

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

Original Application No : 388 of 2000

Dated this 28 the day of January, 2001

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

1. J.Y. Marathe  
(ex-Additional Commissioner of  
Railway Safety, Central Circle),  
Residing at, 12 Roopali,  
777, Shivajinagar, Near Joshi Hospital  
Poona - 411 004. ... Applicant

(By Advocate Shri S.P.Saxena)

VERSUS

1. The Union of India,  
Through the Secretary,  
Ministry of Railway,  
Rail Bhawan, New Delhi-110 002.

2. The Chairman,  
Railway Board,  
Rail Bhawan, New Delhi - 110 002.

~ (By Advocate Shri V.S.Masurkar) ~

O R D E R

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

- 1) The applicant seeks direction to the respondents to allow him to opt for Pension Scheme from the date of his retirement by refunding the contribution and exgratia amount received by him, to accept the same from the applicant, and pay all arrears of pension from the date of his superannuation with interest @ 18% per annum.
- 2) The applicant superannuated as Additional Commissioner of Railway Safety with effect from 31.10.1997, under Ministry of Tourism and Civil Aviation. Prior to his superannuation, he had worked for about 4 1/2 years under the Ministry of Tourism & Civil Aviation, and all along he was governed by Rules and Regulations of Railway Board. Prior to 1957 all the Railway employees were governed by SR PF/CPF Scheme for retirement benefits. He also continued to be governed by SRPF Scheme and collected his retirement benefits as per SRPF Scheme.

3) The Respondents introduced pensionary scheme for Railway Employees, the serving employees and retired employees were allowed option to either continue on SRPF Scheme or come over to Pensionary Scheme. The Pensionary benefits were introduced and liberalised from time to time. The Railway Board by its letter dated 23.7.1974 Ex.A-1 decided to give an opportunity to all the persons governed by Provident Fund Scheme to opt for liberalised Pension Scheme. The above Railway Board's letter was communicated to all the General Managers with the direction that it shall be brought to the notice of all retired servant and fresh option be obtained which were to be exercised by 23.1.1975 or one month from the date of receipt of communication of the orders.

4) The grievance of the applicant is that the Railway authorities did not inform him about said Railway Boards letter dated 23.7.1974 and thus the applicant had no knowledge that he was entitled to give fresh option to come over to Pension Scheme. Thus the applicant was deprived of the opportunity to opt for the liberalised Pension Scheme. The subsequent decision and orders of Railway Board on the subject extending the option to SRPF optees from time to time to come over to liberalised Pension Scheme were also not intimated to the applicant, which resulted in continuing of the applicant as SRPF retiree, though he could have changed over to Pension Scheme, had the orders of Railway Board been communicated to him time to time. Hence this OA for the above said reliefs.

5) The claim of the applicant is resisted by the respondents alleging that the applicant is seeking to open an issue already settled as far back in 1973, as such claim is time barred and deserves to be dismissed as such. On merits, it is stated that the applicant was having eight options

during his service period to switch over to Pension Scheme and failed to excercise them. The eight pension option allowed vide Railway Board letter dated 23.7.1974 was available to those railway servants who were in service on 1.1.1973, which was extended up to 31.12.1978, Vide Boards letter dated 27.12.1978 it was clarified that previous option were meant for serving employees and not retired employees, vide Boards letter dated 29.12.1979 the extension of time up to 31.12.1978 may be deemed applicable in the case of these who have been in service on 1.1.1973, retired/quit/quit services/dies in service during the period 1.1.1973 to 31.12.1978 and the options already excercised the above cases up to 31.12.1978 may therefore be treated as valid and the cases regulated accordingly. Thus the Railway Boards letter dated 29.12.1979 did not open up any fresh option for already retired employees who had not excercise any pension option and only validated the option excercised by retired employees up to 31.12.1978 as accepted by the Railway Administration erroneously before Board's clarification letter dated 27.12.1978 could reach them. It is further stated that the applicant was very much in service at the relevant point of time. The plea of no intimation from General Manager's Office, therefore is not justified.

"The plea of non intimation of government orders was also considered by the Apex court and the Hon.Court was satisfied with the action of Ministry of Railways in term of publicising its circulars in the gazettes, Newspapers etc. The fact that Ministry of Railway had given wide publicity and made efforts to intmitate these optees, was also recognised by the Hon.courts."

"Respondent also submit that Railway Board's circular was also published in the Gazette in the Gujarati, Hindi and Marathi language. A copy of the said

circular is collectively marked as Ex.R.3."

"Railway Board's letters for switching over the pension option scheme from time to time have been circulated to all concerned in extra ordinary gazette, Newspaper, placing on notice board etc. The plea of non-intimation of Government's orders was also considered by the Apex court and Hon'ble Tribunal has certified the action of Ministry of Railway in terms of publishing circulars in Gazette, Newspapers, etc. The fact that Ministry of Railways had given wide publicity and made efforts to intimate these optees was also recognised by the Hon'ble Tribunal."

Hence prayed for dismissal of OA along with costs.

6) The learned counsel for the applicant relied on (1997) 1 SCC 514 Union of India and others V/s D.R.R.Shastri decided by the Apex Court of the land on 22.11.1996 arising from the decision of C.A.T. Madras Bench in OA.NO.1711/1993 decided on 23.9.1994. The finding of the Tribunal was as noted below:-

"The Tribunal by the impugned order came to the conclusion that the respondent being in service of Railways on 1.1.1973 was entitled to exercise option for coming over to the pension scheme in terms of Railway Board's letter dated 31.7.1974. The Tribunal further came to the conclusion that notwithstanding the clear statement in the Board's letter that it should be brought to the notice of all the retirees, it had not been brought to the notice of the respondent on account of which he was prevented from exercising his option. The Tribunal also took note of the fact that another railway employee was allowed to exercise the option long after the date of exercising of option had expired and, therefore, there should be no ground to discriminate the respondent."

7) While deciding the said case the Apex Court has noticed the case of Krishna Kumar - 1991 SCC(L & S) 112, which is relied on by the learned counsel for the respondent during the course of arguments before me, and held as under:-

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"In the aforesaid premises and in the absence of any explanation from the appellant to indicate any special feature for granting similar relief as late as in the year 1994 to Shri K.V.Kasthuri. We see no justification for our interference with the impugned direction of the Tribunal. The respondent had served for about 22 years and he should not be deprived of the pensionary benefit when the Government itself had come forward with the Liberalised Pension Scheme and gave option to the persons already retired to come over to the pension scheme. But his pension is to be calculated as on 31.7.1972 in accordance with the Railway Board's letter dated 23.7.1974 and in compliance with all the necessary formalities by the respondent in accordance with the said circular. Subject to the aforesaid observations this appeal is dismissed but in the circumstances there will be on order as to costs.

8) The applicant has pleaded that the Railway authorities did not inform him about the said Railway Boards letter dated 23.7.1974, as such he had no knowledge that he was entitled to give fresh option to come over to Pension Scheme. He has further pleaded ignorance regarding subsequent extention of the said scheme keeping in view the finding of the C.A.T. Madras Bench in OA.No.1711/1993 not disturbed by the Apex Court, the principle of equality before law laid down in case of D.R.R. Shastry-Supra, I am of the considered opinion that the applicant who was not individually informed about the said letter must be deemed to have been no knowledge about the said scheme and his case can not be distinguished with the case of D.R.R. Shastri and K.V.Kasture.

9) The learned counsel for the respondents relied on an order passed by this Bench in OA. 353/1996 along with other OAs Harischandra Mahadeo Chari V/s Union of India and others decided on 19.11.1997. Perusal of para 13 of the said order makes it clear that

"It is not the case of the applicants that they were unaware of the various circulars issued by the respondents in extending the benefit of pension scheme for the persons who were in service during the relevant period.

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10) As the present case is based on a pleading of unawareness of the various circulars issued by the respondents in extending the benefit of Pension Scheme who were in service during the relevant period, the case is distinguishable.

11) In the result OA is allowed. The applicant is allowed to opt for liberalised pension Scheme on refunding the amount he had received along with interest @ chargeable on loan amount from time to time. The respondents shall intimate the amount payable by the applicant within two months from the date of receipt of the copy of the order and after receipt of the same the applicant shall refund the amount within one month from the date of receipt of the same, submit the option etc. and complete all the formalities to switch over to the pension scheme. Thereafter all consequential benefits be made available to the applicant within a period of one month. No order as to cost.

*SLJ*  
( S.L.Jain )  
MEMBER (J)

*U.28/1/02*  
~~Original~~ ~~Specified~~  
~~to Applican~~ ~~Respondent (s)~~  
~~on 11/2/02~~  
*Mo*