

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 693/94.

~~Original Application No:~~

DATE OF DECISION: OCTOBER 14, 1994.

Abel De Sales

Petitioner

Shri G. S. Walia,

Advocats for the Petitioners

Versus

Union Of India & Others,

Respondent

Shri N. K. Srinivasan

Advocate for the Respondent

CORAM :

The Hon'ble Shri B. S. Hegde, Member (J).

~~The Hon'ble Shri~~

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


(B. S. HEGDE)
MEMBER (J).

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BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO.: 693/94.

Abel De Sales ... Applicant.

v/s.

Union Of India & Others ... Respondents.

CORAM :

Hon'ble Shri B. S. Hegde, Member (J).

APPEARANCE :

1. Shri G. S. Walia,
Counsel for the Applicant.
2. Shri N. K. Srinivasan,
Counsel for the Respondents.

ORAL JUDGEMENT :

DATED : OCTOBER 14, 1994.

{ Per. Shri B. S. Hegde, Member (J) }.

1. The Applicant retired from the Railway Service as a Loco Driver Grade 'A', Bombay Division, Western Railway, Bombay, on 01.04.1977, after attaining the age of superannuation, after putting in 37 years of service. While he was in service, he had opted for the State Railway Provident Fund (SRPF) (Contributory) Rules. The applicant in his application referred to Railway Board's Circular dated 23.07.1974, wherein it is laid down that the employees who were in service on 01.01.1973 could opt for pension scheme, if they had not already opted for the same. In this connection, it was

further laid down that the Railway Administration should take urgent steps to bring the contents of this letter to the notice of all concerned employees under their administrative control including those on leave or on deputation or on foreign service and that in order to facilitate prompt circulation of these orders, the contents of this letter should be published by the Railways in their Gazette in an Extra-ordinary Issue in English, Hindi and regional languages as necessary and early as possible and copies furnished to the recognised unions and suitable press release should also be issued. It was also laid down that the option should be exercised within a period of 6 months from the date of issue of these orders. However, the period for exercising option was extended time and again till 29.12.1979. In this connection, he draws my attention to Railway Board's letter dated 29.12.1979, which reads as below :-

afforded

"Reference this Ministry's letter of even number dated 27th December, 1978. It was clarified that the subsequent orders extending the date of option granted vide this Ministry's letter No. PC.III/73/PN/3, dated 23rd July, 1974 were applicable to serving employees only. On a point having been raised by the A.I.R.F. representing that hardship has been caused in the cases of those who retired/died during the various extensions of options granted, the matter has been considered and it has been decided that the extension of time upto 31st December, 1978 may be deemed to be applicable in the case of those who having been in service on 1st January, 1973 retired/quitted service/died in service during the period from 1st January, 1973 to 31st December, 1978. The options exercised in the above cases upto 31st December, 1978 may, therefore, be treated

as valid and the cases regulated accordingly in terms of the provisions made in para 2 of this Ministry's letter of 23rd July, 1974, referred to above.

2. The above has the sanction of the President."

and also Exhibit 'C' para 4 vide dated 23.07.1974 for clarity. In the later letter i.e. 29.12.1979, the Railway Board invites reference to their earlier letter dated 27.12.1978 stating that the time limit for exercising the option extended upto 31.12.1978 may be deemed to be applicable in the case of those who were in service on 01.01.1973 and those who retired, quit or died while in service during the period 01.09.1973 to 31.12.1978 and their case may be regulated accordingly in terms of the provisions contained in para 2 of the Ministry's letter dated 23.07.1974.

2. The main grievance of the applicant is that he was not put on notice of these letters and his grievance is that, had he been informed of these circulars, he would have opted for coming over to the pension scheme. Accordingly, he prays that he should be permitted to opt for pension scheme by virtue of Railway Board's letter dated 29.12.1979. The only question which arises for consideration is whether the benefit of the letter dated 29.12.1979 was available to the applicant who retired from service on 01.04.1979.

3. It is an undisputed fact that the applicant retired in the year 1977 and the Railway Board's letter dated 29.12.1979 extending the options for those who retired/

quitted service or died in service during the period 1973 to 1978, has not been brought to his notice. Therefore, he contends, pursuant to that letter, he is entitled to exercise the option. Further, he submits that he had been taking the post retirement passes regularly every year from the Respondent's Office, even then the Respondents have not intimated the contents of the Railway Board's letter, referred to above, to the notice of the applicant. He states that he came to know sometime in September 1993 that one of the Railway Employees, a former colleague of the applicant, who had retired during the period from 1973 to 1978, had been allowed to opt for pension by the decision of this Hon'ble Tribunal in O.A. No. 689 of 1993. However, the applicant did not make any representation to the department after the said Judgement, because he states that all such representations filed by other employees have never been replied to by the Department and ultimately they approached the Tribunal for relief. In support of his contention, he relied upon the following decisions of the Tribunal :-

- (i) V.D. Vaidya V/s. Union Of India (1991) 15 ATC 392.
- (ii) Smt. Laxmi Vishnu Patwardhan V/s. Secretary, Railway Board (1988) 2 ATR 49 Bombay.
- (iii) Joseph John Gonsalves V/s. Union Of India (O.A. No. 732/87 dated 28.02.1990).
- (iv) P.A. Thomore V/s. Union Of India (O.A. No. 165/93 dated 09.03.1994).
- (v) Sakharam Baba V/s. Union Of India (O.A. No. 727/89 dated 09.08.1994).
- (vi) B. K. Pillai V/s. Union Of India (O.A. No. 1253/93 dated 01.08.1994).

4. The Learned Counsel for the Respondents draws my attention to the averments in the Written Statement and contends that the applicant never cared to exercise the option while he was in service when the time limit for exercising the option to come to the pension scheme was extended from time to time. Therefore, it is not now open to him to reopen the matter. Since the applicant had not made any representation for exercising option before 31.12.1978, seeking for option at this stage, will not have any relevance. Further, as per Railway Board's letter dated 29.12.1979, the option should have been exercised upto 31.12.1978, as such the question of bringing this letter to the notice of the applicant does not arise. In support of his contention, he relied upon the decision of this Tribunal in J.A. Sams V/s. Union Of India (1994) 27 ATC 804, dismissing the application as devoid of merit.

5. We have heard the rival contentions of the parties. The only question that arise for consideration in this case is whether the benefit of the letter dated 29.12.1979 was available to the present applicant who retired from Railway Service on 01.04.1977. In view of the various decisions and circular cited by the Learned Counsel for the Applicant, referred to above, I am of the view that it is clear from the circulars that the contents of the relevant letters were required to be brought to the notice of all railway servants including retired railway servants. From the written statement, it is clear that the Respondents have not made any efforts to inform the applicant about the relevant

circular dated 29.12.1979 issued by the Railway Board after the retirement of the applicant. Therefore, I, hold that the applicant is entitled to the benefits of the pension scheme. The subject matter has been concluded by the judgement of Shri V. D. Vaidya's case and also Joseph John Gonsalves V/s. Union Of India in O.A. No. 732/87 of this Tribunal, wherein it is observed that the question of exercising a fresh option where a retired employee would arise only if he knew that such an option was available, etc. It was therefore, held that the applicant therein who had retired in 1977 was entitled to exercise option which was extended by letter dated 29.12.1979 as the facts of this case is identical to the facts referred to in B.K. Pillai's as well as Gonsalves case, accordingly the O.A. is allowed. Accordingly, I, pass the following orders/directions :-

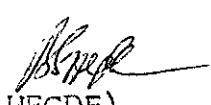
O R D E R

(i) The respondents are directed to hold that the applicant is entitled to the benefit of the pension scheme and within a period of three months from the date of receipt of a copy of this order to fix the pension payable to the applicant according to the rules in existence on the date of his retirement and also amend the pension so fixed taking into consideration the amendments made to the rules thereafter.

(ii) The respondents are entitled to recover from the

applicant all the amounts which would not have been due to him if he had opted for pension scheme prior to his retirement.

- (iii) The respondents shall within a period of three months from the date of receipt of a copy of this order compute the arrears of pension due to the applicant limited to a period of one year before the date of filing this application, i.e. limited to arrears from 27.05.1993.
- (iv) No interest is to be charged when computing the amounts due in terms of clause (ii) and the arrears due in terms of clause (iii).
- (v) The amounts computed in terms of clauses (ii) and (iii) of these orders shall be set off against each other and the net balance amount due shall be computed by the respondents and intimated to the applicant within three months from the date of receipt of a copy of this order. The net payment due shall be made by the party concerned to the other party within one month thereafter.
- (vi) Regular monthly pension payments shall be made from not later than four months after the receipt of a copy of this order. This shall be subject to the applicant refunding the net balance due in terms of clause (v) in case the net balance is payable by him.
- (vii) In the circumstances, I direct the parties to bear their own costs.


(B. S. HEGDE)
MEMBER (J).