

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 1222/96

Date of Decision : 7th June 2001.

K.B.Ganguli Applicant

Shri D.V.Gangal Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri S.C.Dhawan Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Shri Govindan S. Tampi, Member (A)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ? No
- (iii) Library yes

P.L.Jain -
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1222/96

Dated this the 7th day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Shri Govindan S. Tampi, Member (A)

Kaloobaron Basantkumar Ganguli,
C/o. Sandhya Keshwani,
Malvani Colony, Gate No. 7,
Room No.31, Plot No.59,
Malad (W), Bombay.

...Applicant

By Advocate Shri D.V.Gangal

vs.

1. The Union of India through
the General Manager,
Central Railway,
Mumbai C.S.T.
2. The Divisional Railway Manager,
Central Railway,
Jabalpur, M.P.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a Writ of certiorary quashing and setting aside the impugned order dated 15.5.1995, 29.9.1995, 17.11.1995 and 6.12.1995 with a declaration that the applicant is entitled for pension in accordance with the Railway Board's orders on the subject along with arrears of pension w.e.f. 28.11.1978.

S.L.Jain —

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2. The brief facts of the case are that the applicant who is a non-matric joined the Central Railway as a Khalasi under Loco-Foreman in Jabalpur in 1952. He was promoted as Junior Clerk in the year 1958 and posted under the Assistant Engineer, Katani. As he was not keeping well, he submitted application for voluntary retirement which was accepted and he retired w.e.f. 28.11.1978.

3. The grievance of the applicant is that Railway Board has issued letter dated 29.12.1979 after the retirement of the applicant permitting the retired employees or families of the deceased employees to opt for pension even though they retired under the State Railway Provident Fund Scheme. The applicant admittedly was an employee under the scheme of State Railway Provident Fund and was entitled to switch over to pension scheme. The respondents failed to bring to his notice the letter dated 29.12.1979 which deprived the applicant to prefer the option before the respondents. He came to know of the same at the end of December, 1994, submitted the representation dated 31.1.1995 (Annexure-'A-7') followed by reminder dated 20.3.1995 (Annexure-'A-8'). The reply was received (Annexure-'A-1') dated 15.5.1995 to the effect that he cannot get pension but the points raised by the applicant have not been controverted. A further representation dated 29.6.1995 was submitted by the applicant to which reply denying the said relief was sent by the respondents. He also submitted a judgement/order in OA.No.436/93 decided by

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this Bench on 19.11.1993 (Annexure-'A-10') to the respondents but no reply is received. Another representation dated 29.9.1995 requesting the D.R.M.Jabalpur to take appropriate action and send the case to Pension Adalat. A reply is received that since he retired in 1978, no action can be taken on his request for pension after 17 years. Another reply dated 6.12.1995 was also received. Hence, this OA. for the aforesaid relief.

4. (i) The learned counsel for the applicant relied on ATR 1988 (2) CAT 49 Smt.Laxmi Vishnu Patwardhan vs. Secretary, Railway Board & Anr. decided on 25.2.1988 by this Bench laying down the proposition that failure to communicate the railway Board Scheme to the employees through oversight while the case for grant of option was pending for consideration -- The employee expired during the course -- The wife approached the High Court for granting pensionary benefits -- It is held that non-communication of pension Scheme is fatal to the respondents. The said authority is in respect of pension scheme applicable w.e.f. 1.4.1957 which contained a proposal that every retired employee be individually informed of Pension Scheme or exercise option.

(ii) He further relied on (1991) 15 ATC 392 V.D.Vaidya vs. Union of India & Anr. decided on 26.4.1990 dealing with Railways Pension Scheme, 1957 laying down the proposition that even if the employee opt for the scheme, after 10 years after expiry of the time limit, held entitled to benefits of Pension Scheme while

P.L.D.K. -

neither pre-retirement circular dated 16.12.1995 extending time-limit for employees nor the post retirement circular dated 29.12.1979 extending time-limit for retired employees communicated to the applicant.

(iii) The learned counsel for the respondents relied on 1994-96 Administrative Tribunal Full Bench Judgements 365 C.L.Amin & Ors. vs. Union of India & Ors. decided on 6.12.1996 which lays down the proposition that options were invited from the serving and later retired employees of the Railways either to be governed by the C.P.F. Scheme or by Pension Rules, Railway Board Circular dated 23.7.1994 read with Circular dated 29.12.1979 requires that a personal or individual notice be given to the affected parties in this regard -- held no notice is required as the requirement is to give sufficient and adequate notice. Thus, the earlier judgement/order, i.e. Smt.Laxmi Vishnu Patwardhan's case and Shri V.D.Vaidya's case which lays down the contrary law is not binding one.

(iv) Facing the situation, the learned counsel for the applicant argued that in case of Shri V.D.Vaidya, the respondents have preferred Special Leave Petition before the Apex Court, Special Leave Petition was allowed, was converted into a civil appeal and the matter was decided after hearing the parties rejecting the appeal of the respondents. The facts stated by the learned counsel cannot be doubted but on perusal of the order passed by the Apex Court in V.D.Vaidya's case, neither the facts nor the reasoning is not mentioned. It is worth while to mention the order of the Apex Court which is as under :-

J. (S) /

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" Civil Appeal is dismissed."

(v) The learned counsel for the respondents relied on 1999(1) S.C.SLJ 304, Government of India vs. Workmen of State Trading Corporation & Ors. dealing with the question of binding precedent. The Apex Court has stated as under :-

" Mr.Usgaocar rightly emphasised that the decision on which the High Court had relied could not be treated as a precedent and in support of this contention he drew our attention to a Constitution Bench judgement in the case of Krishna Kumar v. Union of India, AIR 1990 SC 1782 : JT (1990) 3 SC 173. In paras 18 and 19 the question as to when a decision can have binding effect has been dealt with. We need say no more as it is obvious from the decision relied on that it does not set out the facts or the reason for the conclusion or direction given. It can, therefore, not be treated as a binding precedent.

(vi) The learned counsel for the applicant also argued that the ground raised by the respondents in V.D.Vaidya's case before the Apex Court in SLP which is converted into civil appeal and which has been dismissed, the said grounds are deemed to have been rejected. We agree to the said facts for the particular case, i.e. V.D.Vaidya but not as a binding precedent in the absence of facts and reasons recorded.

(vii) On Perusal of the same, we are of the considered opinion that dismissal of civil appeal in V.D.Vaidya's case cannot be treated as binding precedent.

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5. The learned counsel for the applicant argued principle of res-judicata and constructive res-judicata, as the same question of law is not involved in the present case, it is not necessary for us to deal with the same.

6. As the applicant has come to this Tribunal after being aware of judgement/order pronounced by this Bench, it is suffice to mention that in view of AIR 1992 SC 1414, Bhoop Singh vs. Union of India & Ors. that relief refused to person applying after taking engagement of a case decided does not amount to discrimination.

7. The learned counsel for the respondents relied on 1991 SCC (L&S) 1176 State of Rajasthan vs. Rajasthan Pensioner Samaj laying down the proposition that PF retirees -- the widows of the same seeking family pension option cannot be considered in view of Krishena Kumar's case and D.K.Nakara's case was distinguished. The learned counsel for the respondents also relied on 1992 SCC (L&S) 517 All India Reserve Bank Retired Officers Association & Ors. vs. Union of India & Anr. which lays down that fixation of cut-off date is justified.

8. The learned counsel for the respondents further relied on 1991 SCC (L&S) 112 Krishena Kumar vs. Union of India & Ors. along with other Civil Writ Petitions laying down the proposition that ample opportunity given to P.F. holders to exercise option for changing over to the pension scheme, if P.F. retirees failed to exercise the option within time, held not entitled to be included in the pension scheme.

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9. It is true that the Pension Scheme provides a personal notice but in view of order of Full Bench in C.L.Amin's case due publicity is a sufficient notice. Hence, the decision in case of V.D.Vaidya and Smt.Laxmi Vishnu Patwardhan has no binding effect.

10. The learned counsel for the applicant relied on AIR 1987 SC 1353 Collector, Land Acquisition, Anantnag & Anr. vs. Mst.Katiji & Ors. deals with Section 5 of Limitation Act which is applicable to appeals. The applicant has come to the Tribunal not with a plea that there has been delay but with a plea that his OA. is within limitation. Hence, question of applying the same authority or even relying on the same by the applicant's counsel is an irrelevant matter.

11. The applicant was in service till 28.11.1998. Railway Board's letter dated 29.12.1979 refers to earlier letter dated 23.7.1974 and 27.12.1978. The applicant was aware of the Pension Scheme which came vide letter dated 27.7.1974.

12. In view of the facts and the law stated above, we are of the considered opinion that the applicant has failed to make out any convincing case.

13. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

(GOVINDAN S. TAMPI)
MEMBER (A)

mrj.

(S.L.JAIN)
MEMBER (J)