

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Original Application No.360/86

Shri. Baliram Piraji Awale,
Ghorpadi Gaon,
Railway Colony, M-87
100 No.Zopadpatti, Pune.

.. Applicant

Vs

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

.. Respondent

Coram: Hon'ble Member(A) Shri J.G.Rajadhyaksha
Hon'ble Member(J) Shri M.B.Mujumdar

Appearances

1. Mr.S.M.Dange, Advocate
for the applicant.
2. Mr.R.K.Shetty, Advocate
for the respondent.

ORAL JUDGEMENT
(Per Shri M.B.Mujumdar)

Date: 9.9.1987.

The applicant has filed this application under section 19 of the Administrative Tribunals Act, 1985.

2. The applicant is a member of Scheduled Caste (Mang community). He cannot read and write though he can sign. He was appointed as Khalashi with Central Railway in 1946. He was promoted as Fitter Grade I in 1969 and in 1983 he was promoted as Highly Skilled Fitter Grade I. He has retired in that capacity on superannuation on 31.10.84.

3. In this application, the applicant has made two prayers. (i) His case regarding the first prayer is that the birth date recorded in his record of service, namely, 4.10.1926 is incorrect and his real birth date is 4.10.1928. Hence, he has requested that his birth date should be corrected as 4.10.1928. He had requested ~~to that effect~~ ^{to that effect} the administration at the fag end of his service but his request was rejected. Mr.Dange, learned advocate for the applicant, did not

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press this prayer before us.

4. His second prayer arises in these circumstances: The railway employees who are appointed prior to Nov.1957 were given option to decide whether they should be given pension or they should be still governed by the Contributory State Railway Provident Fund Scheme. Some date was given for exercising the option and it was extended from time to time. The final date was 31.8.1983. According to the applicant, in Feb 1983 he had filled up the pension option form but due to sudden sickness of his mother who subsequently expired at his native place, he could not give that form to the respondent within the stipulated time. He discovered the above mistake late and thereafter submitted the form to the respondents in Oct,1983 with a request for condoning the delay. The respondents, by their letter dated 2.11.1984, turned down that request pointing out that he should have submitted the option form prior to 31.8.83 and the option form submitted by him on 1.10.1984 could not be considered.

5. After the retirement of the applicant, the applicant was given amounts which were due to him on the basis that he had not exercised his option for getting pension.

6. The applicant has filed this application on 17.10.86 with a request that he should be deemed to have exercised the option within the stipulated time and he should be given pension according to rules. He has shown his willingness to refund the amount which was given to him on the basis that he had not exercised option in favour of pension.

7. We have heard Mr.S.M.Dange, the learned advocate for the applicant and Mr.R.K.Shetty for the respondents. It is true that the applicant had not exercised the option in favour of pension within the stipulated time which was extended from time to time. Mr.Shetty submitted that if an application like this is allowed, that would open floodgates for similar applications.

8. We may point out that the Pension Scheme is introduced as a measure of social security since 1957. The period for exercising option was extended on innumerable occasions with the idea of bringing as many employees as possible within the pension scheme. Unfortunately, the applicant could not exercise the option before the last date. For this he has given cogent and satisfactory reasons which are not denied by the respondents.

9. We are, therefore, inclined as a special case which may not be treated as a precedent, to direct the respondent to extend the pension scheme to the applicant. Of course, the applicant shall have to refund the amount received by him which would not have been given to him if he would have exercised the option before the due date.

10. Instead of asking the applicant to refund the amount immediately, we propose to direct the respondents to calculate the amount which would have been paid to the applicant towards pension since the date of his retirement and also determine the amount which would not have been given to the applicant if he had opted for pension and then recover the difference, if any, from him.

11. In result, we pass the following order:

- 1) We hereby direct that the respondent shall accept the option form submitted by the applicant and hold that the applicant had opted for pension scheme prior to ^{the due date.} ~~his retirement~~. On that basis, the respondent shall calculate the pension amount to which the applicant was entitled from the date of his retirement.
- 2) The respondent shall calculate the arrears of pension which are due to the applicant up to 31.12.1987. They shall also determine the

amount which is due to them from the applicant on the basis that the applicant had opted for the scheme. These amounts should be adjusted, and if any amount of difference is still found due to the respondent from the applicant, the same shall be recovered from him. On the contrary, if some difference is found due to the applicant from the respondent, the same shall be paid to him.

- 3) We further direct that no interest shall be calculated on the amounts due to the parties from each other.
- 4) The above order should be implemented on or before 1.1.1988.
- 5) Parties to bear their own costs.

(J.G. RAJADHYAKSHA)
Member(A)

(M.B. MUJUMDAR)
Member(J)

Contempt Petition No.
3/88 for not complying
with judgment dtd. 9.9.87.

20.10.88