

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 915/89

~~Exempted from publication~~

DATE OF DECISION 9.2.93

Shri Govind Daji Petitioner

Shri D.V.Gangal Advocate for the Petitioners

Versus

Union of India and anr. Respondent

Shri J.G. Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri M.Y.PRIOLKAR, MEMBER (A)

The Hon'ble Shri V.D. DESHMUKH, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
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)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 915/89

Shri Govind Daji

... Applicant.

V/s.

Union of India through
General Manager,
Central Railway
Bombay V T

The Divisional Railway Manager
Bombay Division
Central Railway
Bombay VT

... Respondents.

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

Hon'ble Shri V.D. Deshmukh, Member(J)

Appearance:

Shri D.M. Gangal, counsel
for the applicant.

Shri J.G. Sawant, and
Mr. Subodh Joshi, counsel
for the respondents.

ORAL JUDGEMENT

Dated: 9.2.93

¶ Per Shri M.Y.Priolkar, Member (A) ¶

The applicant in this case is a Railway employee, who had retired on superannuation on 30.6.1971. His retirement benefits were settled under the State Railway Provident Fund Scheme, since he had never opted for pension during his service, although the Railways had introduced a pension scheme for its employees on 1.4.1957 and the existing employees were given the option to come over to the pension scheme within a specified time limit. This option was also subsequently made available during certain specified periods, with the result that the option was not available to employees who retired during certain periods not covered by the option orders. The grievance of the applicant is that at the time of his retirement on 30.6.1971, the benefit of the option for the pension scheme was not available to him, since there was no option available during the period from 1.4.69 to 14.7.72. The prayer of the

applicant is for a declaration that Opening and closing of pension options by the Railway administration was illegal and that the applicant was unlawfully denied the right to opt for pension at the time of his retirement.

2. The learned counsel for the applicant argued that the applicant's case is fully covered by this Tribunal's Judgement in the case of Ghansham Das decided by New Bombay Bench on 11.11.1987 (TA No. 27/87) in which a direction was given that the Railway employees who retired during the period from 1.4.69 to 14.7.72 had the right to opt for the pension scheme. The learned counsel argued that the SLP filed against this Tribunal's judgement had been dismissed and, further, that review petition No. 169/89 against the order passed in that SLP has also been dismissed by the Supreme Court on merits. The learned counsel, therefore, contended that this Tribunal's judgement in the case of Ghansham Das has now become final and binding and the applicant is entitled to the benefits of the judgement in Ghansham Das case.

3. This very question, whether the pension option could have been given only during certain periods but not during others, has been settled by a Bench of five Judges of Supreme Court in the case of Krishna Kumar Vs. Union of India (AIR 1990 SC 1782), in which it has been held that there was adequate justification for giving option or extending the option period within certain specified cut off dates and there was nothing discriminatory or illegal in excluding certain periods for the purpose of according of such option to Railway employees. The learned counsel's contention was that since the Supreme Court has dismissed the review petition 169/89 dated 6.5.91 on merits even after the decision in Krishna Kumar's case had been brought to their notice,

it cannot be said that the decision in Ghansham Das's case is no longer a good law after the decision of the Supreme Court in Krishna Kumar's case. This question had also been earlier considered in the judgement of the Bombay Bench of this Tribunal dated 7.10.91 in the case of Tukaram Mohite Vs. Union of India in OA 750/89 to which one of us (Mr. M.Y.Priolkar) was a party. The relevant extract of that judgement is reproduced below in which it has been held that the order of the Supreme Court rejecting the review petition against their order in SLP against the Tribunal's judgement in Ghansham Das case will not reverse the binding law laid down by the Five Judges Bench of the Supreme Court in Krishna Kumar's case : -

" It may be stated, however, that this review petition was rejected by the Supreme Court holding that the case of Ghansham Das was already distinguished in the judgement in Krishna Kumar's case on the ground that the justification given for each of the option orders issued by the Railways was not brought to the notice of the Tribunal when it delivered the judgement in Ghansham Das case nor to the notice of the Supreme Court when it rejected the SLP filed against that judgement. In fact, even after this review order of the Supreme Court was brought to our notice, we have decided similar cases holding that the Supreme Court judgement in Krishna Kumar's case will have the effect of overruling our judgement in Ghansham Das case. In fact, along with Krishna Kumar's case, a number of other petitions were also decided by the Supreme Court in the common judgement in the Krishna Kumar's case and others and one of the petitioners in the other such cases was covered under the Ghansham Das judgement since he had retired during the period 1969-1972. But even then, the Supreme Court has not thought it fit to grant any relief to that petitioner although he was squarely covered by our judgement in Ghansham Das case. In our view, therefore, a review order of the Supreme Court rejecting the petition against their order on SLP against the Tribunal's order in Ghansham Das's case cannot reverse the binding law laid down by the Five Judges Bench of the Supreme Court in the Krishna Kumar's case....."

We are in agreement ~~with~~ this finding of the Bombay Bench.

4. The next contention of the learned counsel for the applicant was that the Railway Board itself has issued a circular dated 2.1.92 in which it has been

stated that the judgement of the Central Administrative Tribunal, New Bombay Bench in Ghansham Das's case has become absolute after the SLP and review petition have been dismissed by the Supreme Court and, therefore, the benefit of the judgement has to be extended to those similarly placed Provident Fund retirees who would be entitled ~~to~~ it as per the direction of the Tribunal. The relevant portions of the said direction as contained in clause (vi) of the judgement of Ghansham Das case are as follows:

"... The respondents are directed to implement the directions given in clause (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 1.4.69 to 14.7.72 and who had indicated their opinion 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. ..."

The learned counsel for the applicant contended that this Railway Board circular is for implementation of the directions of the Central Administrative Tribunal referred to above in case of all employees retiring between 1.4.69 to 14.7.72. However according to the learned counsel it was wrong on the part of the Railway Board to introduce in the circular the condition that the claimant retirees should already have indicated their option in favour of Pension Scheme either during their service or after their retirement and in no case later than 31.12.72, as has been stipulated in this circular. The learned counsel argued that since admittedly no option was available to the applicant between 1.4.69 to 14.7.72 it is absurd on the part of the Railways to expect that any employee would have indicated the option in favour of Pension Scheme during this period or until 31.12.72 as prescribed in the Railway Board's circular.

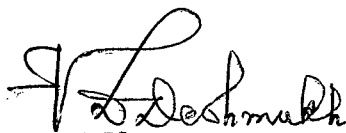
5. The learned counsel for the respondents stated that the Railway Board circular merely repeats the same conditions already imposed in the judgement in Ghansham Das's case of this Tribunal. According to him, as per clause (vi) of the judgement, there are three essential conditions to be satisfied before an employee, similarly placed like Ghansham Das, can be given the benefit of this judgement.

- i. He should have retired between the period from 1.4.69 to 14.7.72.
- ii. He should have indicated his option in favour of Pension Scheme either at any time while in service or after his retirement.
- iii. He should now (i.e. after the judgement) desire to opt for the Pension Scheme.

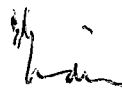
It was the contention of the learned counsel for the respondents that this clause has to be read with para 4 of the judgement in Ghansham Das's case in which it has been specifically mentioned that both the applicants in that case had made applications (representations) requesting to allow them to opt for the Pension Scheme. The first representation of applicant No. 1 is dated 28.8.72 and of the applicant No.2 is 6.2.71. In view of this, the learned counsel contended that clause (vi) of the judgement is not generally applicable to all the Railway employees and they are not to be given the benefit on their opting for Pension Scheme at any time but it is restricted only to those who were similarly placed like the applicants in TA 27/87 i.e. those who satisfy these three essential conditions. In the present case, although it has been stated in the application that the applicant had sent a number of representations to the respondents with the request for opting for Pension Scheme, the respondents have

categorically denied that any such representation had been received from the applicant before the judgement of this Tribunal in the case of Ghansham Das. We are also inclined to agree with the respondents that the specific wording of clause (vi) of the judgement in Ghansham Das's case admits of no interpretation other than that all the three conditions, mentioned therein, have to be satisfied before an employee claims the benefit of the judgement in the case of Ghansham Das. We, therefore, see no merit in the contention of the learned counsel for the applicant that condition (ii) above should be treated as absurd and non-enforceable since in the absence of any specific order to that effect, no such option was available to the applicant.

6. In the result, we reject both the contentions of the learned counsel for the applicant, namely, that this Tribunal's judgement dated 11.11.1987 in the case of Ghansham Das is still good law after the 5 Judges Bench Supreme Court decision to the contrary in Krishna Kumar's case or that the applicant is entitled to the benefits of the Railway Board's circular dated 2.1.1992 without insisting on the specific condition stipulated therein that he should have exercised the option for Pension either during service or thereafter upto 31.12.1972. This application is accordingly dismissed with no order as to costs.



(V.D. DESHMUKH)
MEMBER (J)



(M.Y. PRIOLKAR)
MEMBER (A)