

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

 **BOMBAY BENCH**

O.A. No. 165/93
T.A No. --

198

DATE OF DECISION 9-3-94

P.M.Thomre

Petitioner

Mr.G.S.Walia

Advocate for the Petitioner(s)

Versus

U.O.I. & Ors.

Respondent

Mr.A.L.Kasturey

Advocate for the Respondent(s)

TCORAM

The Hon'ble ~~Smt.~~ Smt.Lakshmi Swaminathan, Member(J)

The Hon'ble ~~Smt.~~ --

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 in needs to be circulated to other Benches of the Tribunal ?

Smt.Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
M(J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.165/93

P.M.Thomre

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

Coram: Hon'ble Smt.Lakshmi Swaminathan, Member (J)

Appearances:

1. Mr.G.S.Walia
Advocate for the
Applicant.

2. Mr.A.L.Kasturey
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 9-3-94
(Per Smt.Lakshmi Swaminathan, M(J))

This is yet another application filed u/s. 19 of the Administrative Tribunals Act by which the applicant is seeking pensionary benefits w.e.f. the date of his retirement i.e. 1-4-1974 with all arrears and interest on the ground that he should be declared to have opted for pension as offered to the former railway employees vide Railway Board letters dt. 23-7-74 and 29-12-79.

2. The facts of the case are not disputed and may be briefly stated as follows: When the applicant retired from service with effect from 1-4-74 he had opted to be governed under the State Railway Provident Fund (SRPF) (Contributory) Rules. By the pension scheme introduced by the Railway Board by letter dt. 23-7-1974 an option had been given to all Railway servants who have retained the State Railway Provident (Contributory) Fund and were in service on 1-1-1973 and those who had quitted or retired on or after 1-1-73, to exercise an option within a period of six months

from the date of issue of this order whether they would like to come over to the pension scheme. The Railway Board has apparently extended the time for coming over to the pension scheme from time to time and finally by order dt. 29-12-79 it was decided to extend the time upto 31-12-78.

3. According to the learned counsel for the applicant in terms of the letters dt. 23-3-74 and 29-12-79 there was an obligation on the part of the respondents to duly inform the concerned retired railway servants by any of the methods enumerated in these letters viz. Gazette notification in English, Hindi and local language and by suitable press releases and information through Unions. He has submitted that no information whatsoever had been communicated to the applicant to enable him to exercise the option. According to him it was only after the decision of this Tribunal in Joseph John Gonsalves vs. U.O.I. & Ors. (O.A. 732/87) dt. 28-2-1990 that he became aware of the fact that such an option was open to him. He has represented to the respondents vide letter dt. 24-6-91 which was not replied to by the respondents. The learned counsel has relied on the judgment of this Tribunal in J.J.Gonsalves case which has been followed in a catena of judgments referred to in the recent judgment in D.A.Benjamin vs. U.O.I. & Ors. (O.A.689/93) dt. 17-2-94 and submits that he should, therefore, be entitled to opt for the pension scheme. The learned counsel states that the appeals filed by the respondents U.O.I. in the Supreme Court in Gonsalves case and Vaidya's case (1991 (15) ATC 392 decided on 26-4-90) have since been dismissed.

4. The learned counsel for the respondents has stated that the crux of the matter is that necessary information as required under the aforesaid Railway Board's letter has been given to the applicant in this case. In this connection he drew my attention to para 5 of the reply in which they have referred to the fact that the Railway Board's letters dt. 15-7-72 23-7-74 and 17-1-75 have been published in the extra ordinary Gazette which according to them is sufficient notice to the applicant. They have also referred to the fact that these letters had been circulated to the various Unions and their offices and also displayed on the "Notice Boards of the concerned offices where the applicant would generally come to receive his pension." It may be noticed that the respondents have not referred to the letter dt. 29-12-79 being brought to the notice of the applicant. Besides, the reply given by the respondents is that they have displayed their earlier letters on the Notice Boards of the concerned offices where 'the applicant would generally come to receive pension' appears to be redundant in the circumstances of the case as the applicant's grievance is that he is not being accepted as a pensioner by the Railway Administration. It is also not their case that they have made suitable press releases of the relevant Railway Board's letters so as to bring the options to the notice of the concerned former railway employees, as required in para 4 of the Railway Board's letter dt. 23-7-74. While it may be considered that it would be impracticable or almost impossible for the respondents to inform former employees individually it was the duty of the respondents to show that they have atleast followed their own instructions regarding

publication of these letters. They have also not produced any copies of the Gazette or confirmed if there were any press releases. In Gonsalves case the Tribunal held :

"There is no affirmation in the respondents' written statement that the requisite publicity had been given to any of the concerned letters insofar as retired railway employees are concerned. During the course of oral arguments Mr. Kasturey did tell us that the letters had been given publicity through the railway's gazette. But this will be of help only so far as serving employees are concerned. We do not see how this can help insofar as retired railway servants are concerned. Based on this discussion we cannot help but hold that the applicant was required to be informed that he could exercise a fresh option to come over to the pension scheme and that he had not been so informed."

5. In the facts and circumstances of the case and following the decision in Gonsalves case and other decisions referred to above the conclusion is inevitable in this case also that the applicant has not received the necessary information and will therefore be entitled to exercise a fresh option to come over to the pension scheme under the Railway Board's letter. The respondents are directed to fix the pension of the applicant according to the rules as applicable from time to time within three months from the date of receipt of this order. However, since this application has been filed only on 1-2-93 the arrears of pension due to the applicant will be limited to a period of one year prior to this date that is

w.e.f. 1-2-92. The respondents are at liberty to recover from the applicant all amounts earlier paid to him under SRPF(Contributory) scheme to which he would not be entitled as per the rules. This amount so recoverable may be adjusted against the arrears or future amounts of pension payable to the applicant from the aforesaid date as applicable under the law.

6. No order as to costs.

M

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)