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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING 6  
BOMBAY.

Original Application No. 652/89

Central Govt. Retired Employees  
Association and 25 others.

...Applicants.

V/s.

Union of India and 2 others.

... Respondents.

CORAM: Hon'ble Shri P.S. Chaudhuri, Member(A)  
Hon'ble Shri T.C. Reddy, Member (J)

Appearance

Applicants by Mr.D.B.Dave.

None present for the  
respondents.

JUDGEMENT:

Dated: 28.8.1991

¶ Per Shri P.S. Chaudhuri Member(A) ¶

1. This application under section 19 of the Administrative Tribunal's Act, 1985 was filed on 29.8.1989. In it the applicants who are retired Railway employees are challenging the failure of the Railway Administration to allow them the benefits of <sup>the</sup> Pension Scheme instead of <sup>the</sup> Provident Fund Scheme.

2. The applicants are retired Railway employees who were covered by and had not opted out of the Railway Contributory Provident Fund Scheme. According to them, before 1957 the only scheme for retirement benefits in the Railways was this Provident Fund Scheme. This scheme was replaced in 1957 by the Pension Scheme. The employees who entered Railway Service on or after 1.4.1957 were automatically covered by the Pension Scheme instead of <sup>the</sup> Provident Fund Scheme. The employees who were already in service on 1.4.1957 were given an option either to retain the Provident Fund Scheme or to switch over to the Pension Scheme. Several notifications giving such option were issued but the applicants did not exercise such option by the date ~~they~~ retired.

Subsequently the applicants requested the Railway administration to bring them under the Pension Scheme but this request was not heeded. Being aggrieved they filed the present application.

3. The respondents have opposed the application by filing their written statement. We have heard Mr. D.B. Dave in person representing the applicant's Association. The respondents were not represented.

4. Mr. Dave's submission was that the original order dated 16.11.1957 introducing the Pension scheme stipulated that those who do not exercise an option for either Pension scheme or the Provident Fund Scheme, as also those whose option was incomplete, conditional or ambiguous in any way would be deemed to have elected the Pension Scheme. By a subsequent notification the Railway Board amended this to provide that only such of the eligible railway servants who wish to be governed by the Pension Scheme need exercise an option. <sup>and all</sup> therefore others who do not specifically elect to be governed by the Pension Scheme or whose option is incomplete, conditional or ambiguous in any way shall be deemed to have been retained the Contributory Provident Fund Scheme. It was Mr. Dave's submission that the applicant's mind remained <sup>under</sup> the wrong notion that as they had not given any option they were automatically entitled to Pensionary benefits. He continued that the amendment in question had not been published in the Gazette of India and so the applicants do not know about this amendment. We find this contention to be totally far fetched. It is not disputed that the applicants received retirement benefits under the Provident Fund Scheme and accepted the same. If they were of the opinion that they were governed by the Pension Scheme,

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They should have pointed this out when receiving their retirement benefits. No where in the pleadings has it been asserted that they did so. In view of this position, we must unhesitatingly reject this submission.

5. The applicants' next contention was that Pension was a property right which cannot be taken away. This submission, too, must be rejected. Pension becomes a property right only for those who are entitled to it. For the applicants to be entitled to it, they must exercise an option for it, within the framework of the rules and regulations. They had not done so, and there is no way in which Pension can be deemed to have become their property right. So, we must reject this submission also.

6. The applicants' final submission was that in Ghansham Das & A D'souza v. Chief Personnel Officer and others, T.A. 27/87 before this Bench, it has been held that the applicants are entitled to the benefit of the Pension Scheme and the same benefit should be extended to the applicants herein. But Ghansham Das' case can be distinguished. In it, it was held that denial of the benefit of the Pension Scheme to those employees who had retired during the period from 1.4.1969 to 14.7.1972 was arbitrary, discriminatory and un-reasonable and so the application was allowed. However, thereafter the matter went before the Supreme Court in a cluster of 5 writ petitions- Krishnakumar v. Union of India and others, etc. etc. (1990) 14 ATC 846. One of these 5 writ petitions was W.P. No. 1575/86 in which petitioner No. 5 had retired on 19.6.1972 i.e. the period mentioned in Ghansham Das' case. In Krishnakumar's case, the Supreme Court took notice of the judgement in Ghansham Das' case, but did not extend the benefit of the Pension Scheme to the writ petitioners. In Shankar K. Raje v. Union of India and

others etc. etc., OA 261/90 ~~filed~~ before this Bench, with which we are in respectful agreement, it has been held that <sup>are</sup> ~~we~~ bound by the law now laid down by the Supreme Court in Krishnakumar's case. In view of this position, there can be no question of extending the benefit of Ghansham Das <sup>case</sup> to the applicants

7. In this view of the matter we are of the opinion that there is no merit in <sup>the</sup> application and it deserves to be dismissed.

8. We accordingly dismiss ~~the~~ the application. In the circumstances of the case there will be no order as to costs.

T. C. Reddy

(T.C. REDDY.)  
MEMBER (J)

P. S. Chaudhuri

(P.S. CHAUDHURI)  
MEMBER (A)

28-8-1991