

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH
NEW BOMBAY

Review Petition No.28 of 1990

O.A. No. 938/1989

Manglia Zipria ... Applicant

Vs.

1. Union of India through
General Manager,
Central Railway, Bombay
2. Divl. Rly. Manager,
Bombay Division,
Central Railway Bombay. ... Respondents.

Coram: Hon'ble Shri M.Y. Priolkar, Member(A)

Hon'ble Shri J.P. Sharma, Member(J).

Dated: 18-1-1991

Review Petition Order

This review petition is against our judgement dated 6-4-1990 in O.A. No. 938/1989. This judgement proceeded on the premise that the Railway Board's letter No. PC-IV/87/Imp/PN I, on which the reliefs claimed in the main application (O.A. 938/1989) were based, was dated 8th July 1987 whereas in the review petition, it is asserted that it is in fact dated 8th May 1987. We had presumed that the former date was the correct date since it was repeatedly mentioned in the written reply filed on behalf of the respondents on 5-4-1990, a copy of which had also been served on the Applicant's advocate. But this error was not pointed out by the applicant's advocate during the hearing. We decided, therefore, to hear both parties again before disposing of this review petition.

2. Although during the hearing on 14-1-1991, the learned counsel on both sides stuck to their respective positions and insisted that the dates already indicated by them were the correct dates, Mr. J.G. Sawant, ^{Counsel for Respondent} conceded

during the adjourned hearing on 16-1-1991 that the relevant Railway Board's letter was in fact dated 8.5.1987 and not 8-7-1987. Since a factual error had thus cropped up in the judgement dated 8-7-1987, we agreed to review this judgement and heard at length the learned counsel on both sides on merits of the original application.

3. It was ~~argued~~ ^{argued} on behalf of the applicant that he was still in service on the date of issue of Railway Board's order dated 8-5-1987. He retired only on 30-6-1986. Under para 3.1 of the Railway Board's order dated 8.5.1987, he is, therefore, deemed to have come over to the Pension Scheme since he did not exercise any option to continue under the Contributory Provident Fund Scheme by 30-9-1987. It was also contended that there is no ~~other~~ time limit fixed in para 3.7 of the Railway Board's order for refund of Government Contribution to Provident Fund, received ^{by an employee at the time of retirement along with interest} at 10% per annum, for the period of delay beyond 30-9-1987.

4. According to the respondents, the Railway Board's order dated 8-5-1987 was received in the concerned Bombay office only in the first week of July 1987 and even before the receipt of this order, the applicant who retired on 30-6-1987, was paid his Provident Fund dues along with the Government Contribution. He was, therefore, asked by letter dated 30-7-1987 to remit back the Government Contribution to Provident Fund within one month so that he could be governed by the Pension Scheme. There was, however, no response to this letter for over two years until an Advocate's Notice dated 15-11-1989 was received. The learned Counsel for the respondents, therefore, argued that this application filed before the Tribunal on 21-12-89 was time barred in view of the provisions of Section 21 of the Administrative Tribunals Act, 1985 and was, therefore, correctly dismissed as such by our judgement dated 6-4-1990.

5. Evidently, the applicant was governed by para 3.1 of Railway Board's order dated 8-5-1987, being a C.P.F. beneficiary who was still in service on the date of issue of that order. Para 3.7 of that order which provides for interest at 10% per annum for period of delay beyond

30.9.1987 in refunding the Government Contribution to Provident Fund will not, therefore, apply to the present case, as this para specifically stated that it is applicable only to the types of cases covered by paragraphs 3.3 and 3.5, i.e. of C.P.F. beneficiaries who were in service on 1-1-1986 but had either died or retired before the issue of the Railway Board's order dated 8-5-1987. The applicant's contention that there was no time limit for him to refund the amount of Government Contribution to Provident Fund with interest as as to be entitled to the pension scheme has, therefore, to be rejected.

6. By our judgement dated 6-4-1990 which is sought to be reviewed, we had dismissed the applicant's original application primarily on the ground that we do not find any satisfactory explanation for the delay in filing that application within the time limit prescribed in Section 21 of the Administrative Tribunals Act, 1985. The learned Counsel for the applicant, however, argued that since there was a recurring cause of action, namely payment of pension, which was ~~involved~~ in this case, no bar of limitation should apply. In a number of decided cases before it, the New Bombay Bench of this Tribunal has held, as for example in O.A. No.732 of 1987 and O.A. No.842/89, that even in such cases where there was a recurring cause of action, the application would be maintainable only in respect of certain portions of the claim, i.e. the Claim for pension was restricted to one year before the date of filing the application before the Tribunal and not from the date of retirement. We are inclined to respectfully follow the recent judgements of this Bench in the above cases in regard to the grant of pensionary benefits to the applicant.

7. Accordingly, in modification of our judgement dated 6-4-1990 in O.A. No. 938/1989, we pass the following order:-

- i) The respondents are directed to hold that the applicant is entitled to the benefit of the pension scheme and within a period of three months from the date of receipt of a copy of this order to fix the pension payable to the applicant according to the rules in existence on the date of his retirement and also amend the pension so fixed taking into consideration the amendments made to the rules thereafter.

- ii) The respondents are entitled to recover from the applicant all the amounts which would not have been due to him if he had opted for the pension scheme on the date of his retirement.
- iii) The respondents shall within a period of three months from the date of receipt of a copy of this order compute the arrears of pension due to the applicant limited to a period of one year before the date of filing this application, i.e. limited to arrears from 1-12-1988.
- iv) No interest is to be charged when computing the amounts due in terms of clause (ii) and the arrears due in terms of clause (iii).
- v) The amounts computed in terms of clause(ii) and (iii) of these orders shall be set off against each other and the net balance amount due shall be computed by the respondents and intimated to the applicant within three months from the date of receipt of a copy of this order. The net payment due shall be made by the party concerned to the other party within one month thereafter.
- vi) Regular monthly pension payments shall be made from not later than four months after the receipt of a copy of this order. This shall be subject to the applicant refunding the net balance due in terms of clause (v) in case the net balance is payable by him.
- vii) In the circumstances of the case, we direct the parties to bear their own costs.

J.P.Sharma
(J.P.Sharma) —
Member(J)

M.Y.Priolkar
(M.Y.Priolkar) 8/18/ —
Member(A)