

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY 400614

O.A. NO. 407/86

Mr. Om Prakash Khattri
Usha Sadan
Garodia Nagar
Ghatkopar (East)
Bombay 400077

Applicant

V/s.

1. Union of India
through the Secretary,
Ministry of Transport
Railway Board
Department of Railways
New Delhi

2. The General Manager
Central Railway
Bombay (V.T.)

3. The Divisional Railway Manager
Central Railway
Bombay (V.T.)

Respondents

Coram: Hon'ble Vice Chairman B C Gadgil
Hon'ble Member(A) L H A Rego

Appearance:

Mr. D V Gangal
Advocate
for the Applicant

Mr. R K Shetty
Advocate
for the Respondents

JUDGMENT
(Per: B C Gadgil, Vice Chairman)

DATED : 18.11.1987

The applicant retired from Railway Service on 1.4.1977. On retirement he got the benefit of Contributory Provident Fund. It appears that the Railway Administration introduced a Pension Scheme on 23.8.1979 (Annexure M). The Railway Administration has passed orders giving an opportunity to the Railway servants who were in service on 31.3.1979 to opt for pension in place of Contributory Provident Fund benefits. The

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option was to be exercised within a period of six months from 23.8.1979. Of course the employees who so exercised the option had to refund the entire Government contribution towards the Provident Fund. In paragraph 2(iii) of Annexure M it is stated, that the contents of the letter should be brought to the notice of all retired Railway servants who are eligible for the option and that the amount to be refunded to the Government should also be indicated to them simultaneously. Paragraph 5 ibid further states, that it would be desirable to obtain an acknowledgement from each pensioner so that ignorance of these orders is not pleaded at a later stage.

2. The contention of the applicant is that he was not at all intimated about his right to exercise option in terms of the above mentioned orders. Even before the orders of August 1979, he had informed the Railway Administration on 10.4.1979 (vide Annexure B) that he was anxious to opt for pension and that he should be informed as and when the option is made permissible to him. He wrote another letter on 2.9.1979 on similar lines (Annexure C), but to no avail. Hence one more letter dated 24.9.1985 (Annexure D) was sent by him when he learnt about the right to exercise the option. However, he stated that he was not informed about the same and that he remained ignorant on account of the absence of any communication from the respondents. He has, therefore, asked for exercising the option. He stated that he was prepared to pay back all the Government contribution towards the Provident Fund. The respondents on 21.2.1986 gave a reply (Annexure E) stating therein that a letter was sent to the applicant on 14.1.1980 about this option and that there was no response from the applicant. The applicant immediately wrote to the Railway Administration (Annexure F) that he was not informed by any such letter. After this exchange of correspondence the applicant filed the application in question with prayer that he should be granted individual as well as family pension on the basis of the orders dated 23.8.1979.

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3. The respondents resisted the application by contending that a letter was sent to the applicant on 14.1.1980 about the right to opt for pension and that the applicant had not responded to that letter. It is contended that in view of this position it would not be open for the applicant to claim pensionary benefits under the option. There are certain other contentions, but they are not much relevant.

4. The respondents have produced at Annexure R-1 a copy of some register showing that the option form was sent to the applicant on 14.1.1980. Mr. Sethi relied upon this document for the purpose of contending that the applicant was informed about this option in good time and that he has not exercised the option. It is however material to note that the applicant denied that he has received any such letter dated 14.1.1980. We have already observed that in accordance with paragraph 5 of Annexure M instructions have been issued that it is desirable to obtain acknowledgement from each individual so that ignorance of the option orders would not be pleaded at a later stage. The respondents have not produced any acknowledgement signed by the applicant for having received the letter dated 14.1.1980. It is true that under section 114, illustration (f) of the Law of Evidence, there would be a presumption that 'the common course of business has been followed' in such postal communication. Thus there can be a presumption that the respondents sent a letter to the applicant, but the presumption of the respondents that it has reached the addressee is a rebuttable one and it is an accepted proposition of law that such a presumption is rebutted whenever an addressee states on oath ^{that} he has not received the communication in question. This has been so held by the Supreme Court in the case of Radha Kishan V. State of Uttar Pradesh, reported in AIR 1963 SC 822.

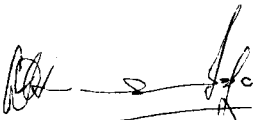
5. The net analysis, therefore, is that the applicant did not get intimation of his right to exercise his


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option for pension. Secondly the respondents have not obeyed the instructions that an acknowledgement from each individual should be obtained about a communication permitting such option. After taking into account these factors, we are satisfied that the applicant was prevented from exercising the option in good time, on account of absence of any communication on the part of the respondents conveying the applicant about his right to exercise option. The applicant cannot be allowed to suffer and we think it just and proper to permit the applicant to exercise the option with a view to get pensionary benefits. It is faintly suggested by Mr. Sethi that the application would be barred by time as the claim of option which was permissible in 1979 is sought to be enforced in 1986, when this application was filed. This argument is not acceptable for the simple reason that the applicant was never informed to exercise his option. It is only in 1985 that he was informed about his right to exercise the option. Of course the information is qualified by showing that a letter in that respect was sent on 14.1.1980. However, as discussed above that letter was never received by the applicant. The net result, therefore, is that the application succeeds and we pass the following order.

ORDER

- 1) The application is partly allowed.
- 2) The applicant should exercise within two months from to-day, his option in terms of Annexure M and should also refund within this period the Government's contribution towards the Provident Fund. If the applicant so exercises the option, within the time mentioned above, the respondents are directed to pass appropriate orders granting pensionary benefits from the date on which the applicant refunds the Government contribution in the Provident Fund.
- 3) Parties to bear their own costs.


(L H A Rego) 13.11.87
Member (A)


(B C Gadgil)
Vice Chairman