

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 510/91
T.A. No.

198

DATE OF DECISION 25-9-1991

Lowrance D. Ferreira

Petitioner

Mr. D.V. Gangal

Advocate for the Petitioner(s)

Versus

Union of India and another

Respondent

Mr. J.G. Sawant

Advocate for the Respondent(s)

CORAM :

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

The Hon'ble Mr. T.C. Reddy, 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? ☒

MOIPRRND-12 CAT/86-3-12-86-15,000


(M.Y. PRIOLKAR)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

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O.A.510/91

Lowerance D.Ferreira,
Pachbawadi, Tal.Vasai,
Dist.Thane,
PIN 401 201.

.. Applicant

vs.

1. Union of India
through
The General Manager,
Central Railway,
Bombay V.T.

2. Financial Adviser and
Chief Accounts Officer,
Central Railway,
Bombay V.T.

.. Respondents

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

Hon'ble Shri T. C.Reddy, Member(J)

Appearances:

1. Mr.D.V.Gangal
Advocate for the
Applicant.

2. Mr.J.G.Sawant
Advocate for the
Respondents.

ORAL JUDGMENT:
(Per M.Y.Priolkar, Member(A))

Date: 25-9-1991

The applicant in this case retired from railway service as Accounts Stocks Verifier on 30-9-1977. During his service although there was a provision to opt for pension after the pension scheme was introduced in the railway, he did not opt for the pension scheme and on his retirement his retirement benefits were settled according to the Railway Servants Provident Fund Scheme. According to the applicant, under the Railway Board's circular dtd. 29-12-1979 read with *Their* earlier circular dtd.23-7-1974, railway employees who had retired or quit service or died but who were in service as on 1-1-1973 were also granted

pension option. The grievance of the applicant in this case is that although under this circular the concerned employees or their families are to be individually intimated of the availability of the pension option, ~~The contents~~ ^{notice of the} of the letter ^{were} ~~was~~ never brought to the concerned employees and that he was not aware of the pension option and could not exercise the same until 1988 or so when the availability of pension option came to his knowledge. According to the applicant he sent a representation dtd. 5-3-1988 and again on 28-6-88 to the Ministry of Railways but no reply has been received. He says that he also sent representation subsequently to the Railway Minister and also to the General Manager on 5-7-1990 and he finally received the reply dtd. 22-8-1990 in which he was informed that he was not entitled for pensionary benefits nor was the option for pension scheme open to him. The applicant has therefore approached the Tribunal by this application on 6-8-1991 with a prayer for a direction to the respondents that the applicant must be granted pension option effective from 1-10-1977.

2. In the written statement filed by the respondents they have contended that since the applicant is asking for benefits w.e.f. 1-10-1977 and although he retired from service on 30-9-1977 and the present application has been filed on 6-8-1991 the application is barred by limitation. They have also stated ^{that} both the Railway Board's circulars dtd. 23-7-1974 and 29-12-1979 ^{on} ~~from~~ which the applicant's case is based ^{been} had given wide publicity and both the letters were published in the Railway Gazette. It is also stated that the copies of the letters were sent to each section


of the Railways to be circulated among the staff, copies were also furnished to the recognised Unions for publicity in the notice board. Respondents have however not admitted that the applicant was not informed about the letter dtd. 29-12-1979 since the relevant records of 1979 were not available at this distant time. Respondents also stated that no representation or claim of 1988 had been received by the Railway administration from the applicant, and it was only in 1990 that the representation addressed to the Prime Minister was forwarded to them for comments.

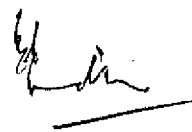
3. Learned counsel for the applicant contended that in a number of earlier decisions this Tribunal has taken the view that individual intimation to retired employees or their families are mandatory as stipulated in the Railway Board's letters dtd. 1974 and 1979 and because of non-compliance of this requirement the employees ^{who} ~~were~~ approached the Tribunal even after a long time have been granted ~~for~~ pension option. He has annexed a copy of the judgment dtd. 28-2-1990 of a Division Bench (New Bombay) in this connection. He has also cited another case of one Pandit (O.A. 12/90) where also similar benefits was granted to the employee. It appears from the judgment annexed that the Railway Administration had not taken the plea in ~~this case~~ those cases as they have done in the present one that the relevant record is not available with them at this distant ~~of~~ time. The provisions of the railway manual were also brought to our notice in which a period of 5 years ~~were~~ ^{is} prescribed for preservation of service records of the employees. However, learned counsel for the applicant contended that ^{a mere} ~~in view of the~~ provision in the manual ~~does not~~

ipso fact establish that the records were destroyed.
 There is however, a specific averment that the records
 are not available. The respondents also stated that
 the manual prescribed a period of 5 years for
 preservation of service record, although the learned
 counsel for the applicant disputed this and contended
 that there was no such provision in the manual. We have
 therefore seen the manual and find that there is a
 clear provision that the service records of the
 employees are to be preserved only for five years
 after retirement of the employee. The learned counsel
 for the applicant conceded that any individual intimation
 or letters if sent to the concerned employee, should
 have been available in the service record which under
 this provision is therefore to be preserved only for
 a period of five years after retirement. In view of
 this provision and the averments of the respondents,
 it is not possible for us to disbelieve the statement
 of the respondents that the relevant records are not
 available ^{at} ~~and~~ this distant time and they are, therefore,
 unable now either to deny or confirm that individual
 intimations had been sent to the applicant. It appears
 that the applicant has settled down in Thane which is
 only a suburb ~~where there~~ of Bombay where there is a
 large number of serving and retired Railway employees.
 He is stated to be ^{visiting} ~~insisting~~ railway office regularly
 for the complementary passes. It is in fact difficult
 for us to believe, therefore, that he was not aware of
 the availability of pension option granted by the
 Railway Board's letters of 1974 or 1979. We do not
 thus find any convincing reason why the applicant had
 not approached the Railway administration for this
 grant of option within a reasonable period after
 retirement. In fact in a recent order dtd. 25-4-1991
 the Supreme Court has held in the case of Union of India

v. All India Services Pensioners Association and another (Civil Appeal No.897 of 1987) that there was no explanation for the long delay of 10 years in moving the Court and the claim was, therefore barred by limitation. This was a case where the retired employees had come up for grant of arrears of pensionary benefits after 10 years and although the Tribunal had allowed the claim, the Supreme Court set aside the Tribunal's judgment on the ground of limitation alone. In the present case also, the delay is of almost 13 years before the applicant made his first representation. We have therefore to hold that this application is also barred by limitation, as no sufficient cause is made out to explain this long delay.

4. Thus, both on merits as also limitation, we find no substance in this application which is, accordingly, dismissed. No order as to costs.


(T.C. REDDY)
Member(J)


(M.Y. PRIOLAR)
Member(A)

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