

(06)

CAT/J/12

## IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 964/89

XXXXXX

198

DATE OF DECISION 18.4.91

SHRI DIGAMBAR T TAMHANE Petitioner

Mr. D. V. Gangal Advocate for the Petitioner(s)

Versus

General Manager, C.R. and others Respondent  
Bombay - VT

Mr. S. C. Dhavan Advocate for the Respondent(s)

## CORAM

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

The Hon'ble Mr. T.C.S. REDDY, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?



(07)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
NEW BOMBAY

ORIGINAL APPLICATION No.964/89

SHRI DIGAMBAR T TAMHANE,  
Retired permanent Way Inspector  
Central Railway, Sion,  
Bombay,  
Residing at 'Sushilganga'  
Vishnu Nagar Dombivali (E)  
District - Thane.

.... Applicant

Vs.

General Manager,  
Central Railway, Bombay-VT

Divisional Superintendent,  
Central Railway, Bombay-VT

.... Respondents

CORAM : HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

HON'BLE SHRI T.C.S.REDDY, MEMBER (J)

Apperance

Shri D.V.Gangal, Adv,  
for the applicant

Shri S.C.Dhavan, Adv.  
for the respondents.

ORAL JUDGMENT

DATED: 18.4.1991

(PER: M.Y.PRIOLKAR, M(A))

The applicant in this case retired as a Permanent Way Inspector from the Central Railway on superannuation on 22.3.1972. His retirement benefits were settled on the basis of the Provident Fund scheme. His grievances is that the Railway Administration had given option to railway employees to come over to the

pension scheme during several periods. But such option was not available during certain other periods, one of which was 1.4.1969 to 14.9.1972. According to the applicant, he wanted to opt for pension scheme at the time of his retirement, but he could not do so, as the pension option was not available during this period. Admittedly, the applicant did not ~~exercise~~ option for pension, when he had opportunities to do so while in service.

2. According to the applicant the 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 is arbitrary and discriminatory. He has also cited in support of his contention the judgment of this Tribunal in T.A.No.27/87 in the Case of Ghansham Das V. Union of India, in which the Tribunal had held that the applicant was entitled to benefit of the pension scheme, and also directed that all railway employees who were similarly placed like the applicant in that case i.e. those who retired during the period from 1.4.1969 to 14.7.1972 and had given their option in favour of the pension scheme either at any time while in service or after their retirement, should be permitted now to opt for the pension scheme.

3. The question of permitting ~~to~~ change over from the Provident Fund Scheme to Pension Scheme to the retired railway employees has not been finally decided by a Five Judge Bench of Supreme Court in the case of Krishna Kumar Vs. Union of India, in which it has been held that giving such

option only during certain periods and not during others, cannot be held as discriminatory. The Supreme Court has observed that the Provident Fund retirees are not on par with the Pension retirees, since liability of Government in respect of Provident Fund retirees is a one time liability, which is crystallised at the time of retirement, whereas in the case of pension employees there is a continuing obligation of Government till the death of the employee. Even the particular case of Ghansham Das cited by the applicant has been referred to in this judgement by the Supreme Court and distinguished <sup>on</sup> the ground that the justification of the decisions for giving option only during certain periods and not during others was not brought to the notice of the Tribunal and also of the Supreme Court, when the SLP filed by the respondent Railway against the Tribunal judgment was rejected. In the present Five judge Bench judgment, the Supreme Court after going into each of the orders giving and closing ~~of~~ <sup>the</sup> options, has found adequate justification for each of those orders.

4. In view of the clear verdict of the Five judges Bench of the Supreme Court in Krishna Kumar case that fixation of a cut-off date for exercising option cannot be held to be discriminatory, we see no merit in this case, which is rejected with no order as to costs.

T. C. REDDY  
(T.C. REDDY)  
M(J)

18-4-91  
M.Y. PRIOLKAR  
(M.Y. PRIOLKAR)  
M(A)