

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(8)

O.A. NO: 434/89

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DATE OF DECISION 13.2.1992

Nadirshah S.Patel

Petitioner

Mr. D.V.Dave

Advocate for the Petitioners

Versus

Union of India & Ors.

Respondent

Mr. A.L.Kasturey

Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice U.C.Srivastava, V/C

The Hon'ble Mr. M.Y.Priolkar, M(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
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*

M.Y.Priolkar
(M.Y.Priolkar)
M(A)

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

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Original Application No. 434/89

Nadirshah S. Patel

... Applicant

v/s

Union of India & Ors.

... Respondents

CORAM : Hon'ble Vice-Chairman, Shri Justice U.C.Srivastava
Hon'ble Member (A), Shri M.Y.Priolkar

Appearances:

Mr. D.V.Dave, Advocate
for the applicant and
Mr. A.L.Kasturey, Counsel
for the respondents.

ORAL JUDGMENT:

Dated : 13.2.1992

(Per. M.Y.Priolkar, Member (A))

The applicant in this case who is stated to have joined the Railway Service on 9.4.1940 retired on superannuation on 30.9.1975. According to the applicant, at the time when he retired he had approached the Personnel Department of the Railway for exercising his option for pension but he was informed that the pension option was not available at that stage and the retirement benefits were settled ^{per} ~~as~~ the State Railway Provident Fund rules.

2. Although, admittedly, no pension option was available when the applicant retired on 30.9.1975, The Railway Board subsequently allowed such option and in their circular dated 29.12.1979 it was provided that the time limit for exercising option for pension which was earlier extended by the Railway Board upto 31.12.1978 may be deemed to be applicable in the case of those who were in service on 1.1.1973 and ~~those~~ who retired, quit or died while in service during the period 1.1.1973 to 31.12.1978. It is not in dispute that the applicant was eligible to claim the benefit of this circular of the

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Railway Board but his grievance is that he could not exercise the option for pension within the prescribed time limit since the contents of this circular were never communicated to him although this was a mandatory requirement. After coming to know of this circular he had represented to the Railway Administration for permitting him to exercise his option for pension but the prayer was rejected on the ground that the pension option should have been exercised within the time limit prescribed.

3. The respondents have contended that the contents of the Railway Board's circular dated 29.12.79 were notified for general information of the employees by placing a copy on the notice board of Railway Offices and that it was not obligatory for them to individually inform all the employees concerned. In an earlier case of Shri Joseph John Gonsolvas v. Union of India (O.A. 732/1987) the Bombay Bench of this Tribunal had considered the scope of the Railway Board's circular dated 29.12.1979. In that case also the respondents had contended that it is not necessary for them to communicate this circular to the Railway employees who have retired but the Tribunal held in that case after considering the circular dated 16.11.1957 introducing the pension scheme and letters of the Railway Board dated 23.7.1974 and 20.5.1978 that the contents of these letters should have been brought to the notice of all the retired railway employees and failure to do so was illegal. The relevant portion of the judgment reads as under:-

"At the outset Mr. Kasturey pressed the point mentioned above, namely that the Railway Board's letter dated 29.12.1979 was applicable to such of the staff who had opted for pensionary benefits after their retirement during 1.1.1973 to 31.12.78. But we cannot go along with this line of argument. The question of exercising a fresh option by a retired employee would only arise if he knew that

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such an option ~~was~~ available. How would he know unless he was intimated? And so the short point in which the case hinges is whether the applicant was required to be informed that he could exercise a fresh option and, if so, whether he had, in fact been so informed. We have quoted the relevant letters above in detail. It is clear from these circulars that the contents of the relevant letters were required to be brought to the notice of all railway servants including retired railway servants and the families of the concerned railway servants who had since deceased."

4. We respectfully agree with the reasoning given ~~and~~ ^{reached in} the conclusion ~~limits of~~ of the above judgment and hold that it was incumbent on the part of the railways to have informed the applicant of the contents of the circular dated 29.12.79 so that he could have exercised his option to come to the pension scheme. Since the respondents had not informed the applicant the contents of the circular dated 29.12.79 issued by the Railway Board after the retirement of the applicant, in our view, he should be now permitted to come over the pension scheme and we hold that the applicant will be entitled to the benefits of pension scheme.

5. The respondents have/raised the question of limitation stating that the applicant had approached this Tribunal almost 15 years after the retirement of the applicant. Since the courts have consistently taken the view that there is no period of limitation for pensionary benefits ~~since it~~ is a recurring cause of action, we hold that the application would be maintainable only in respect of certain portion of the claim and not from the date of retirement. In similar earlier cases this Tribunal has restricted ~~such~~ claim for pension to one year before the date of filing the application and pension as claimed from the date of retirement was not granted. We are inclined to follow our earlier judgments in this regard. Accordingly, we direct the respondents to fix the pension of the applicant within a

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period of three months from the date of receipt of a copy of this judgment, according to the rules in existence on the date of his retirement, with consequential revisions as applicable from time to time. Regular monthly pension payment shall be made to the applicant within four months from the date of receipt of this order. However, the arrears of pension due to the applicant will be limited to a period of one year before the filing of this application i.e. from 20.6.1988. The respondents are at liberty to recover from the applicant all amounts which would not have been due to him if he had opted for the pension scheme prior to his retirement. The amount so arrived at would be set-off against the arrears of pension payable to the applicant from 20.6.1988. In case the amount to be recovered from the applicant is in excess of the arrears of pension to which the applicant is entitled, the excess amount so arrived at may be recovered in monthly instalments from the pension of the applicant.

6. The application is allowed as above with no order as to costs.



(M.Y. Priolkar)
Member(A)



(U.C. Srivastava)
Vice-Chairman