

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: **1069/96**

Date of Decision: **7.4.1997**

Madhusudam Laxman Jeg. .. Applicant

Shri V.G.Pashte. .. Advocate for
Applicant

versus

Union of India & Anr. .. Respondent(s)

Shri N.K.Srinivasan. .. Advocate for
Respondent(s)

CORAM:

The Hon'ble **M.R.Kolhatkar, Member(A).**

The Hon'ble

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A).

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1069 OF 96.

Monday, this the 7th day of April, 1997.

Coram: Hon'ble Shri M.R.Kolhatkar, Member (A).

Madhusudan Laxman Jog,
B/17, Vithal Park,
476 Gangapur Road,
Nasik, - 422 002.

... Applicant.

(By Advocate Shri V.G.Pashte)

V/s.

1. Union of India through
General Manager,
Western Railway,
Churchgate,
Bombay.

2. Divl. Railway Manager,
Bombay Central,
Western Railway,
Bombay.

... Respondents.

(By Advocate Shri N.K.Srinivasan)

O R D E R (ORAL)

(Per Shri M.R.Kolhatkar, Member (A))

The applicant was working as a Chief Signal Inspector and retired as such on 30.4.1990. The Railway Board by its letter No.RBE/S.No.116/87 dt. 8.5.1987 on the subject "Change over of Railway employees from the SRPF (Contributory Scheme) To Pension Scheme - Implementation of the recommendations of the IVth Central Pay Commission - regarding" issued detailed instructions on the subject. As stated in para 3.1 of the Circular, All CPF beneficiaries, who were in service on 1.1.1986 and who are still in service on the date of issue of these orders, will be deemed to have come over to the Pension Scheme. Para 3.2 states that the employees of the category mentioned above will, however have to an option/continue under the CPF Scheme, if they so desire. The option will have to be exercised and

conveyed to the concerned Head of Office by 30.9.1987, in the form enclosed, if the employees wish to continue under the CPF Scheme. If no option is received by the Head of Office by the above date the employees will be deemed to have come over to the Pension Scheme. ^{that} It is not disputed in terms of this Circular ~~that~~ the applicant opted to remain under S.R.P.F. scheme vide his option dt. 11.8.1987 vide (EX. R-1) to the Written Statement. The applicant, however, after his retirement sent a letter on 6.1.1995 (at page 12) relying on the Judgment of the Supreme Court in R.Subramaniam V/s. Chief Personnel Officer (vide Appeal No.381/1993) decided on 16.1.1995 ~~and~~ requested that his earlier option for continuance under CPF scheme should be revoked and his option for pension scheme may be accepted. The request of the applicant, however, was turned down by the Railways by their letter dt. 6.1.1995 stating that since he had opted for S.R.P.F. and he had not given any option for pension scheme, he cannot get the benefit of pension. It is this communication dt. 6.1.1995 that the applicant has impugned. The main contention of the applicant is that he has a fundamental right to revoke his option once granted and the Railways have violated this fundamental right to revoke the option ^{and} ~~that~~ he is supported in this contention by the Supreme Court Judgment in Subramaniam's case and therefore, he has sought the relief of declaration that he is entitled to grant of pension and hence prays for a direction to the Railway Administration to accept his application revoking his option for continuance under S.R.P.F. scheme and grant him pension after adjustment of any benefit that he might have drawn under S.R.P.F. Scheme.

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2. The respondents have opposed the O.A. According to them the option once exercised cannot be changed as per para 3.6 of the Railway Board's Circular dt. 8.5.1987. The counsel for the Respondents relies on the Judgment of the Supreme Court in V.K.Ramamurthy V/s. Union of India (1997(1) SLJ 16) and also the Judgment of this Tribunal in O.A. 668/96 delivered on 5.2.1997 in a similar case wherein the applicant had sought to take back the option and wanted to be covered under the pension scheme.

3. The applicant has relied on Ghanshamdas V/s. Union of India ~~no~~ (O.A. 27/87) in which the Tribunal reportedly has/held that pension can be opted at any time during his service or after his retirement and this has been upheld by the Hon'ble Supreme Court in the Review Petition dt. 6.5.1991 and also in the Judgment of R.Subramaniam referred to above.

4. In my view, this Tribunal is bound by the Bench Constitution/decision of the Supreme Court in Krishna Kumar V/s. Union of India (AIR 1990 SC 1782) decided on 13.7.1992. The Hon'ble Supreme Court has also observed in V.K.Ramamurthy's case referred to above in para 5 as below :

"In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara's case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time. The decision of Ghansham Das case on which the learned counsel for the petitioner placed reliance, the Tribunal relied upon Nakara's case and granted the relief without considering the Nakara's decision has been distinguished in the Constitution Bench case of Krishna Kumar and other cases, referred to supra. Therefore, dismissal of the Special Leave Petition.

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against the said judgment of the Tribunal cannot be held to be law laid down by this Court, in view of what has been stated in Krishena Kumar's case. The other decision of this Court, in the case of R. Subramanian (Writ Petition (Civil) No. 381 of 1993) the Court merely relied upon the dismissal of Special Leave Petition against the Judgment of Tribunal in Ghansham Das case and disposed of the matter and, therefore, the same also cannot be held to be a decision on any question of law. In the aforesaid premises and in view of the legal position as discussed above the writ petition is dismissed but in the circumstances without any order as to costs."

It would therefore appear that reliance placed by the applicant on Ghansham Das's case specifically related to the period between 01/4/1969 to 14/7/1972 during which no option was prevalent does not help the applicant. In Krishena Kumar's case the Hon'ble Supreme Court has analysed in great detail the 12 options which were given by the Railway Administration to the Railway employees from 16.11.1957 to 8.5.1987. So far as V.K. Ramamurthy's case is concerned, it was a case related to an employee who retired on 14.7.1972, therefore we are required to go beyond the observations made by the Hon'ble Supreme Court, in V.K. Ramamurthy's case and go back to Krishena Kumar's case. In Krishena Kumar's case the last option given by the Railway Administration was the Circular dt. 8.5.1987 and that was challenged before the Supreme Court. The Hon'ble Supreme Court had pointed out that the controversies arose because of the fact that in successive periods the pension scheme was liberalised and the C.P.F. scheme was not liberalised and therefore, the employees wanted to opt for the pension scheme and when they were frustrated in their effort to opt for the pension

scheme ~~had approached~~ the Court. So far as the last option is concerned, the Railway Administration had very wisely laid down a policy that all C.P.F. beneficiaries who are in service as on 1.1.1986 and who are still in service on the date of issue of the orders will be deemed to have ~~come~~ over to the pension scheme. In other words, the extension of benefit of pension to C.P.F. beneficiaries ~~by the~~ dated 8.5.1987 is automatic. This situation is quite different from the earlier situation when a conscious decision was required to be taken by the employee to opt for the pension. Under the extension of pension scheme being automatic, ~~a~~ decision is ~~to be taken~~ by the employee to continue to remain under S.R.P.F. scheme. It has to be presumed that when an employee consciously opts for the S.R.P.F. scheme ~~with his eyes~~ open, he understands the consequence of his action and it is required to be held that having given an option with ~~his~~ open eyes ^{he} / would not thereafter be allowed to turn back on his earlier option. So far as the argument of the counsel that there is an inherent fundamental right to revoke the option is concerned, this point was dealt with by Krishena Kumar's case (para 31 of the Judgment) where it is stated as below :

"The next argument of the petitioners is that the option given to the P.F. employees to switch over to the pension scheme with effect from a specified cut-off date is bad as violative of Art.14 of the Constitution for the same reasons for which in Nakara the notification were read down. We have extracted the 12th option letter. This argument is fallacious in view of the fact that while in case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also

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be similarly affected. In case of P.F. retirees each one's rights having finally crystallised on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at part with the living pensioners. How the corpus after retirement of a P.F. retiree was affected or benefited by prices and interest rise was not kept any track of by the Railways. It appears in each of the cases of option the specified date bore a definite nexus to the objects sought to be achieved by giving of the option. Option once exercised was told to have been final. Options were exercisable vice versa. It is clarified by Mr. Kapil Sibal that the specified date has been fixed in relation to the reason for giving the option and only the employees who retired after the specified date and before and after the date of notification were made eligible. This submission appears to have been substantiated by what has been stated by the successive Pay Commission. It would also appear that corresponding concomitant benefits were also granted to the Provident Fund holders. There was, therefore, no discrimination and the question of striking down or reading down Cl. 3 of the 12th option does not arise."

5. I am therefore, of the view that the decision of the Railway Administration taken on 6.1.1995 refusing the application of the applicant on 6.1.1995 to revoke the earlier option is legal and is in accordance with Constitution Bench decision of the Supreme Court in Krishna Kumar V/s. Union of India & Ors. The same needs no interference. The O.A. is therefore dismissed with no order as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

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