

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.164/86

Shri Ibrahim Suleman,
Retired Shunter 'B',
Near Sharda Bldg.,
Shivaji Nagar,
Bhusaval,
Tal. Bhusaval,
Dist. Jalgaon.

... Applicant

vs.

The General Manager,
Central Railway,
Bombay V.T.

... Respondent.

Coram: Hon'ble Member(A) J.G. Rajadhyaksha

Hon'ble Member(J) M.B. Mujumdar

Appearance:

1. Mr. S.B. Kasar
Advocate for the
applicant.
2. Mr. S.R. Atre
(for Mr. P.M. Pradhan)
for the Respondent.

ORAL JUDGMENT

Date: 28-9-1987

(Per M.B. Mujumdar, Member(J))

The applicant has filed this application under Section 19 of the Administrative Tribunals Act, 1985 under the following circumstances :

2. On 16-5-1944 the applicant has joined as Yard Khalasi with the Central Railway. On 31-5-1984 he retired on superannuation on completing 60 years of age as Shunter 'B' from Bhusaval Station of the Central Railway. To those employees who had joined service with the Railways prior to 1979, the Railways had given an option either to opt for Pension or to continue to remain under the State Railway Provident Fund. Those who wanted to opt for pension were required to submit option forms prior to a certain prescribed date. The date was extended from time to time in order to give benefit

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of the Pension Scheme to as many employees as possible as a measure of social security.

3. It is the case of the applicant that in 1979 he had filled up and submitted the necessary form opting for pension. However, he is unable to produce any receipt ^{for that form} from any of the offices of the respondents. On the contrary, it is the case of the respondents that the applicant had never submitted the form opting for the Pension scheme and hence after his retirement he has been given the amounts due to him on account of State Railway Provident Fund Scheme including the applicant's contribution, as well as the contribution of the Railways, on the assumption that he had not opted for pension.

4. After considering all the circumstances on record and by taking a sympathetic view we are inclined to hold that the applicant had opted for pension in 1979 as alleged by him and he is entitled to be governed by the pension scheme.

5. After finding that the applicant was not given pension he made a number of representations to the respondents. Welfare Inspector of the Central Railways at Bhusaval was asked to enquire into the matter. He submitted his report dtd. 12-9-1984. The report shows that the Welfare Inspector recorded the statements of two employees viz. Ramdayal Tilak and Sitaram Ram Prasad, Shunters 'B'. On the basis of these statements and other enquiries made by him he had reported that at least benefit of the doubt should be given to the applicant and his case may be recommended for pensionary benefits.

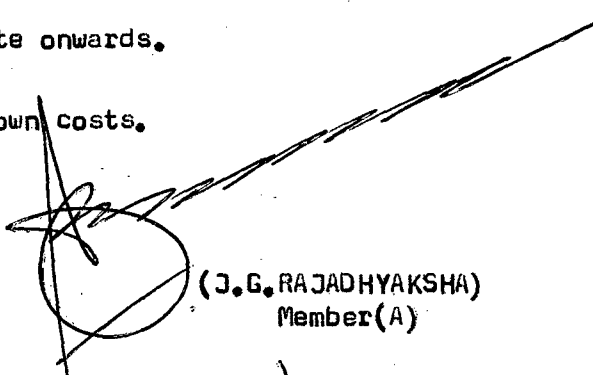
6. The applicant has filed affidavits of those two persons viz. Ramdayal Tilak and Sitaram Ram Prasad in this case. Both of them have averred that on 17-11-1979 they attested the option form which was filled up by the applicant. There is no reason to disbelieve them.


7. We have seen the pay sheets regarding the applicant and other employees prepared by the respondents and we may point out that the pay sheets pertaining to the applicant from October 1982 till his date of retirement were prepared on the basis that he had opted in favour of pension. Mr. S. R. Atre, the learned Advocate, for the respondents submitted that these pay sheets were so prepared by mistake. Even assuming this to be true, in view of the other circumstances on record we feel that benefit of this mistake must go to the applicant.

8. Finally, we may point out that the statement dtd. 19-6-1984 regarding payment of settlement dues regarding the applicant was also prepared on the basis that he had opted for pension. An amount of over Rs. 9000/- is settled as Non contributory SRF which a pensioner alone is entitled to get. This also shows that there must be some substance in the submission of the applicant that he had submitted the option form in 1979, itself.

8. Lastly, the applicant has shown his willingness to refund the amount which was paid to him on the basis that he had not submitted his option in favour of pension. We, therefore, find no difficulty in allowing the application and passing the following order :

- (1) It is hereby declared that the applicant had submitted the necessary form for opting for the pension scheme on 17-11-1979.
- (2) The amount paid to the applicant after his retirement on the basis that he had not opted for pension should be adjusted towards the amount of arrears of pension which would have been given to the applicant on the basis that he had opted for pension, from the date of his retirement till 31-1-1988, and difference if any paid or recovered as may be necessary. No interest should be charged by the parties on the amounts due ~~if any~~ ^{from each} from each other.
- (3) The respondents shall carry out the above order on or before 1st of February, 1988 and start paying pension to the applicant from that date onwards.
- (4) Parties to bear their own costs.


(J.G. RAJADHYAKSHA)
Member(A)


(M.B. MUJUMDAR)
Member(J)