

(B)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
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Original Application No: 630/89

Transfer Application No:

DATE OF DECISION: 31.5.1994

Waman Jeevan Patil Petitioner

D.V.Gangal Advocate for the Petitioners

Versus  
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Union of India & Ors. Respondent

Subodh Joshi Advocate for the Respondent(s)

CORAM :  
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The Hon'ble Shri M.R.Kolhatkar, Member(A).

The Hon'ble Shri -

1. To be referred to the Reporter or not ? ✓
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar  
(M.R.KOLHATKAR)  
MEMBER (A)

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH, BOMBAY.

Original Application No. 630/89.

Shri Waman Jeevan Patil. .... Applicant.

V/s.

Union of India & Ors. .... Respondents.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearance:-

Shri D.V.Gangal for the  
applicant.  
Shri Subodh Joshi for the  
Respondents.

Oral Judgment :-

[Per Shri M.R.Kolhatkar, Member(A)] Dt. 31-5-94

The applicant retired from railway service on 24.5.1971. He claims to have represented for pensionary benefits prior to retirement, but also states that since no pension option was available to railway employee between 1.4.1969 to 14.7.1972 even if he had not made a representation the same should not be held against him. The applicant appears to have represented and to Railway Minister on 13.3.1979 to the concerned Minister for Personnel department on 4.7.1986. At annexure 'E' is the letter dt. 12.2.1987 from the Chief Personnel Officer which informs him with reference to the representation addressed to Minister of Personnel that his request for ex-gratia pension is not in order. The applicant relies on the ratio of Ghanshamdas's case in TA 27/87 of this Bench decided on 11.11.1987. The basic contention of the applicant is that in pursuance of Ghanshamdas's case the Railway

....2.

Administration issued a Circular being RPE No.392 dt. 2.1.1992 in which it was laid down that such railway employees who retired under SRPF (C) scheme during the period 1.4.1969 to 14.7.1972 and whose option for pension was exercised during service or thereafter upto 31.12.1972 should be considered. According to the applicant, his case is fully covered by the ratio of Ghanshamdas and the interpretation put by the Railway Administration on the Ghanshamdas's case in the above orders is not correct. The applicant also states that the whole policy of opening and closing of the option adopted by the Railway Administration is illegal and that the Railway employee has an unlimited right to opt for pension. In this connection the applicant relies on Rule 201(ii) of the Manual of Railway Pension Rules, 1950 which may be reproduced in brief:

"201. The rules contained in this Manual govern the pensionary benefits of the following classes of Railway servants :

- (ii) All non-pensionable Railway servants who were in service on 15.11.1957 and who elected to come on to these rules. "

2. The applicant also relies on the Bangalore Bench decision in in M.G.Rajashankar V/s. The Chief Workshop Manager, Central Railways, Matunga, Bombay (A.I.S.L.J. - 1990(3) Page 122).

3. The Respondents have resisted the application of the applicant. According to them the Judgment in Krishena Kumar Vs. Union of India (AIR 1990 SC 1782) has finally settled the issues relating to the opening and closing of the options. So far as the Ghanshamdas's case is concerned the Railway Administration had issued its orders after its SLP against Ghanshamdas's case

was rejected and the applicant does not fulfil the conditions laid down in the Railway Board's instructions dt. 2.1.1992.

4. In his rejoinder, the applicant has pointed out that the applicant had requested the then Goods Superintendent, Wadibunder that he may be permitted to switch over to the pension scheme but he was, however, told that the period for switching over to pension scheme is over and, therefore, he could not be granted the said benefit. The request of the applicant to switch over to the pension scheme can be found, <sup>it is stated,</sup> in the personal file maintained by the Railway Administration, but the applicant himself is not able to produce the same.

5. The various issues raised by the applicant have been dealt with by us in the following cases:

- (1) O.A. No.689/90 decided on 12.4.1994 which was a Division Bench Judgment.
- (2) O.A. No.175/90 decided on 30.3.1994 which was a Single Bench Judgment.

O.A. No.175/90 was similar to the present case except that in that case the applicant was able to produce the proof regarding his having complied with the conditions laid down by the Railway Administration in its Circular based on Ghanshamdas's case viz. Circular No.RPE No.392 dt. 2.1.1992. In the present case we have nothing beyond the bare statement of the applicant that he had applied; therefore the conditions of OA No.175/90 are not fulfilled.

6. So far as the status of Ghanshamdas's case is concerned, this matter has been dealt with by the Division Bench of this Tribunal in the case of Tukaram Krishana Mohite V/s. Union of India (QA 750/89) decided on 7.10.1991 which was a Division Bench Judgment, reiterated in Govind Daji (O.A. No.915/89) decided on 9.2.1993.

7. Shri Gangal, learned counsel for the applicant relies on the pronouncement of Justice Bhagwati in S.C.Gupta (1981 SCC page 87) defining the Judgment, according to which the Judgment is not the reason for the Judgment or the ground for the Judgment (nor) the evidence given in the Judgment, but what the Court decides is the Judgment and what the Court directs is the Judgment. In our view, it may be true that the Railway Administration Orders dt. 2.1.1992 did not in terms follow the operative portion of the Judgment of Ghanshamdas, but Ghanshamdas was delivered prior to Krishena Kumar and after Krishena Kumar, Ghanshamdas is no longer a good law. Therefore, the definition of Judgment laboured by the learned counsel does not help him. The learned counsel next depends on the Bangalore Bench Judgment in M.G.Rajashankar V/s. Chief Workshop Manager, CR, Wadibunder. A perusal of this Judgment shows that that Judgment which followed Ghanshamdas was delivered when the Supreme Court Judgment in Krishena Kumar was not available and this has been noted by the Hon'ble Tribunal in its own Judgment. The observations of the Tribunal in that Judgment therefore ~~are not correct~~ that the Judgment in Ghanshamdas is Judgment in vain does not also help the applicant. Whatever the Tribunal might have said relating to interpretations of Sec.14 and 19 in M.G.Rajashankar also has no applicability in the present case. The only argument ~~the~~ of the applicant which is new and which has not been dealt with in the Judgments referred to by us earlier is as to the interpretation of Rule 201(ii), but this again does not help the applicant because this rule merely states the extent of the application of the rules.

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The ~~sweep~~ of definition of scope of the applicability of the Rules does not take within itself the inter-pretation read by the counsel for the applicant in these rules viz. that this rule confers an unlimited power for opting for pension on all non-pensionable Railway Servants who were in service as on 15.11.1957.

8. We therefore see no merit in the application and dispose of the same by passing the following order.

O R D E R

The O.A. is rejected. No order as to costs.

A

*MR Kolhatkar*

(M.R.KOLHATKAR)  
MEMBER (A) .

B.