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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

ORIGINAL APPLICATION NO:619/91

Ganesh Keshav Joshi

...Applicant

V/s

Union of India
through The General Manager,
Western Railway, Churchgate
Bombay - 400016
and ors.

...Respondents

O.A.No. 620/91

Arjun L.Aher,
Bombay

...Applicant

V/s

Union of India
and others

...Respondents

O.A.NO.621/91

v. Konde.
Sudhakar ~~Vikode~~,
Bombay

...Applicant

V/s

Union of India
and others

...Respondents

CORAM : HON'BLE MR.JUSTICE S.K.DHAON, Vice-Chairman
HON'BLE SHRI M.Y.PRIOLKAR, MEMBER (A)

Appearance :

Shri D.V.Gangal, Adv.
for the applicants.

Shri P.M.A.Nair, Adv.
for the respondents.

ORAL JUDGEMENT

5th AUG 1992

(PER : JUSTICE S.K.Dhaon, Vice-Chairman)

The applicants in these three cases are retired railway servants. They retired on before 28th December 1979. They are claiming the benefits of the pension and family pension scheme of 1964 enforced by a letter of Railway Board dated 28th December 1979. The controversy therefore in these three cases is common. They have been heard together and therefore being disposed by a common order.

2. On 28th December 1979 the Railway Board issued a communication addressed to the General Managers, All Indian Railways and others. The subject of this communication was, the grant of option to Railway servants governed by the SRPG (Contribution) rules for coming over to pension and family pension scheme, 1964. This communication emphasizes that the benefits of the scheme of 1964 has been extended to the 31st December 1978 and the same may be deemed to be applicable to the retired/quitted service/died in service during the period from 1.1.1973 to 31.12.1978. The employees would be entitled to get their options in accordance with the paragraph two of the Ministry's letter dated 23.7.1974. According to the letter dated 23rd July 1974 we find that one of the direction content therein was that the scheme was introduced by the Railway Board's letter dated 23.7.1974 should be brought to the notice of ^{all} retired railway servants who were eligible to exercise the option.

3. The definite case set up by the applicants before this Tribunal is that they received no communication

whatsoever from the respondents. to the effect that they could exercise their option in the said scheme. Their case is that they acquired knowledge of the fact that they could take advantage of the scheme for the first time some time in the year 1988 and immediately thereafter they made a representation to the authority concerned for being given benefits of the scheme, but in vain. Finally they came to this Tribunal by means of this application.

4. In the counter affidavit filed on behalf of the respondents. ~~There is no averments whatsoever~~ to indicate that any attempt was made to bring to the notice of the applicants the contents of the letter dated 28th December 1979 of the Railway Board.

g The case is set up, however, is, that in pursuance
g of the letter of the Railway Board the circulars
were issued to the different Railways in the country.
The argument is that the applicants being retired railway servants, They were expected to visit the
g Headquarters off and on. Therefore, we have ^{to} presumed that they have acquired knowledge of the aforesaid circular.

g 5. We ^{are} have not impressed with the case set up
g the the respondents. A scheme beneficiary to the
g applicants had been introduced by the Railway Board.
g The Board had emphasised that the scheme should
g be brought to the notice of those who want^{ed} to take advantages of the same. The applicants therefore

§ acquired some sort of right to take benefits of the said scheme. They cannot be deprived of their right
§ unless we record ^{an} the finding that, by their conduct, they gave up the right. There is no material on records
§ before us to come to that finding. On the contrary,
§ we can safely recorded ^{the} finding that the directions of the Railway Board as contended in the letter dated 23.7.1974 regarding the notice to be given to the intend-ing beneficiaries of the scheme had not been carried out by the respondents. We ^{are} therefore, of the opinion that the applicants' case should have been considered on merits by the respondents and they should have been given the benefits of the scheme if there was no legal impediment in their way. This matter has come up before this Tribunal in numerous other cases. We have in the past given a direction that the persons coming before us with similar allegation, as in these cases, should be given the benefits of the scheme with effect from a date one year before the date of presentation of the application.
§ We have also directed that the person who ^{has} taken advantage of the scheme should be liable to be refund to the Railways the contribution made towards their Provident Fund, but without paying any interest. We have also directed that the railway in their turn would be liable to pay to the applicants concerned arrears
§ of the pension from ^{an} the definite date but without being called upon to pay any interest. We propose to follow the practice in these case also.

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6. We find that, there are three applications before us filed on 16th September 1991. We, therefore, direct that the applicants would be given the benefits of the pension scheme with effect from 16 th ^{September} ~~August~~ 1990. The direction given by this Tribunal in O.A.No. 732/87 decided on 28th FEB 1990 shall form part of this order.

7. With these directions these applications are disposed of finally. There shall be no order as to costs.