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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW~~ BOMBAY BENCH

O.A. No. 21/90
T.A. No. -----

198

DATE OF DECISION 7-4-1992

Laxman Krishna Pitkar Petitioner

Mr. D. V. Gangal Advocate for the Petitioner(s)

Versus

GM. Central Railway, Bombay V.T.

Respondent

Mr. S. C. Dhawan

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Y*
2. To be referred to the Reporter or not ? *N*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *N*

MD

M.Y. PRIOLKAR
(M.Y. PRIOLKAR)

(8)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.21/90

Laxman Krishna Pitkar,
A-5, Suyog Co-op.Hsg.Scty.,
Plot No. 24/25, Sion(East),
Bombay - 400 022. .. Applicant

vs.

1. General Manager,
Central Railway,
Bombay V.T.
2. Chief Personnel Officer,
Central Railway,
Bombay V.T. .. Respondents

Coram: Hon'ble Shri Justice U.C.Srivastava,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.
2. Mr.S.C.Dhavan
Advocate for the
Respondents.

ORAL JUDGMENT: Date: 7-4-1992
(Per M.Y.Priolkar, Member(A))

The applicant in this case retired from railway service as Assistant Controller of Stores on 31-7-1974. Admittedly he did not opt for pension while he was in service although several opportunities were available to him for changing over from Provident Fund Scheme to the Pension Scheme. Accordingly after retirement his retirement benefits were settled under the Railway Contributory Fund Scheme. Subsequently for several other periods options were again made available to the railway employees for changing over to the pension scheme under Railway Board's circular dt. 23-7-74 which is extended from time to time and finally by letter dtd. 27-12-78. The grievance of the applicant is that he was not made aware of the provisions for option contained in the Railway Board's circular dtd. 23-7-74 and further orders extending ^{the} time

limit prescribed therein for changing over to pension scheme and he was therefore unable to exercise his option for pension within the prescribed timelimit. According to him he became aware of the circular dtd. 23-7-1974 only in 1986 and thereafter he submitted several representations to the Railway Board to permit him to change over to pension scheme but all his representations were rejected. He has accordingly approached the Tribunal in 1990 with a prayer for direction to the respondents to permit the applicant to opt for the pension scheme and thus be entitled to pensionary benefits inlieu of the benefits under the State Railway Provident Fund Scheme.

2. The respondents have filed their written reply resisting the application/on the ground that the applicant was aware of the Railway Board's circular dtd. 23-7-1974. It is evident, according to them, from the applicant's representation dtd. 27-11-86 in which the applicant has stated that when he retired on 31-3-1974 the terms and conditions stipulated for pension scheme were not suitable for him in view of his family circumstances at that time and therefore he had no other alternative but to opt for Provident Fund scheme. According to the respondents this is a clear admission on the part of the applicant that he was aware at the time of his retirement that he could opt for pension scheme even at that time but he had deliberately not chosen to do so since in his opinion the PF scheme ~~was~~ more attractive. It is ~~further~~ difficult for us to ~~difficult~~ accept this contention of the respondents. His representation dtd. 27-11-1986 merely states that at the time of his retirement in 1974 the provident fund scheme ^{was} more attractive to him. It did not however give any

indication as regards the existence of any further option ~~being~~ given by the Railway Board ~~apart from~~ ^{or of} various subsequent letters of the Railway Board right upto the letter dtd. 27-12-1978 by which the time limit for opting ^{for} pension scheme was extended for those railway employees who ^{were} in service on 1-1-73 and retired subsequently.

3. The learned counsel for the applicant has also brought to our notice the judgment of the New Bombay Bench dtd. 28.2.1990 in the case of Joseph John (OA No. 732/87) ^{of} Gonsalves v. Union of India & Ors, in which it has been held that the question of exercising a fresh option by retired employee ~~who only~~ should only arise if he knows that such an option was available. In fact the Railway Board's letter providing for option had also made it mandatory ^{that} and the contents of this circular should be brought to the notice of all Railway servants including retired railway servants and the families of the concerned railway servants who had since deceased. There is no affirmation in the written statement filed by the respondents that the contents of this circular had been brought to the notice of the applicant either before or after his retirement. We have, therefore, to accept the applicant's contents ⁱⁿ that the contents of these letters had not been brought to his notice and it was only ^{when} he became aware of the letters that he represented to the railway administration to give him an opportunity to change over to the pension scheme.

4. In the judgment cited above it has also been held that as far as arrears of pension are concerned the period of one year would be a reasonable period for the payment of arrears in the context of Section 21 of the Administrative Tribunals Act which requires application to be filed within one year from the date of final order by which the applicant is aggrieved.

The Tribunal has accordingly after considering the fact that the applicant had enjoyed the benefits of ~~this~~ the comprehensive alternative scheme allowed the arrears of pension only for a period of one year prior to the filing of the application.

5. We are in agreement with the judgment cited above and accordingly pass a similar order in this case also, as follows:

O R D E R

- i) The respondents are directed to hold that the applicant is entitled to the benefits of the pension scheme within a period of three months from the date of receipt of a copy of this order and to fix the pension payable to the applicant according to the rules in existence on the date of his retirement and also amend the pension so fixed taking into consideration the amendments made to the rules thereafter;
- ii) The respondents shall also within a period of three months from the date of receipt of a copy of this order compute the arrears of pension due to the applicant limited to a period of one year before the date of filing of this application i.e. the arrears will be payable only from 1-2-1989.
- iii) No interest is to be charged when computing the amounts due in terms of clause (ii) and the arrears due in terms of clause (iii);
- iv) The amounts computed in terms of clauses (ii) and (iii) of these orders shall be

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set off against each other and the net balance amount due shall be computed by the respondents and intimated to the applicant within three months from the date of receipt of a copy of this order. The net payment due shall be made by the party concerned to the other party within one month thereafter;

vi) Regular monthly pension payment shall be made from not later than four months after the receipt of a copy of this order. This shall be subject to the applicant refunding the net balance due in terms of clause(v) in case the net balance is payable by him;

vii) In the circumstances of the case the parties to bear their own costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman

MD