

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW BOMBAY BENCH

O.A. No. 805/89

ExxxxNox

198

DATE OF DECISION 8.1.1989Shri V.N.Naik

Petitioner

Shri V.G.Pashte

Advocate for the Petitioner(s)

Versus

General Manager, C.Rly.Bombay V.T Respondents  
and another.Shri S.C.Dhawan

Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. M.B.Mujumdar, Member (J)

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 ? *No*
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 ? *No*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY 400 614

OA NO. 805/89

Shri V.N.Naik  
12/E, Jai-Bharat Society,  
5th Road Old Khar,  
Bombay 400 052.

... Applicant

v/s.

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

2. Chief Workshop Manager,  
C & W Workshop Central Railway,  
Matunga, Bombay 400 016. ... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar  
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr.V.G.Pashte  
Advocate  
for the Applicant

Mr.S.C.Dhawan  
Advocate  
for the Respondents

ORAL JUDGMENT

Dated: 8.1.1990

(PER: M.B.Mujumdar, Member (J)

In view of the judgment of this Tribunal in Tr.A.No. 27/87 dated 11.11.1987, the applicant should not have been required to approach this Tribunal by way of a fresh application. But the adamant stand taken by the respondents has forced the applicant to approach this Tribunal.

2. The relevant facts for the purpose of this judgment are these : The applicant was appointed as Workman in the Matunga Workshop of the Central Railway on 20.4.1938. He was promoted to higher posts in due course and he retired as Chargeman Gr.'A' on 31.12.1969 from the same workshop. In 1957, the Railway Board introduced pension scheme for railway

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servants by letter dated 1.4.1957. The scheme was introduced with the sanction of the President. The scheme was made applicable (a) to all railway servants who entered service on or after the date of issue of the letter, and (b) to all pensionable railway servants who were in service on 1.4.1957 and had joined railway service between that date and the date of issue of the letter and wanted to opt for pensionary benefit in preference to their retirement benefits. According to para 4 of that letter, railway servants referred to in (b) above were required to exercise unconditional and unambiguous option in prescribed form on or before 31.3.1958 electing for the pensionary benefits or retaining their existing retirement benefits under the State Railway Provident Fund Rules. Moreover, such employee from whom an option form showing the employee's option was not received within the above mentioned time limit or whose option was incomplete or conditional or ambiguous, was to be deemed to have opted for the pensionary benefits. Para 4 of the said letter was subsequently partly modified by another letter dated 9.5.1958. According to the modification, it was decided that only such of the above mentioned railway servants who wish to be governed by the pensionary benefits need exercise option therefor and all others who did not specifically elect by 30.6.1958, were to be governed by the pensionary benefits or whose option was incomplete, conditional or ambiguous in any way, would be deemed to have retained the then existing retirement benefits under the State Railway Provident Fund Rules. Though the option exercised in terms of the letter was to be final and irrevocable the railways had extended the time for exercising the option 17 or 18 times prior to 1969 in order to give benefit of the pension scheme to as many employees as possible. However, it is necessary to point out that no options were given for those railway employees who retired from 1.4.1969 to 14.7.1972.

3. The applicant had not exercised his option while he was in service. However, after his retirement he made several representations dated 18.11.1973, 15.1.1978, 5.3.1985 and 28.2.87 for allowing him to opt for pensionary benefits. On the basis of the judgment of this Tribunal in Ghanshyam Das and another v. Union of India and two others, T.A.No. 27/87 dated 11.11.1987, he made two more representations dated 20.6.1989 and 15.7.1989 requesting to give him pensionary benefits from the date of his retirement. In both these representations he referred to the said judgment of this Tribunal, though without giving particulars. However, by letter dated 17.8.1989 the respondents have rejected both these representations on the ground that he had failed to exercise the option in favour of the pensionary benefit while he was in service, though the options were available while he was in service.

4. In similar circumstances, Ghansham Das and A.D'Souza had filed writ petition No. 1556 of 1983 in the High Court of Judicature at Bombay and it was transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985. After transfer the petition was numbered as TA. 27/87. After hearing their advocate and the advocate for the Central Railway, the petition was decided on 11.11.1987 by a Division Bench, comprising of one of us (M.B.Mujumdar). The following operative order was passed in para 11 of the judgment :

"In the result, we pass the following orders :

- i) The respondents are directed to hold that the applicants were entitled to the benefit of the pension scheme since their retirement and to determine the pension due to them according to the rules in existence at the time of their retirement taking into consideration the amendments made to the rules thereafter.
- ii) The respondents will be entitled to recover all the amount from the applicants which would not have been due to them if they had opted in favour of pension before their retirement.

- iii) The respondents shall calculate the arrears of pension due to the applicants and after deducting the amounts due from the latter as per clause (ii) of this order, pay the balance, if any, to the applicants.
- iv) No interest is to be charged on the amounts due to each other.
- v) The above order should be implemented as early as possible and in any case within four months from the receipt of a copy of this order.
- vi) The respondents are directed to implement the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1-4-1969 to 14-7-1972 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme.
- vii) Parties to bear their own costs."

5. It may be noted that in clause (vi) of the order, we had directed the respondents to implement the directions given in clauses (i) to (iv) in respect of all the railway employees who are similarly placed like the applicants that is those who retired during the period from 1.4.1969 to 14.7.1972 and who had indicated their option in favour of pension scheme at any time while in service or after their retirement and who now desire to opt for the pension scheme. Obviously, it must be for implementing this direction that the applicant ~~must have~~ made the last two representations dated 20.6.1989 and 15.7.1989, but that request was rejected. We may point out that the respondents in that case had preferred Special Leave to appeal (Civil Appeal No. 59/88) in the Supreme Court but it was dismissed on 5.9.1988.

6. The applicant's request in this application is for giving him the benefits which were given to the applicants in TA. 27/87.

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7. We have heard Mr.V.G.Pashte, learned advocate for the applicant and Mr.S.C.Dhawan, learned advocate for the respondents. Mr. Dhawan ~~had~~ <sup>for</sup> requested some time for filing reply but as the main facts are not in dispute, we have rejected his request. As already pointed out this application ~~was~~ <sup>is</sup> filed merely for directing the respondents to implement the direction in clause (vi) of the order in the judgment dated 11.11.1987 and hence we admit this application and dispose it of finally.

8. Mr. Dhawan stated that though the respondents' SLP was dismissed, respondents have filed review petition in the Supreme Court. But he could not give particulars of the Review Petition. Moreover, the order, admittedly is not stayed by the Supreme Court. Then, Mr. Dhawan referred to an order of the Supreme Court in Krishna Kumar v. Union of India, (1989) 10 ATC 496. The order shows that the petitioners in that case were retired railway servants who were in the service of the railways on 15.11.1957 when pension scheme was introduced in the railways. Prior to that all employees including petitioners were governed by the Provident Fund Scheme. The petitioners had the opportunity to exercise their option and opt for the pensionary scheme subject to certain adjustment. They had, however, not exercised their option to opt for the pensionary scheme in view of the pension payable at the respective dates on which such options were available. However, they submitted that they should be given such option again in view of the subsequent substantial increase in the pension. As the question involved was of considerable importance, the Bench which comprised of two judges felt that the matter should be decided by a larger Bench preferably comprising of 5 judges or atleast of 3 judges. The case is still pending. But it may be noted that no option was available for railway employees who retired during the period from 1.4.1969 to 14.7.1972. The applicants in T.A.No. 27/87 as well

as the applicants before us had retired during that period. As Supreme Court has dismissed SLP against the judgment of this Tribunal in T.A.No. 27/87, we do not think it necessary to wait for the final judgment of the Supreme Court in Krishna Kumar's case.

9. We may point out that in OA.No. 373/89 the applicant Mr.G.K.Chaubal had retired on 14.4.1970. His request for giving him benefits of the order in TA. 27/87 was rejected by the railways. But by judgment dated 6.9.1989 he was given similar benefits with cost of Rs.300/-.

10. In result, we pass the following order.

- (i) The respondents are directed to hold that the applicant was entitled to the benefit of pension scheme since his retirement and determine the pension due to him according to the rules in existence at the time of his retirement taking into consideration the amendments made thereafter.
- (ii) The respondents would be entitled to recover ~~from~~ all the amount ~~due to~~ the applicant which would not have been due to him if he had ~~for pension~~ opted before his retirement.
- (iii) The respondents shall calculate the arrears of the pension due to the applicant and after deducting the amounts due from him as per clause (ii) of this order, pay the balance, if any, to the applicant.

(iv) No interest is to be charged due to each other.

(v) The above directions should be implemented as early as possible and in any case within four months from the date of receipt of a copy of this order.

(vi) The respondents shall pay Rs.300/- as cost of this application to the applicant within four months from the date of receipt of a copy of this order.

  
(M.Y.PRIOLKAR)  
MEMBER (A)

  
(M.B.MUJUMDAR)  
MEMBER (J)

Decalment dtd. 8.1.90  
Send to parties on  
31.1.90.

  
O. B. Bhandarkar