

(9) O R D E R

(Pronounced by the Hon'ble Shri N.R.Chandran,
Judicial Member)

The applicant retired as Chief Clerk in the office of the D.R.M., Western Railway, Bombay Division on 31-12-1975, after putting in 40 years of service. While he was in service, he had opted for the Railway Provident Fund Scheme. When the Railways introduced a Pension Scheme on 16-11-1957, options were called for from employees who were governed by the R.P.F. scheme to come over to the pension scheme. Time for exercising the option was being extended from time to time. The applicant in his application refers to a letter dated 16-12-1975 in which the Railway Board extended the last date for exercising option to come over to Family/Pension Scheme, 1964 up to 30-6-1976. According to the applicant, the letter dated 16-12-1975 of the Railway Board was communicated by the Headquarters office to the local offices only on 26-12-1975 and it was not made known to him on or before his retirement. On 29-12-1979 another letter was issued by the Railway Board, inviting reference to their earlier letter dated 27-12-1978 stating that the time limit for exercising the option extended up to

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 and their cases may be regulated accordingly in terms of the provisions contained in paragraph 2 of the Ministry's letter dated 23-7-1974. But the applicant was not put on notice of these letters and his grievance is that had he been informed of these circulars, he would have opted for coming over to the Pension Scheme. He submitted a representation on 4-2-1986 addressed to the Prime Minister which had been forwarded to the respondents and the 2nd respondent rejected the same on 25-6-1986 on the ground that it would not be possible to allow the applicant to opt for the Pension Scheme since the applicant had not availed of the opportunities of opting for the new Pension Scheme at the appropriate time. According to the applicant, he made several representations, two of which were on 3-9-1987 and 16-11-1987 addressed to the Senior D.P.O. He received two replies

dated 6-11-1987 and 17-11-1987, which according to the applicant, were irrelevant and did not deal with the points raised by the applicant in his representations. Hence the applicant has filed this application before this Tribunal, praying for a declaration that he is entitled to opt for the Pension Scheme with effect from 31-12-1975. He has also prayed that consequential benefits resulting therefrom such as arrears of pension may be granted to him.

The learned counsel for the applicant put forth the contentions urged in the application and particularly drew our attention to the letter dated 23-7-1974 referred to in the Railway Board's letter dated 29-12-1979. Besides that, he referred to the decision in *Shri Jagan Prasad Srivastava vs. Union of India and others* reported in 1989(3)SLJ(CAT)449 and also a decision of this Tribunal in *Smt. Laxmi Vishnu Patwardhan vs. Secretary, Railway Board and another*, reported in ATR 1988(2)49.

He also relied on a decision of the Jodhpur Bench in Mr. Bharat Singh vs. Union of India and others (O.A.123 of 1986).

The learned counsel for the respondents drew our attention to the averments in the Written Statement and contended that the applicant never cared to exercise his option while he was in service when the time-limit for exercising the option to come to the Pension Scheme was extended from time to time. Therefore, it is not now open to him to reopen the matter. He also contended that the application suffers from delay and laches and as such is hit by Section 21 of the A.T. Act. He further contended that the applicant being an employee of the Railways viz., Chief Clerk in the office of the D.R.M., he should have been aware of the notifications and it is not necessary for the respondents to inform the applicant about those notifications. He accordingly prayed that the application be dismissed.

We have heard the rival contentions.

The relevant facts may be narrated as under to appreciate the crux of the issue. The applicant retired on 31-12-1975. By their letter dated 16-12-1975 the respondents had extended the time limit for coming over to the Pension Scheme up to 30-6-1976 and later on in their letter dated 29-12-1979 they had further extended the time limit up to 31-12-1978 in respect of those who were in service as on 1-1-1973 and those who retired or died while in service between 1-1-1973 and 31-12-1978. Thus when the applicant retired, he had an opportunity to exercise his option in favour of the Pension Scheme. But he did not exercise such an option. According to the learned counsel, the applicant should have been informed about the extension of time limit for giving fresh option, he being a retired employee, to enable him to exercise the option. Therefore, the bone of contention is whether the applicant is entitled to be informed about the contents of the letters referred to above. At this stage it is necessary to refer to the decisions cited by the learned counsel for the applicant.

In Smt. Laxmi Vishnu Patwardhan v. Secretary Railway Board (ATR 1988(2)CAT 49, the Hon'ble Shri Gadgil, Vice Chairman of this Bench, after considering the communication dated 16-11-1957 wherein a Pension Scheme was introduced by the Railways with effect from 1-4-1957, has held that paragraph 10 of the communication dated 16-11-1957 contemplates a positive action on the part of the department, namely that the retired servants should be individually informed that they should exercise option. On that ground the Court allowed the application filed by the widow of a railway employee, holding that the railway employee would be entitled to pension. This decision was followed by the decision of the Principal Bench in Jagan Prasad Srivastava v. Union of India and others (1989(3)SLJ'CAT)449. The learned counsel for the applicant also relied on a decision of the Jodhpur Bench in O.A.123 of 1986. In that case though the application was allowed, there is no discussion on the contentions of the applicant and hence it is not necessary to consider the said ruling.

We also find that a Bench of this Tribunal consisting of Hon'ble Shri M.B. Mujumdar and Hon'ble Shri P.S. Chaudhuri, in Shri Joseph John Gonsolvas v. Union of India and others (O.A. 732 of 1987) has considered an identical question. In that case also the scope of Railway Board's letter dated 29-12-1979 came up for consideration. In that case also the applicant did not exercise his option. Similar contentions were raised by the respondents on the ground that it is not necessary to communicate the circulars to the railway employees who had retired. This Bench after considering the Circulars dated 16-11-1957 introducing the pension scheme and letters of the Railways Board dated 23-7-1974 and 20-5-1978, has held that the contents of these letters should have been brought to the notice of all retired railway employees and failure to do so was illegal. The relevant portion of the judgement 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 31-12-1973. 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 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."

In view of the abovementioned decisions viz., A.T.R. 1988(2)CAT-49, 1989(3)SLJ(CAT)449 and O.A. 732 of 1987 of this Bench, we hold that it is incumbent on the part of the Railways to have informed the applicant of the contents of these Circulars so that he could have exercised his option to come over to the Pension Scheme. In the Written Statement there is no indication

whether any effort had been made to inform the applicant about the relevant circulars. But in para 7 of the Written Statement a specific stand has been taken that there is no provision to inform the applicant about the relevant circulars. Therefore, it follows that the respondents had not informed the applicant of the circulars dated 16-12-1975 and 21-12-1979 issued by the Railway Board after the retirement of the applicant. Since the case of the applicant is that the Pension Scheme should be made applicable to him and he had made representations that he should be permitted to come over to the pension scheme, we hold that the applicant is entitled to the benefits of the Pension Scheme.

The next question to be decided is regarding the relief to be granted. In *S.S.Rathore v. State of Madhya Pradesh (AIR 1990 SC 10)* A Full Bench consisting of seven Judges of the Supreme Court has held that for the

purpose of Section 21 of the A.T. Act, non-statutory representations would not save limitation. Here the applicant who retired on 31-12-1975, had approached this Tribunal only on 3-11-1989 i.e. after a lapse of nearly fourteen years.

The case of the applicant was rejected on 25-6-1986 and he has not chosen to challenge it. The period of limitation starts from the accrual of cause of action. Here the cause of action arose to the applicant on 25-6-1986 when his representation was rejected. The applicant had been submitting representation after representation reiterating his stand. Such non-statutory representations would neither save limitation nor condone the laches on the part of the applicant. In the application filed before this Tribunal, he has not explained the reasons for the delay in approaching this Tribunal.

In col.3 of the application which deals with limitation, the applicant states as follows:

'The applicant further declares that the application is within the limitation period prescribed in section 21 of the Administrative Tribunals Act, 1985.'

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 31-12-1975. In O.A. 732 of 1987 about which a reference has already been made in this judgement, this Tribunal has restricted the claim for pension to one year before the date of filing that application and that the pension as claimed from the date of retirement was not granted. We are inclined to respectfully follow the judgement of this Tribunal in O.A. 732 of 1987 in regard to the grant of pensionary benefit to the applicant.

For the reasons stated above, we hold that the applicant is entitled to the benefit of the Pension Scheme. The respondents are directed to fix the pension of the applicant within a period of three months from the date of receipt of a copy of this judgement, 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 the receipt of the 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 3-11-1988. 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 3-11-1988. 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.

The application is allowed as above.

N Chandran

(N.R. CHANDRAN)
JUDICIAL MEMBER

M.Y. Priolkar

(M.Y. PRIOLKAR)
ADMV. MEMBER

26-4-1990

Index: Yes/No

Review Petition No. 34/1990
in O.A. No. 842/90

Tribunal's Order

Dated : 5 Oct. 1990

This review application is directed against the judgement and order dated 26.4.1990 in Original Application No. 842/89 pronounced by a Bench of this Tribunal consisting of Hon'ble M.Y.Priolkar and Hon'ble N.R.Chandran. Hon'ble N.R.Chandran was the author of the judgement. The question is as to whether the review application along with the application for condonation of delay numbered as M.P.624/90 is to be laid before the same Bench or not.

2. Clause (f) of Subsection (3) of Section 22 of the Act pertains to the power of review of the Tribunal. It reads as follows:

"A Tribunal shall have, for the purpose of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely, -

(f) Reviewing its decisions."

47 C.P.C.
 Perusal of order/~~of observance~~ GPC will go to show that the review application is to be made to the Court which passed the decree or the order and unless the Judge or the Judges constituting the Court are precluded, the review application is to be heard ^{and} disposed of by the Judge or Judges constituting the Court or Bench (in the case of Tribunal).

3. In the case of Nand Lal Nichani vs. Union of India the Full Bench of this Tribunal laid down as follows:

"(1) A review application has to be filed within 30 days of the communication of the order either by hand to the party or to his counsel or by sending a true copy of the order by registered post properly addressed and prepaid.