

(6)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 808/90

XXXXXX XXXX XXXX XXXX XXXX

DATE OF DECISION

11/11/93

Shri D.R. Manekji Petitioner

Shri G.S. Walia Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri J.G. Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri N.K.Verma, Member (A)

The Hon'ble ~~Smt~~ Smt. Lakshmi Swaminathan, 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 ?~~

N.K.Verma
(N.K.Verma)
Member (A)

M.B/

NS/

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 805/90

Shri D.R. Manekji

... Applicant.

V/s.

Union of India, through
Secretary, Railway Board
Rail Bhavan,
New Delhi.

General Manager,
Central Railway
Bombay VT
Bombay.

Divisional Railway Manager
Central Railway
Bombay VT
Bombay.

... Respondents.

CORAM: Hon'ble Shri N.K. Verma, Member (A)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Appearance:

Shri G.S. Walia, counsel
for the applicant.

Shri J.G. Sawant, counsel
for the respondents.

JUDGEMENT

Dated: 1-11-93

{ Per Shri N.K. Verma, Member (A) }

In this OA, the applicant, a Motorman of the Railways who retired on 1.6.77 has prayed for a declaration that he is entitled to opt for pension with all benefits of arrears etc. with effect from 1.6.77 and he has also prayed that he should be granted pension from that date with 18% interest on the arrears of pension which has not been paid to him so far.

2. The short facts of the case are that the applicant came to know about the outcome of a case decided by Jodhpur Bench of the Tribunal in March 1989, wherein Railway retirees who had not opted for pension scheme were allowed to opt for

pension and were also given the arrears. It was held that a person who was never informed by the Railways that he should have exercised the option for coming over to the pension scheme during the extended period upto 31.12.78 had to be given the opportunity now, since it was the Railways failure to have intimated him about the pension option available to him after he had retired. The applicant in this O.A. made a representation on 15.8.1990 to the General Manager, Central Railway that in view of the Jodhpur Bench of the Tribunal's decision granting full benefits of pension to Provident Fund retirees, he would also like to exercise his option for pension and he demanded the grant of the same from the date of his retirement. Earlier to that he had made a similar claim to the DRM on 16.2.1990. He was replied by the DRM on 28.5.1990 saying that the widows and dependent children of the deceased only can be given ex-gratia payment with effect from 1.1.1986 and there was no provision for exercising option for the pension scheme at this stage as the claim was not covered by the rules who had retired under SRPF groups resulting this OA filed on 12.11.1990.

3. The Railway respondents in their pleadings stoutly contested the claim as time barred as the applicant has preferred the claim after a very long lapse of time. A similar claim also filed in OA 510/91 was dismissed on 25.12.1991 by this Bench on this very ground.

4. The learned counsels for both the sides were heard on 7.10.93. The learned counsel for the applicant reiterated the position that the applicant retired on 1.6.1977. Attention was drawn to various circulars stipulating that the option can be exercised by the retirees. Orders dated 23.7.1974, order

23/ N.L.W.

dated 27.12.1978 and order dated 29.12.1979 were specially mentioned. As per these orders it was clearly stated that based on the decisions of the Government on the recommendations of the Third Pay Commission, the Railway Board have decided that another opportunity to opt for the liberalised Railway Pension Rules, including the benefits of Family Pension Scheme for Railway Employees, 1964 as amended from time to time should be allowed to all Railway servants who have retained the S.R.P.F.(Contributory) benefits and were in service on 1.1.73 and those who quit/ retired on or after 1.1.1973 and that this option should also be allowed during the period from 1.1.1973 to the last date for exercise of the above option. Under sub-rule (iii) of para 2 of the said memorandum it was enjoined :

..." The contents of this letter should be brought to the notice of all retired Railway servants who are eligible for this option or to the families of all the deceased Railway servants who may have died on or after 1st January 1973 before exercising an option within the time limit allowed and the amount to be refunded should also be advised to them simultaneously. If the retired Railway servants or the family members in question desire to take advantage of these orders, the request from them to that effect duly accompanied by the amount to be refunded by them, as aforementioned must be received before the last date for exercise of option, or within a period of one month from the date of receipt of the communication of these orders to them, whichever is later. General Managers may extend the above limit of one months to three months in consultations with the respective FA & CAOs on the merits of individual cases. It should be ensured that in cases covered under para 2(i) and 2(ii) above the requisite advise is issued as early as possible so that it reaches the retired Railway servant/family in time to enable option being exercised before the expiry of the last date.

3. Pensionable Railway servants who were in service on 1st January 1973 including those who have ~~quit~~ retired from service or or after 1st January, 1973 and had opted not to be governed by the Family Pension Scheme for Railway Employees, 1964, may be allowed to exercise a fresh option to elect the benefits under the Family Pension Scheme for Railway employees, 1964 as amended from time to time. The option will be current for a period of 6 months from the date of issue of these orders. In case failure to exercise a fresh option within the stipulated period , the earlier option, if any, will be deemed to subsist. This option will also be available to the beneficiaries of Railway servants who have died or may die during the period from 1.1.73 to the last date for exercise of the option. Option once exercised will be final. In cases where settlement has been made in terms of the ~~Family~~ Pension Scheme under the Liberalised Pension Rules 1950, the option shall be further subject to refund of the excess amount of D.C.R.G. already paid over the D.C.R.G. due after the option now exercised. The other conditions mentioned in para 2(ii) and 2(iii) ~~sub~~para will also apply to those options.

4. The Railway Administration should take urgent steps to bring the contents of this letter to the notice of all concerned employees under their administrative control including those on leave or on deputation or on foreign service. To facilitate prompt circulation of these orders the Board desire that the contents of this letter should also be published by the Railways in their gazettes in an extra-ordinary issue (in English, Hindi and regional language as necessary) as early as possible and copies furnished to the recognised unions, as well suitable press releases should also be issued.

5. These orders were further modified under order dated 27.12.78 when it was intimated that the last date to come over to pension scheme has been extended from time to time and the last orders were

N. K. M.

....5...

issued on 29.12.78 extending the date upto 31st December'78.

Para 2 of the very letter say:

... It has been brought to this Ministry's notice that permission to come over to pension scheme is being granted to employees after the date of retirement on the consideration that subsequent orders extending the date of option are also applicable to the retired employees.

The Ministry desires to clarify that the subsequent orders extending the date of option are applicable to serving employees only. The cases already decided otherwise may be treated as closed and need not be re-opened.

6. The learned counsel for the applicant placed before us the Railway Board's letter dated 23.7.74 wherein it was stated that the contents of this letter should be brought to the notice of all retired Railway servant who are eligible for this option which was again reiterated in the order dated 27.12.79 that the last date to come over to pension scheme has been extended upto 31.12.78 and may therefore be treated as valid and the case be regulated accordingly in terms of provisions made in para 2 of Ministry's letter dated 23.7.74 referred to above. Since para 2 of 1974 memo has sub-para (iii) enjoining upon the Railway to bring to the notice of all retired official who are eligible for this option it was the duty of the Railway to inform the applicant about the option to be exercised by him which they failed and therefore the onus is on the Railways to give him the benefit of the option now, since he had conveyed his option to the DRM in 1990, and he may be given all the benefit from the date of his retirement. In support of this submission learned counsel for the applicant showed the judgement given

N. K. W.

....6....

18/

by Chandigarh Bench in O.A. 345/90 decided on 25.2.91 in the case of Hamir Singh v/s. Union of India and others. The Tribunal held the view that since the contents of the Railway Board's order had not been brought to the notice of the applicant, the impugned order declining to allow the applicant the pensionary benefits cannot be sustained. The learned counsel for the applicant also referred to the Supreme Court judgement in the case of Krishna Kumar V/s. Union of India AIR 1990 SC 1782. This case has no bearing in the instant case as the Hon'ble Supreme Court gave a decision regarding the preposition of discrimination agitated by the petitioners in that case. Then, relevance was placed on the Tribunal's Full Bench decision in the case of G. Narayana and others V/s. Union of India and others in OA 111/91 decided on June 18, 1993. This case again has no relevance as the matter decided upon in that judgement was Classification, categorisation and fitment, Upgradation of some of the tradesmen out of the same category and exclusion of the rest. The question of discrimination in the payment of pensionary benefit under the Railway Pension scheme has not been agitated in this O.A. All that the applicant has sought for as a relief is that (a) that the Tribunal will be pleased to hold and declare that the applicant is entitled to opt for pension with all benefits of arrears of pay with effect from 1.6.77. (b) This Hon'ble Tribunal order and direct the respondents to allow the applicant to opt for pension from 1.6.77 and be granted pension from that date with all the arrears of pension with 18% interest thereupon. The main argument on which this claim is based is that the applicant was not aware of the chance given to him for exercising the option by several circulars issued by the Railways from time to time.

N. K. Singh

....7...

187

18

7. The respondents on the other hand stated that the application was clearly time barred and deserves to be dismissed on that ground alone, as was done in the case of Lawerance D Ferreira V/s. Union of India and others in OA 510/91 decided on 25.9.1991 by this very Bench of the Tribunal. The Railway manual has prescribed only 5 years for preservation of service records of the employees and any employee agitating for service matters beyond that period is barred by limitation. It is also stated that the Railway Board's circulars dated 23.7.74, 27.12.78 and 29.12.79 on which the applicant's case is based had been given wide publicity and these were also published in the Railway gazette. Such notifications are also sent to the various branches and sections of the Railway Administrative offices and circulated among the staff, Copy has also been furnished to recognised Unions for publicity through their notice board. The contention of the applicant that the delay was because of his not being in know of the extended time permitted by the several circulars is untenable, more so in view of the fact that the applicant retired only on 1.6.1977 when the Railway Board letter dated 23.7.74 had been in operation for nearly 3 years. Sub- para 2 of this letter had to be brought to the notice of all the Railway servants who were eligible for option or to the families of all the deceased Railway servant who may have died on or after 1.1.1973 before exercising the option within the time limit allowed and the amount to be refunded also to be advised to them simultaneously. The Railway Board had advised the Railway Administration in para 4 that they should bring the contents of this letter to the notice of

all concerned employees under their administrative control including those on leave or on deputation or on foreign service to facilitate prompt circulation of these orders the Board desire that the contents of this letter should also be published by the Railways in their gazette in an extra -ordinary issue in English, Hindi and regional language as early as possible and copies furnished to the recognised unions and suitable press releases should also be issued. There has been no contention from the learned counsel for the applicant that the Railway had not carried out these instructions. Apart from this, the retired government servant or their family who had not opted on or before 1.1.1973 were to be advised individually to exercise their option and to make their claim. This position was also clarified in Railway Board circular dated 27.12.1978 with the subsequent order extending the time limit. Para 2 of the circular says that:

..." It has been brought to this Ministry's notice that permission to come over to pension scheme is being granted to employees after the date of retirement on the consideration that subsequent orders extending the date of option are also applicable to the retired employees. If the Ministry desires to clarify that the subsequent orders extending the date of option are applicable to serving employees only. The cases already decided otherwise may be treated as closed and need not be re-opened..."

The same position was also reiterated in the circular dated 27.12.1979 under which it was stated that :

... " It was clarified therein that the subsequent orders extending the date of option granted vide this Ministry's letter No. PC-III/73/PN/3 dated 23rd July, 1974 were applicable to serving employees only. On a point

(b)

Having been raised by the AIRF representing that hardship has been caused in the cases of those who retired/died during the various extensions of options granted, the matter has been considered and it has been decided that the extension of time upto 31st December 1978 may be deemed to be applicable in the case of those who having been in service on 1st January, 1973 retired/ quitted service/ died in service during the period from 1st January 1973 to 31 December 1978. The options exercised in the above cases upto 31st December 1978 may, therefore, be treated as valid and the cases regulated accordingly in terms of the provisions made in para 2 of this Ministry's letter of 23rd July 1974, referred to above..."

8. Learned counsel for the applicant made much out of this regulations under para 2 of the Ministry's letter dated 23.7.74. Admittedly the para 2 had sub-para (iii) which shows that the contentions of the letter should be brought to the notice of all retired Railway servants who are eligible for this option or to the families of all the deceased Railway servants who may have died on or after 1st January 1973 before exercising an option within the time limit allowed and the amount to be refunded should also be advised to them simultaneously. In sub para (i) and (ii) it was enjoined that :

..." The option for pension will be valid if they refund the entire Government contribution and the excess, if any, of special contribution to provident fund received by them, over D.C.R.G. due to them under Pension Rules. The refund must be received before the last date for exercise of option or within one month of their being advised to do so by the Railway Administration, whichever is later. General Manager may extend the above limit of one month to three months in consultation with the respective FA & CAOs on the merits of individual cases..."

JS/

Nikunj

...10...

..." In the case of deceased Railway servants covered by these orders the option for pensionary benefits may be given provided a request for the same is specially made by the nominee validly nominated by the subscriber or, in the absence of a nomination by all the members of the family of the deceased as defined in the SRPF Rules. If the family includes minor children the request on their behalf can be made by their natural guardian and if there is no natural guardian by the legal guardian..."

This part of the order is not applicable to the present case. The contents of sub-para (i) and (ii) of para 2, were to be brought to the notice of the concerned retired Railway servant or their families and pensionary benefits were to be regulated under this two provisions. (emphasis supplied). Since the applicant was already in Government service at the time of the issue of the circular in 1974, the question of getting covered by sub-para (iii) of para 2 does not arise, because he had been duly informed of the exercise of option through Railway gazette notifications etc.

9. There is no doubt that the applicant had not preferred his option to the Railways within the stipulated time i.e. before 31.12.78, as desired in the two circulars dated 27.12.78 and 29.12.79. He approached the Railways for the first time in February 1990. beyond the cut off date and came to the Tribunal in November 1990. The delay in exercising the option cannot be accepted and this cannot help him in escaping the bar of limitation. We have therefore no hesitation in holding that the view taken by the Division Bench of this Tribunal in OA 510/91 was right as sufficient cause was not made out to explain the long delay in agitating the Railway Board's circular before the Tribunal. This

11

(19)

approach also finds support in the order dated 25.4.91 of the Supreme Court in the case of Union of India Vs. All India Pensionary Association and another Civil Suit No. 897/87, wherein it was held that there was no explanation of long delay of 10 years in moving the Court and therefore the case was barred by limitation. We therefore hold that this claim is barred by limitation.

10. We cannot also believe that the applicant was not aware of the availability of the pension option granted by the Railway Board in their letters of 1974 or 1978 or 1979. Even when he came to know the option available under judgement of the Jodhpur Bench of this Tribunal, he should have refunded the entire amount of Government contribution made to him at the time of settlement of his dues which would have entitled him to have exercised his option. In sub-para (i) of para 2 of the Railway Board Circular dated 23.7.74, it is made absolutely clear that the refund must be received before the last date of exercising the option. Even if he chose to exercise the option beyond the time limit prescribed, he again chose to forget the requirement of refund of the government contribution to his contributory fund accumulation. As a Railway servant retiring in June 1977 he would have known the existence of the pension scheme and the option available to him at that particular time. Thus besides the limitation, there is also no merit in this application and therefore we dismiss it.

10. There will be no order as to costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

N.K. Verma
(N.K. VERMA)
MEMBER (A)