

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW ~~XXXXXXXX~~ BOMBAY BENCHO.A. No. 191 of 1988
~~XXXXXX~~DATE OF DECISION 19.12.1988Shri Gerald D'Souza PetitionerShri G.S. Walia Advocate for the Petitioner(s)

Versus

Union of India & Others. RespondentShri J.G. Sawant Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. K.S. Puttaswamy, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, 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? *yes*

(6)

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

Original Application No.191/88

Gerald D'Souza,
C/o G.S.Walia,
89/10, Western Railway,
Employes Colony,
Matunga Road,
Bombay-400 019

... Applicant

V/s.

1. Union of India, through
General Manager,
Central Railway,
Bombay V.T.
2. Secretary,
Railway Board,
Rail Bhavan,
New Delhi.
3. Divisional Rail Manager,
Central Railway,
Bombay V.T.

... Respondents

Coram: Hon'ble Vice-Chairman, Shri K.S.Puttaswamy
Hon'ble Member(A), Shri M.Y.Priolkar

Appearance:

1. Shri G.S.Walia,
Advocate for the
applicant.
2. Shri J.G.Sawant,
Advocate for the
respondents.

ORAL JUDGMENT:-

Dated: 19.12.1988

(PER: Shri K.S.Puttaswamy, Vice-Chairman)

This is an application made by the applicant
under Section 19 of the Administrative Tribunals Act,
1985('the Act').

2. Sri Gerald D'Souza the applicant before us, who
was working as a mail driver, retired from service from

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20.6.1953 on attaining superannuation. When he retired from service, the pension scheme in the Railways had not been introduced and, therefore, the applicant was paid the compulsory Contributory Provident Fund ('CPF') in accordance with the Rules and orders regulating the same. On that payment the applicant has no grievance.

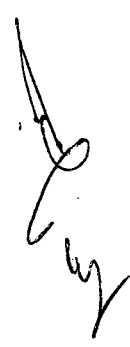
3. In 1967, the Railway Board examining the cases of those who had retired from service availing the benefit of CPF, but were still alive, by its order No.(P)1/15.Pt. dated 23.1.1967 (Exhibit-I) introduced payment of an ex-gratia pension on the terms and conditions stipulated in that order. In its order dated 23.1.1967, the Railway Board did not stipulate any last date for making applications. But, in its later order made on 5.6.1970 (Exhibit-II) the Railway Board stipulated 31.12.1970 as the last date for making applications.

4. As late as on 6.5.1985, the applicant made an application before the competent authority claiming the benefit of the order dated 23.1.1967. On an examination of that application, the competent authority had rejected the same on the ground that the applicant had not made his application on or before 31.12.1970. In this application, the applicant has challenged that order and has sought for appropriate direction to the respondents.

5. In justification of the orders made, the respondents have filed their reply.

6. Sri G.S.Walia, learned counsel for the applicant contends that the date if any stipulated in the order

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dated 5.6.1970, cannot be construed as a date prescribed for making an application under the Limitation Act and the application made by his client on 6.5.1985, who was unaware of the orders made on 23.1.1967 and 5.6.1970 before he made his application should be entertained and decided on merits only and not on the technical ground that the same had not been made on or before 31.12.1970.

7. Sri J.G.Sawant, learned counsel for the respondents, refuting the contention of Sri Walia, sought to support the orders made by the authorities.

8. On 23.1.1967, the Railway Board examining the cases of those that had retired under CPF scheme made an order extending exgratia pension on the terms and conditions stipulated in that order. Para 1 of that order which is relevant for our purpose reads thus:

" The Railway Board have decided, with the approval of the President, that railway employees who retired prior to 1.4.1957 after completing 20 years continuous service and are still alive, will be granted ex-tratia pension, with effect from 1.1.1967 at the following rates:-

<u>Pay drawn by the Railway employees at the time of retirement.</u>		<u>Amount of Ex-gratia Pension.</u>	
Rs.	p.m.	Rs.	p.m.
80 or less		15.00	
Above 80 and upto 130		15.50	
Above 130 and upto 200		20.00	
Above 200 and upto 500		22.50	

These pensions will not be payable to (a) those who were dismissed/removed from service and (b) those who resigned from service with less than 30 years service before superannuation."

The other para^{and}s refer to various details are not necessary

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for our purpose. In this order, the Railway Board has not stipulated any last date for making applications. But, in its later order made on 5-6-1970 the Railway Board fixed 31-12-1970 as the last date for making applications. On the fact that the applicant had not made his application on or before 31-12-1970, there is no dispute at all.

9. We have no doubt, that if the applicant was aware of the last date for making applications, he would have undoubtedly made his application before that date, as that would have only resulted in financial benefit to him. We have no reason to disbelieve the assertion of the applicant that he was unaware of the orders made by the Railway Board from time to time and he came to know of them only on or about 6-5-1985 and, therefore, he presented his application on 6-5-1985.

10. We are of the view that the date fixed for making applications was only fixed to enable parties to make expeditious applications and not to defeat their claims solely on that ground. We have no doubt that the date fixed in the order dated 5-6-1970 is not a date fixed under the Limitation Act or any other law as disabling a person from making an application on or after the date specified in the order. On any principle, we cannot construe the date as a sacrosanct date to reject an application solely on that ground. On this view, as also on our earlier finding on the applicant being unaware of the orders made till he made his application on 6-5-1985, this is a fit case in which we should direct the authority to entertain the application and decide the

the same on merits only.


11. We have earlier reproduced the relevant para of the order dated 23-1-1967. As to whether the applicant satisfies all or any of the requirements or not and to what extent the applicant is entitled for the benefits has necessarily to be examined and decided by the Railway administration. In deciding the application the applicant is also entitled to take benefit of the terms of the order to the extent it is helpful to him.

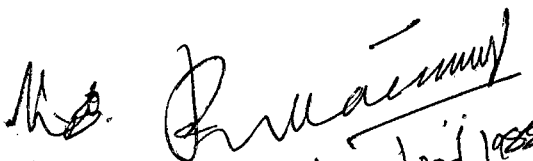
12. As the applicant is now aged 90 years or more, we consider it proper to direct the respondents to examine the case of the applicant with expedition and in any event on or before 28-2-1989 and settle his claim in accordance with law. As the applicant himself has delayed in making his application, he cannot claim any interest on the payment of the amounts which are payable to him.

13. In the light of our above discussion, we make the following orders and directions:

- (a) We quash Order No.BB/P/311/EGP dated 21-11-1986 (Exhibit-A) and letter No.E(G)86 PN2/3 dated 13-10-1986 (Exhibit-III to the reply).
- (b) We direct the respondents to entertain the application of the applicant made on 6-5-1985 and decide the same in the light of the provisions made in the order dated 23-1-1967 and extend him all such financial benefits to which he becomes entitled to in pursuance of that order with all such expedition as is possible in the circumstances of the case and in any event not later than 28-2-1989.

14. Application is disposed of in the above terms. But, in the circumstances of the case, we direct the parties to bear their own costs.


(M.Y. PRIOLKAR)
MEMBER(A)


(K.S. PUTTASWAMY)
VICE-CHAIRMAN

10/12/1988