of the applicant this implementation was only done in 1977 and immediately thereafter the applicant requested to come on to the Pension Scheme. It was his submission that failure to take this nexus into consideration would be unreasonable classification and hence arbitrary. We see considerable merit in this proposition.

5. Mr.Walia then urged that the imposition of a cut off date of 31.3.1979 in the memorandum dt. 9.8.1979 was arbitrary. He supported this on a number of grounds. The first was that in D.S.NAKARA's case (supra) classification in revised pension formula between Pensioners on the basis of date of retirement specified in the memorandum had been held to be arbitrary. His second contention was that in all the orders giving fresh options, the orders had retrospectively effected. It was his stand that there was no rational grounds why retrospective effect should be only from 31.3.1979 and not from any earlier date. It was his submission that no reason had been given for adopting this date. We see considerable merit in these submissions.

6. The first limb of Mr.R.C.Kotiankar's attack on the application was res judicata. We do not see any merit in this contention. To begin with, the applicant had filed O.A. 221/87 after his Writ Petition had been rejected by the High Court. This application was allowed to be withdrawn with liberty to file a fresh application.

Besides, Mr.Walia drew our attention to HOSHNAK SINGH's case in which the Supreme Court has held "It is, therefore, incontrovertible that where a petition under Article 226 is dismissed in limine without a speaking order such a dismissal would not constitute a bar of res judicata to a subsequent petition on the same cause of action.....".

7. The second limb of Mr.Kotiankar's argument was that there were many employees on the same footing as the applicant and so granting the applicant's prayer would pose problems. We do not see any merit in this submission. To begin with there may not be many employees who retired before 31.3.1979 without exercising an option in terms of the memorandum dt. 17.6.1974. Further, of the few such employees that there might be, there would be very few who would have exercised an option in 1977 immediately after their pays had been revised.

8. Mr.Kotiankar's final submission was that a similar matter was before the Supreme Court - See KRISHAN KUMAR's case \*. But in this very case the Supreme Court have observed "..... many of the retired employees before us are quite old and are anxious that their matters should be decided very early. The matter is, of course, one which deserves to be disposed of very expeditiously". No final view has been taken by the Supreme Court in this matter and we are of the view that it would not be proper for us to withhold our decision on that score.

9. In this view of the matter we are of the view that it was incorrect on the part of the respondents to reject the applicant's request for pensionary benefits.

£ AIR 1979 SC 1333

\* (1989)10 ATC 496.

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