

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH  
CIRCUIT SITTING AT NAGPUR.

O.A.NO. 913/92

199

TR.A.NO.

DATE OF DECISION *1/1/93*

Shri S.Ganeshan Iyer.

Applicant(s)

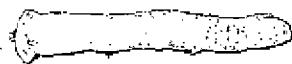
Versus

Union of India & Ors.

Respondent(s)

1. Whether it be referred to the Reporter or not ? *4/1/93*
2. Whether it be circulated to all the Benches of the *CA* Central Administrative Tribunal or not ?

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



mbm:

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
BOMBAY BENCH, CAMP AT NAGPUR.

Original Application No.913/92.

Shri S.Ganeshan Iyer.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

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

Appearances:-

Applicant by Shri D.B.Dave.

Respondents by Shri P.M.A.Nair.

JUDGMENT :-

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

Dt. 2.12.1993

This is an application from one Shri S.Ganeshan Iyer retired Guard, Western Railway who superannuated on 30.4.1973 from the Western Railway. He availed of the terminal benefits available to the Railway employees on the Contributory Provident Fund Scheme and did not exercise his option to come over to the Pension Scheme for which Railway Board had issued instructions under its letter dt. 23.7.1974 wherein all those who had retired/quit service or died in service after 1.1.1973 were given option to come over to the Pension and Family Pension Scheme. This exercise of option was extended from time to time upto 31.12.1978. The applicant was not advised to exercise his option as he had gone to stay in his village home in Kerala after his retirement and came to know of the option to come over to the Pension Scheme only recently when he started to stay with his son at Vasai Road. The applicant also claims that he had been demanding pensions from the Railways without any reply.

2. The Railways in their written statement have not controverted that the applicant is/entitled for any pensionary benefits as the exercise of option was

available to him till 1978 and it is now only that the applicant has thought it fit to make his claim. In support of their contention they also quoted this very Tribunal's Judgment in Tr. Application No.27/87 wherein it was decided that the option to come over to the pension scheme can be granted only to those who are in a position to produce acceptable documentary proof in token of their having indicated the said option at the material time.

3. The matter was heard at length from both the sides. Shri Dave, learned counsel for the applicant reiterated that as per the letter dt. 23.7.74 the Railways were advised they should take urgent steps to bring the contents ~~of~~ of their letter to the notice of all concerned employees. He also reiterated that the Western Railway had failed in its duty to inform the applicant as desired by the Ministry of Railways and deprived the applicant of his right to pension option. He referred to this Tribunal's decision in O.A. No. 732/87 in which the Railways had filed an SLP No.456/91 in the Supreme Court which was rejected and the applicant was granted a special option. Similarly, in O.A. No.842/89 this Tribunal had granted option to the applicant, in this case also SLP No.1807/1991 of Respondents was dismissed. Several other decisions of this Tribunal were also quoted in support of his claim. The learned counsel for the Respondents Shri Nair, however, based the rebuttal of the Respondents on the main issue whether any documentary proof was available that the option of the applicant was exercised within the stipulated time or even after that when a few cases for exercising the option were favourably ordered by some Benches of this Tribunal. The applicant retired in April, 1973. The Railways in 1974 came out

with an order for exercise of option which was given the widest publicity through personal letters, notice in Newspapers, Gazette Notifications and several other measures, so that everyone affected by this option can exercise the same within the permissible period. This change over to the pension scheme got extended by various further notifications of the Railways, the last one being in December, 1979. It is entirely unbelievable that a retired Railway employee would not come to know of it from any sources even though he may be staying in the remotest village of Kerala. The change over to the pension scheme was also agitated in some of the Benches of this Tribunal which were favourably decided upon and a number of such claims were preferred and complied with. However, this applicant has come to this Tribunal for agitating his claim only in August, 1992. He has not produced a single evidence to support that he had at any point of time written to the Railway authorities for change over to the pension scheme. He has of course produced a copy of the letter purported to have been issued by him on 31.3.1973 saying that his option for the pension may be recorded as he was retiring in April, 1973. Another copy of the letter dt. 25.12.1978 is also produced saying that he would like to opt for the new Pension Scheme. In that letter dt. 25.12.1978 he says that the option for the pension was not granted to me after 31.12.1972 as I was compulsorily retired with S.R.P.F. After these two letters, the only time the matter was agitated was on 1.12.1989 when a letter from him to the Secretary, Railway Board was issued giving the reference to the Supreme Court SLP No.1575/85 regarding grant of Pensionary benefits to SRPF retirees from the Railways. The two letters dt. 31.3.1973 and 25.12.1978 do not bear any

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acknowledgement from the Officers to whom they were addressed and therefore, the veracity of these letters cannot be established, one of the conditions for opting for the Pension Scheme was also to return the government contribution in the Provident Fund Emoluments which would have entitled him to claim the option of pension scheme and the family pension scheme. The applicant had at no time indicated that he was prepared to return the government contribution as required under the 1974 orders. Even when he wrote to the Railway Board in 1989 he has not indicated the amount which he was supposed to be returning to the government in order to make him eligible for the pension scheme. This is a very old case barred by limitation in view of the fact that no records pertaining to his service books are available at this distant stage. Since this Tribunal in its decision in OA No.925/92 had clearly said that there was a proof in this case that the option was sent by the registered post by the General Manager, Central Railway and therefore, the applicant's claim could be accepted with certain modifications. The arrears of the pension accrued on that account was limited to one year before filing of this application i.e. from 27.8.1991. No such redeemable feature is available in this application and therefore, I am not persuaded to accept that this claim is valid and there was a genuine lack of communication between the Railways and the applicant in not having come to know about the option for change over to the Pension Scheme before August, 1992. In

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the conspective of the circumstances, the application is dismissed. There will be no order as to costs.

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

B.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESOT ROAD, BOMBAY-1

R.P. No. 10 of 1994 in  
O.A. No. 913/1992

S. Ganesan Iyer ..Applicant  
V/s.

Union of India & 2 ors. ..Respondents

Coram: Hon. Shri N K Verma, Member (A)

TRIBUNALS ORDER: (By circulation)  
(Per: N K Verma, Member (A)) DATED: 22 April 1994

In this Review Petition the applicant has prayed for review of the order dated 2.12.1993 under which the applicant's prayer for switching over to Railway Pension Scheme was dismissed. The grounds addused for the review seem to be in detriment in this Review Petition. As per the provisions of the Administrative Tribunals Act, 1985 a review is permissible on the application of a person who (i) from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or (ii) on account of some mistake or error apparent on the face of the record, or (iii) for any other sufficient reason, desires to obtain a review of the order made against him. In this review petition none of these grounds have been canvased.

The petitioner has cited the Hon. Supreme Court's decision relating to UNION OF INDIA V. ASHWANI KUMAR, SLP (Civil) No.9909 of 1993 decided on July 5, 1993 [1993] 25 AIC 461 before filing any objection before the Hon. Supreme Court in respect of any error in the order of the High Court or the Tribunal it is

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only proper to bring that error to the notice of the High Court or the Tribunal by filing a Review Petition. However, the applicant has not been able to satisfy the apparent error in which the bench ~~felt~~<sup>speaking</sup> failed. The order dated 2.12.1993 itself has quoted several of the judgments under which retired railway officials were permitted to come over to the pension scheme. The respondents in the OA had contested the application on the ground that the option to come over to the pension scheme can be granted only to those who are in a position to produce acceptable documentary proof in token of their having indicated the said option at the material time. The applicant has produced two letters purported to have been written by him, one on 31.3.1973 and the other on 25.12.1978 for which no documentary proof for having issued those letters could be conclusively proved by the applicant. If the applicant makes a claim that he addressed these letters to the railway respondents it is incumbent upon him to have the proof of the same. If the railways do not have any of the letters in their custody they cannot be asked to produce the same. The applicant has again relied on the judgment of this very Tribunal in OA 569/87 in the case of SMT. LAXMI VISHNU PATWARDHAN V. SECRETARY RAILWAY BOARD & ANR.

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(ATR 1988(2) CAT 49) delivered by Hon. Shri Justice B.C. Gadgil on 25.2.1988. That case can be distinguished from the instant one on the plain reading of the facts of the case. The applicant in that case had entered railway service on 16.5.1919 and he retired on super-annuation on 9.6.1957. Prior to that from 9.12.1955 to 8.6.1957 he was on leave preparatory to retirement. The Railways introduced the pension scheme for the

Railway servants for which a decision was taken on 16.11.1957. Hence the question of Smt. Laxmi ~~to~~ Vishnu Patwardhan having known the scheme when she retired hardly arose and therefore <sup>his widow</sup> she had to be informed by the railways so as to obtain her option. No such intimation was given to Smt. Laxmi Vishnu Patwardhan. In the instant case the applicant was in railway service till 30.4.1983 when he was superannuated. He availed of the terminal benefits available to the railway employees of C.P.F. scheme and did not exercise his option to come over to the pension scheme which was extended from time to time upto 31.12.1978. A further notification was issued in December 1979. His long silence on this matter of option of coming over to the pension scheme from May 1973 to August 1992 cannot be overlooked, <sup>on the basis of</sup> The two unsupported and unsupportable letters which he claims that he had written to the railways will not help him. During the arguments the learned counsel for the respondents stated that no records were available pertaining to the service book etc., at this distant stage and therefore they were not in a position to confirm the receipt of these letters.

~~Review Petition filed by the applicant~~ N.L.

There is no error apparent on the face of the record nor has the applicant brought out any new important matter or evidence which would warrant review of the order passed in the matter. The Review Petition is, therefore, without merit and is dismissed.

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