

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No: 366/96.

Date of Decision: 23/10/97.

Prabhakar Damodar Barde, Applicant.

Shri K. B. Talreja, Advocate for  
Applicant.

Versus

Union Of India & Another, Respondent(s)

Shri S. C. Dhavan, Advocate for  
Respondent(s)

CORAM:

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

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- (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).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 366/96.

Dated this pronounced the 23<sup>rd</sup> day of OCT, 1997.

CORAM : HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Prabhakar Damodar Barde,  
Retired Office Supdt.,  
General Manager's Office,  
Central Railway, Mumbai V.T.  
Mumbai.

R/o.: 301, Vasudev-Laxmi  
Co-Op. Housing Society Ltd.,  
Ursekar Wadi, Ramnagar,  
Dombivli (East) - 421 201.

... Applicant

(By Advocate Shri K.B. Talreja)

VERSUS

1. The Union Of India through  
The Secretary,  
Railway Board, Rail Bhavan,  
New Delhi.

... Respondents.

2. The General Manager,  
Central Railway,  
Mumbai V.T.

(By Advocate Shri S.C. Dhavan)

: ORDER :

¶ PER.: SHRI M. R. KOLHATKAR, MEMBER (A) ¶

The applicant retired from Railway Service on 31.12.1984. According to him, no option was available to the railway servants under SRPF Scheme between 01.09.1983 to 30.03.1985. It was during this period that the applicant

retired. Prior to the retirement, the applicant wrote a letter on 06.11.1984 at annexure -2 page 13, in which he had requested that another option should be thrown open to the serving employees who are still governed by SRPF (Contributory) Rules to come over to the Pensionable Service and to the Family Pension Scheme 1964. The matter was taken to Pension Adalat and the F.A. & C.A.O. (Pension) vide his letter dated 12.10.1987 enquired whether any reference to the Railway Board has been made by the Headquarters office. It appears that reference to the Railway Board was infact made on 29.03.1995 at page 66 and succinctly sets out the case of the applicant. The same is reproduced in extenso.

"Sub :- Request for grant of pension option including Family Pension received from Shri P. D. Barde, retired Office Supdtt., G.M.'s Office, Central Railway, Bombay V.T.

Shri P. D. Barde, retired Office Supdtt. in General Manager's Office, Bombay V.T. who was governed under State Railway Provident Fund (SRPF) Rules has requested that he may be permitted to come to pension scheme including Family Pension as he had given option for Pension Scheme before his retirement on 31.12.1984, which could not be accepted since pension option was not open at that time. The case of Shri P.D. Barde is explained below :-

2. Shri Barde was appointed in Railway Service w.e.f. 24.7.1945 prior to introduction of Pension Scheme on the Railway and retired on superannuation w.e.f. 31.12.84. He was governed under SRPF Rules. He desired

to opt for pension scheme at the time of his retirement after the expiry of option. However, his option could not be accepted since the pension option was not available at the time of his retirement. The last date of exercising option during his service period was 31.8.1983 as per Board's letter No. F(E).III/82 PN1/7 dated 02.06.1983. He did not opt for pension earlier when option was granted by the Board.

3. Board vide their letter No. F(E)III/ PN1/15 dated 18.06.1985 have given further option to Railway Staff, who were in service on 31.3.85 and onwards and still governed under SRPF Rules to come over to Pension Scheme. Since Shri Barde was retired on 31.12.1984, he could not avail the benefit of this option. During the period from 01.09.1983 to 31.03.1985, there was no option for the Railway Employees to come over to Pension Scheme.

4. Shri Barde has since been requesting to allow him to cover to pension scheme and he is prepared to refund the amount of Govt. Contribution together with interest thereon.

5. Shri Barde has represented that the Board vide their letter No. PC-III/84/UPG/9 dated 16.11.1984 had issued order in regard to cadre review and restructuring of Group 'C' and 'D' Staff. However, before implementation of the orders of the Board by the Administration, Shri Barde was retired from Railway Service w.e.f. 31.12.1984. The Board did not consider to extend the benefits arising out of this cadre review to retired staff at the first instance. But subsequently, after considering the case of retirement railway employees, the Board issued orders for giving all the retirement benefits. Thus, Shri Barde was promoted as Office Supdtt.(II) w.e.f. 1.1.84 and paid all the arrears dues after fixation of pay in higher grade. Shri Barde is also representing that since his settlement dues were to be recalculated after implementing restructuring orders, he should be given a fresh option for opting to Pension Scheme in view of retrospective implementation of restructuring orders w.e.f. 1.1.1984.

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6. Since the option for pension was closed only during the period Sept. 1983 to March, 1985 and Shri Barde retired on 31.12.1984 and has requested for pension before his retirement, this Railway recommend that his case may be considered for granting him option for pension as a special case.

7. The Board are, therefore, requested to communicate their decision in the matter early.

8. In this connection, it is advised that Anna Joshi M.P. (Lok Sabha) has also forwarded a representation of Shri Barde for granting him pension option."

2. To this, there has been a reply on 21.08.1995 from the Railway Board, which was produced before the Tribunal at the stage of argument, by which the General Manager of the Central Railway has been intimated that the request of Shri Barde has been examined and competent authority has not agreed to accept Shri Barde's request at this distant date. The applicant is aggrieved by the refusal of the respondents to consider his case for grant of option for pension including Family Pension in the circumstances mentioned above and he has sought the relief of directing the respondents to hold that the applicant was entitled to the benefit of pension scheme since his retirement and give suitable direction. The applicant has particularly relied on the case of Ghansham Das & Anr. V/s. Union Of India & Others T.A. No. 27/87 decided by the Bombay Bench of the Tribunal

on 11.11.1987, which was a similar case, but in relation to an earlier period namely; 01.04.1969 to 14.07.1972 when no option was available. That case proceeded on the basis of discrimination. The discrimination was stated to be two-fold. Firstly, in para 8 it was stated that even assuming that the employees who had retired after 01.01.1973 were given the opportunity to exercise option on account of revision of pay scales on the recommendations of IIIrd Central Pay Commission, it is not clear as to why this benefit was not extended to those employees who had retired from 15.07.1972 to 31.12.1972. The second discrimination was in respect of members of the family of the railway employees who died while in service during the period 01.04.1969 to 14.07.1972. In para 9 it is stated - "We do not understand as to why the members of the family of the railway employees who died during the period were given the benefit of the Family Pension Scheme by allowing them to exercise their option in favour of the same, while denying the benefits of pension to the railway servants who had retired during the same period. We have therefore, no hesitation in holding that denial of the benefit of the pension scheme to those employees who had retired during the period from 01.04.1969 to 14.07.1972 is arbitrary, discriminatory and unreasonable. No explanation whatsoever was given to us nor could we find any such explanation, as to why the

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of the pension scheme should be denied to those railway servants who had retired during the said period."

3. The Tribunal had also relied on the decision of the Rajasthan High Court in the case of Retired Contributory Provident Fund Association, Jodhpur V/s. State of Rajasthan, (S.B. Civil Petition No. 900/84 decided on 03.09.1985), which in turn had relied on the Supreme Court judgement in D.S. Nakara V/s. Union Of India (AIR SC 1983 130) and the S.L.P. against which was dismissed.

4. The Learned Counsel for the respondents however contends that the judgement in Ghansham Das Case is no longer good law in the context of Constitution Bench judgement of the Supreme Court in Krishena Kumar V/s. Union Of India & Others (AIR 1990 SC 1782). In this judgement, the Hon'ble <sup>Supreme Court</sup> did note that the S.L.P. against Ghansham Das case was dismissed. However, the Supreme Court in para 34 of the judgement, had distinguished the Judgement of the Tribunal as well as the judgement of Rajasthan High Court on facts. The Supreme Court had further observed that the Nakara's judgement dealt with pension retirees whereas Krishena Kumar's judgement dealt with Provident Fund retirees and that, these two schemes were structurally different. The rights of each individual

P.F. retiree finally crystallised on his retirement whereafter no continuing obligation remained while, on the other hand, as regards pension retirees, the obligation continued till their death. The Court also observed that various options were allowed to the railway employees from time to time and these options were given under circumstances which had a nexus with the objects sought to be achieved by giving of the option and that the railway employees were given more than one opportunity to switch over to the Pension Scheme and it was not necessary that there should be an option for every period. The Learned Counsel for the respondents also relies on the case of V. K. Ramamurthy V/s. Union Of India & Another [ Writ Petition (Civil) No. 174 of 1996 decided on 13.08.1996 ], in which the Hon'ble Supreme Court had relied on Krishna Kumar's case and had distinguished the case of R. Subramanian [ Writ Petition (Civil) No. 881 of 1993 ]. In the last para of this judgement dated 13.08.1996, the Hon'ble Supreme Court has observed as follows :-

"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 that Nakara's decision has been distinguished in that Constitution Bench case of Krishena Kumar and other cases referred to supra. Therefore, dismissal of the Special Leave Petition against the said judgement 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. 881 of 1993] the Court merely relied upon the dismissal of Special Leave Petition against the judgement 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."

5. I am therefore, of the view that reliance placed by the applicant on Ghansham Das case is not warranted. The O.A. has no merit and the same is, therefore, dismissed. No order as to costs.

*M.R.Kolhatkar*

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

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