

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 36/91

198

~~XXXXXX~~

DATE OF DECISION 30.4.1991

Shri R.S.Mehta Petitioner

Shri G.S.Walia Advocate for the Petitioner(s)

Versus

Union of India and others Respondent

None for the Respondents Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. 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 ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No



(4)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH  
NEW BOMBAY

Original Application No. 36/91

Shri R.S.Mehta,  
C/o G.S.Walia, Adv.,  
Prabhat Centre, CBD,  
New Bombay - 400614.

Vs.

Union of India  
and others

CORAM : SHRI U.C.SRIVASTAVA, Vice-Chairman

SHRI M.Y.PRIOLKAR, Member (A)

Appearance :

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

None for the respondent.

ORAL JUDGMENT

DATED : 30.4.1991

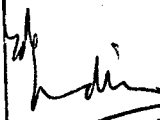
(PER : M.Y.PRIOLKAR, M(A)).

The grievance of the applicant in this case is that he is not allowed to opt for the retirement benefits under the Pension Scheme although employees were allowed to change over from Provident Fund (PF) scheme to Pension Scheme during certain other periods. According to the applicant such opening and closing of Pensions only during certain periods and not in others is illegal, being discriminatory. The applicant's case is based on the Judgment of this Tribunal in case of Ghanshyamdas in T.A. No.27/87.


5

OA NO.36/91

2. This question of validity of options for Pension scheme only during certain periods and not during others has been now finally decided in Krishna Kumar's case (AIR 1990 SC 1982) where a five Judge Bench of the Supreme Court has held that giving options during certain periods cannot be considered to be discriminatory. The Supreme Court has observed in this Judgment that employees retiring on P.F. will not be on par with pension retirees since in the case of P.F. retirees, the liability of the Government crystallises on the date of retirement being a one time liability, whereas in the case <sup>of</sup> Pension retirees there is a continuing obligation of the Government till the death of the employees. Ghanshyam Das's case cited by the applicant has been specifically referred to in this Judgment of the Supreme Court and distinguished on the grounds that the justification for the various orders by which option periods were decided or extended was not brought to the notice of the Tribunal and also before S.C., when the SLP filed against the Tribunal's judgment was rejected by the Supreme Court. This Tribunal's decision in the case of Ghanshyam Das's <sup>thus</sup> is no longer a good law. We have decided a number of similar cases after the receipt of the judgment in Krishna Kumar's case, holding that there is now no merit in such applications. Accordingly, this application is also rejected. There will be no order as to costs.

  
PRIOLKAR  
(A)

30-4-81

  
(U.C. SRIVASTAVA)  
Vice-chairman

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Review Petition No.42/91  
in  
O.A.36/91

R.S.Mehta,  
C/o.G.S.Walia  
Advocate,  
Office No.65, First Floor,  
Prabhat Centre, Near Fire Stn.,  
Konkan Bhavan, New Bombay-400614. .. Applicant

vs.

1. Union of India
2. The General Manager,  
Western Railway,  
Churchgate,  
Bombay - 400 020. .. Respondents

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

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

TRIBUNAL'S ORDER IN REVIEW PETITION  
BY CIRCULATION:  
Per M.Y.Priolkar, Member(A)

Date: 11-11-1991

This Review Petition is filed against our judgment in O.A. 36/91 decided on 30-4-1991. The grievance of the applicant in that case was that he was not allowed to opt for the retirement benefits under the Pension Scheme although employees were allowed to change over from Provident Fund Scheme to Pension Scheme during certain other periods. The applicant's case is based on an earlier judgment of this Tribunal in case of Ghanshyamdas in T.A.No.27/87.

2. We had, however, held in our judgment under review that our earlier judgment in Ghanshyamdas case was no longer a good law after the judgment of a five Judge Bench of the Supreme Court in Krishna Kumar's case (AIR 1990 SC 1982) in which the Supreme Court had held that giving an option during

certain periods cannot be considered & to be discriminatory. The Review Petition is based on the fact that the railway administration had filed a review petition in the Hon'ble Supreme Court against their earlier rejection of the SLP in Ghanshyam Das's case and the Supreme Court has now rejected the said review petition of the railway administration and thereby confirmed the earlier judgment of this Tribunal in Ghanshyam Das's case. It is therefore argued in the present review petition that the view we had taken in our ~~present~~ judgment under review that the earlier judgment in Ghanshyam Das's case is not good law does not subsist, and requires review.

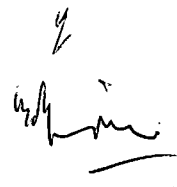
3. We had already observed in our judgment under review ~~after~~ <sup>that the</sup> Ghanshyam Das's case cited by the applicant had been specifically referred to in the judgment of the Supreme Court in Krishna Kumar's case and distinguished on the grounds that the justification for the various orders by which option periods ~~have~~ <sup>were</sup> decided ~~on~~ or extended was not brought to the notice of the Tribunal when Ghanshyam Das's case was decided and also before the Supreme Court when the SLP filed against the Tribunal's judgment was rejected by the Supreme Court. From the review order dtd. 6th May, 1991 of the Supreme Court which is now produced by the Review Petitioner, <sup>it is seen that</sup> the Supreme Court has rejected the review petition merely on the ground that the decision in Ghanshyam Das's case was brought to the notice of the Constitution Bench of the Supreme Court when it decided the Krishna Kumar's case on 13th July, 1990. In some similar applications which we have decided recently even after this review order of the Supreme Court was


R.P. 42/91 in  
O.A. 36/91

-: 3 :-

9  
8

brought to our notice we have not thought it fit to differ from our earlier decision as in the case under review since one of the petitioners in the other cases decided along with Krishna Kumar's case by ~~The~~ common judgment of Supreme Court dtd. 13th July, 1990 was squarely covered by the judgment in Krishna Kumar's case, that petitioner having retired during the period between 1969 - 1972. Still the Supreme Court had not granted any relief to that petitioner. In any case a mere rejection of the review petition by a two Judges Bench of the Supreme Court could not have the effect of over ruling the binding law decided by a five Judges Bench of the Supreme Court in Krishnakumar's case. We ~~did~~<sup>do</sup> not therefore find any reason to warrant a review of our judgment dtd. 30-4-1991 in O.A. 36/91. The review petition is ~~therefore~~<sup>accordingly</sup> rejected.

  
(M.Y. PRIOLKAR)  
Member(A)

  
(U.C. SRIVASTAVA)  
Vice-Chairman

MD