

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:899/94

DATE OF DECISION:5.1.2000

Shri Waman Anaji Pagare Applicant.

Shri Shri H.A.Sawant Advocate for
Applicant.

Versus

Union of India and others Respondents.

Shri A.L.Kasturey Advocate for
Respondent(s)

CORAM

Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

Hon'ble Shri D.S.Baweja, Member (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library.


(R.G.Vaidyanatha)
Vice Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO:899/94

Wednesday the 5th day of JANUARY 2000

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Waman Anaji Pagare
Residing at
C/o Shri U.W.Pagare,
B-471, Jai Yashwant
Co-op Housing Society Ltd.,
Village Road,
Bhandup (East)
Bombay.

...Applicant.

By Advocate Shri H.A.Sawant

V/s

1. Union of India through
The General Manager
Western Railway,
Chsurchgate.
2. The Divisional Railway
Manager (E),
Western Railway,
Bombay Central,
Bombay.

...Respondents

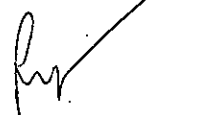
By Advocate Shri A.L.Kasturey.

ORDER (ORAL)

(Per Shri Justice R.G.Vaidyanatha, Vice Chairman)

This is an application filed by the applicant claiming the pensionary benefits. The respondents have filed reply opposing the application. We have heard Shri H.A.Sawant counsel for the applicant and Shri A.L.Kasturey counsel for the respondents.

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2. The applicant was working as an employee in the Western Railway. He retired from service on 30.6.1972. The Railway had only Provident Fund Scheme till 1957. In 1957 Pension Scheme was introduced in Railway and option was given to the employees either to opt to Pension Scheme or continue in Provident Fund Scheme. The applicant who was in service when Pension Scheme was introduced and till he retired in 1972, did not exercise option for Pension Scheme. Even after retirement there were number of opportunities given to the employees by Railways by extending the cut of date for exercising option, but the applicant did not exercise option.

3. The applicant's case is that he was unaware of the 1969 circular that one has to exercise option. Then he wrote a letter to the Railway claiming pension but no final reply was received; that is how he has approached this Tribunal claiming pensionary benefits.

4. The defence of the respondents is that since the applicant has not exercised the option to come out to Pension Scheme within the cut of date or extended cut of date, he is not entitled to pensionary benefits.

5. The argument of the learned counsel for the applicant is that there was no notice to the employees including the applicant and therefore he was not aware of the Rule and could not exercise option. But according to the respondents there was wide publicity but the employees did not exercise option. Hence they cannot get the benefit to come out to Pension Scheme.

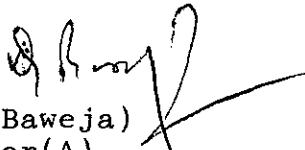
The learned counsel for the applicant invited our attention to some Division Bench judgements of this Tribunal namely OA 727/89 and other cases where a Division Bench of this Tribunal has held that when the notices are not given to the employees then they cannot be denied the benefit of Pension Scheme if subsequently they apply for the same. We do not want to consider the Division Bench judgements since the matter is covered by Full Bench judgement and Supreme Court judgement. A similar question arose in some cases was referred to Full Bench. In OA 314/94 and connected cases the Full Bench by judgement dated 6.12.1996 has held that individual notices to the employees regarding extended cut of date to come out to Pension Scheme is not necessary.


The we have the judgement of Supreme Court in Krishna Kumar's case reported in 1990 (14) ATC 846, where grievance was made about discrimination between employees who are getting pension and retirees who had failed to exercise option within the extended cut of date. The Supreme Court has held that Provident Fund retirees who had failed to exercise option within the time are not entitled to be included in Pension Scheme. The Supreme Court held that Provident Fund retirees and Pension retirees constitute different class and therefore there is no question of discrimination if Provident Fund retirees are given option and they did not exercise the option within the cut of date and extended cut of date. In view of the law declared by the Apex Court, Provident Fund retirees who did not exercise option are not entitled to come over to Pension Scheme. Therefore the applicant

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cannot be granted any relief. It may be as a policy the Government may grant pension to all Provident Fund retirees with or without option, that is purely a policy matter with which we are not concerned. In the circumstances Provident Fund retirees can come to the pension Scheme only when they exercise option before cut of date or extended cut of date, failure of which they cannot come to Pension Scheme. Admittedly the applicant did not exercise option within the cut of date or extended cut of date therefore he cannot claim for pensionary benefits. Hence we hold that the applicant is not entitled to any relief.

7. In the result OA is dismissed. No order as to costs.


(D.S. Baweja)
Member(A)


(R.G. Vaidyanatha)
Vice Chairman

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