

Q. 8.1.11 333/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 353/96, 314/94

1116/94 and 1146/94

19th THE Wednesday day of November 1997.

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

Hon'ble Shri M.R. Kolhatkar, Member (A)

Harishchandra Mahadeo Churi,
P.No. 4994, Ex. Skilled Fitter Gr. II,
At-Aktan, Post & Taluka - Vasai
Dist. Thane.

... Applicant
OA 353/96.

By Advocate Shri D.V. Gangal

C.L. Amin
C/o Miss Surabhiben P. Vaidya
Vithal Nivas
10 C Walkeshwar Road,
Bombay.

... Applicant.
O.A. 314/94.

J.M. Parikh
C/o G.S. Wallia,
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street
Fort Bombay.

... Applicant.
OA 1116/94.

U.H. Mehta,
C/o G.S. Wallia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street
Fort Bombay.

... Applicant.
OA 1146/94.

By Advocate Shri G.S. Wallia

V/s

Union of India through the
General Manager,
Western Railway, Churchgate,
Bombay.

The Chief Workshop Manager,
Lower Parel Workshop
Tool Room Department,
Western Railway,
Lower Parel, Bombay.

... Respondent.

By Advocate Shri N.K. Srinivasan, Shri V.S. Masurkar

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ORDER

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

Heard counsel for the parties.

2. In all these cases, the applicants are retired officers of the Western Railway, retired between 1.1.1973 to 31.12.1978. Date of retirement of the applicants are given below:

Applicant in O.A. 353/96	- 30.6.1977.
Applicant in O.A. 314/94	- 8.7.1976.
Applicant in O.A. 1116/94	- 31.1.1976.
Applicant in O.A. 1146/94	- 6.8.1973.

All the applicants are governed by Contributory Provident Fund Scheme. The Railway Board by its order dated 23.7.1974 read with memo dated 29.12.1979 allowed options for pension to the retiring as well as retired employees who were in service during the period from 1.1.73 to 31.12.78. By letter dated 29.12.79 the option was also extended to the retired employees, who retired from 1.1.1973 to 31.12.1978.

3. In all these cases the applicants state that though the addresses of the applicants were known to the respondents, and the applicants also used to approach the department for renewing the passes etc. the respondents never brought the contents of the circulars specially the circular dated 29.12.1979 to their notice. As a result of

which, though they wanted to opt for pension scheme they were precluded from doing so. None of the applicants sent any representation to the Railways in this regard except Shri U.H. Mehta, who has sent a representation in 1988 which does not have any direct bearing on the issue. However they came to know regarding the circular dated 29.12.79 from the judgement delivered in the year 1993 in the case of Union of India V/s. V.D. Vaidya and others.

4. These applications have been opposed by the respondents. Firstly, by way of preliminary objection, that the applications are barred by time. Though the applicants are retired from service between 1.1.73 to 31.12.78 and they have filed these applications after a lapse of 18 years, thereby, the applications filed by the applicants are barred by limitation. Secondly, it is contended that the pension scheme was introduced by the Railways as back as 1957. The applicants were in service prior to 1957. The employees already in service as on 1.4.57 are given option either to retain the Provident Fund Scheme or to switch over to Pension scheme. The letter dated 23.7.74 issued by the respondents do not introduce pension scheme, but merely liberalised and given further option for pension scheme for those who are interested to opt for the same. In so far as subsequent letter dated 29.12.79 and other series of Railway Board

letters extending the date of option from time to time in continuation of their letter dated 23.7.74. Since all these applicants did not opt for Pension scheme, their settlement was done under SRPF Rules. The extension of time limit was given to those who were in service as per Railway Boards letter dated 27.12.78.

5. On the other hand the contention of the applicants have been refuted by the respondents and submitted that the benefit of option for pension has been permitted only to persons who were in service as on 1.1.73 and who quitted/retired/died on or before 23.7.1974. Further it is contended, that the applicants have mis-interpreted the letter of the Railway Board dated 29.12.79 which is only amendment to the earlier letter dated 27.12.78. In this connection it is relevant to quote the Railway Board's letter dated 27.12.78, which reads as below:

" It has been brought to this Ministry's notice that permission to come over to pension scheme is being granted to employees after the date of retirement on the consideration that subsequent orders extending the date of option are also applicable to the retired employees. This Ministry desires to clarify that the subsequent orders extending the date of option are applicable to serving employees only. The cases already decided otherwise may be treated as closed and need not be re-opened. "

In view of the above, it is for the Railway Board to clarify this letter by their subsequent letter dated 29.12.79 considered and has been decided that the extension of time for option upto 31.12.78 may be deemed to be applicable in the case of those who having been in service on 1.1.73 retired/quitted service/died in service during the period from 1.1.73 to 31.12.78. The option exercised in the above cases upto 31.12.78 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 23.7.74. From the above, instructions it is clear that the issue pertains to only to the cases in which option for pension were accepted wrongly after retirement from persons who quitted/retired/died on or before 23.7.74 though they were not eligible to opt for pension.

6. In view of the conflicting decisions of the Tribunal, the learned Single Judge vide order dated 28.4.95 referred the matter to Full Bench to decide the issue. The Full Bench on 6.12.96 heard the matter and the question referred to the Full Bench is whether the Railway Board Circular dated 23.7.74 read with Circular dated 29.12.79 enforces an obligation on the Railways to inform the affected parties individually. The Full Bench after hearing the parties has observed that all that is needed is sufficient and adequate notice.

If there is sufficient publication to intimate the affected parties, that should be notice enough. Accordingly it was observed, that Annexure A1 does not contemplate personal notice in the shape of individual notice, letter or information. Publication in the Gazette, and in the press and in prominent places of access to applicants will be sufficient notice for purposes of the rule. The learned counsel for the applicant Shri G.S.Walia pointed out that whether there was notice at all, in view of Rule 12(3) of the CAT(Procedure) Rules 1987. Since the counsel for the respondents were not able to produce the notice at the time of hearing and submitted that they would furnish the required notification for the perusal of the Tribunal. Accordingly, the matter was remitted back to Division Bench to examine whether there was notice by publication in the gazette, press etc. and parties will be afforded an opportunity to substantiate their pleadings before the Division Bench. Accordingly, the matter was listed for hearing on 29.10.97. The respondents have furnished the Gazette notification dated 23.7.74 and urged that gazette notification is sufficient to notice all. Hence no individual notice is required to be given. Further, the applicants were used to visit the headquarters for renewing their passes. They were fully aware of the various circulars issued by the respondents. It is not their case that they were unaware of the circulars.

The learned counsel for the respondents Shri V.S. Masurkar in support of this contention cited various decision of the Apex Court. The Apex Court in the case of Krishena Kumar V/s. Union of India AIR 1990 SC 1782 held that the pension scheme and the Provident Fund Scheme are structurally different and they do not belong to one class. SRPF scheme in Railways was of the Pension scheme as applicable to other Central Government and those who were in service as on 1.4.57 was governed and was given option to come under pension scheme. Such options are given 11 occasions and last option was valid upto 29.12.79.

7. The Apex Court again in the case of V.K. Ramamurthy V/s Union of India and Anr. 1996 SCC(L&S) 1341 wherein it was held that the contributory provident fund retirees form a different class from those who had opted for Pension Scheme according to the decision in Krishena Kumar case and as such they are not entitled to claim as a right to switch over from Provident Fund Scheme to Pension Scheme. In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time. The decision of Ghansham Das case on which learned counsel for the petitioner placed

reliance, the Tribunal relied upon Nakara case and granted the relief without considering that Nakara decision has been distinguished in the Constitution Bench case of Krishena Kumar and other cases referred to Supra. Therefore, dismissal of the special leave petition against the said judgement of the Tribunal cannot be held to be law laid down by this Court, in view of what has been stated in Krishena Kumar case, the other decision of this court in the case of R. Subramaniam the Court merely relied upon the dismissal of special leave petition against the judgement of the Tribunal in Ghansham Das case and disposed of the matter and therefore, the same also cannot be held to be a decision on any question of law. The latest decision in the case of Union of India V/s. A.J. Fabian AIR 1997 SC 1921 relying upon the earlier decision of Krishena Kumar and Ramamurthy reiterated that this Court having laid down the law distinguished that judgement only on facts, but that is not to say that the view expressed by the Bombay Bench was approved by this Court in Krishena Kumar's case. Therefore, it does not form any basis to be followed. On the other hand, Krishena Kumar's ratio binds the Tribunal as law under Article 141 and should be followed.

8. On the other hand the learned counsel for the applicant Shri D.V. Gangal in support of his contention relied upon the decision in the case

of Union of India and Ors. V/s. D.R.R. Sastri
1997 SC SLJ 148. In that case the admitted facts
are that the respondent joined the Indian Railways
in the year 1950 and while continuing they went on
deputation to the Heavy Engineering Corporation
during the year 1972. While he was in the Railway
he had opted for Contributory Provident Fund Scheme.
The said respondent exercised his option for
permanent absorption in Heavy Engineering and
submitted his resignation from the Railways which
was accepted by Railway Board and communicated by
letter dated 26.6.1973. In the year 1974 on the
basis of recommendations of the Third Pay Commission,
liberalised pension scheme was introduced and the
Railway Board in its letter dated 23.7.74 decided
to give an opportunity to all the persons governed
by the Provident Fund Scheme to opt for the
liberalised Pension Scheme. The Respondents approached
the Tribunal and the Tribunal came to the conclusion
that the respondent being in service of the Railways
on 1.1.73 was entitled to exercise option for
coming over to the Pension Scheme in terms of Railway
Board's letter dated 23.7.74. On perusal of the
judgement, we find that the ratio laid down in that
case is distinguishable from the present case as the
applicants in the present case had not gone on
deputation. The applicants were in Railway service
prior to 1957 and retired from the Railway service.
Therefore, the ratio laid down in that case does not
apply to the present case.

9. Heard counsel for the parties and perused the pleadings. The short question that arise for consideration therefore, is whether the pension scheme though was in operation while the petitioners/ applicants were in service and option was sought for but the applicants never opted for the same and on the other hand opted for provident fund scheme, therefore seeking relief after lapse of 18 years of their retirement does not arise. In the constitution Bench in the case of Krishena Kumar the Apex Court has also considered an identical case of a Retired Railway employee who had opted for the Contributory Provident Fund Scheme but after his retirement he wanted to switch over to the Pension Scheme. This Court did not allow the relief of switching over to the Pension scheme on a conclusion that the pension scheme and provident fund scheme are structurally different and they do not belong to one class. Even in Nakara's case it was never held that both the Pension scheme and the Provident Fund scheme form a homogenous class and while deciding the case of Nakara the provident fund scheme were not in mind. Whereas in Krishena Kumar's case it was held that in so far as Contributory Provident fund scheme is concerned, Government's obligation towards an employee under Contributory Provident Fund Scheme to give the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government

in respect of the Provident Fund is finally crystallised and thereafter no statutory obligation continues. On the other hand under the Pension Scheme the Government's obligation does not begin until the employee retires when only it begins and it continues till the death of the employee. etc.

10. The matter could have been decided by the Full Bench but the respondents were unable to adduce the notification dated 23.7.1974, therefore the Tribunal had given a direction to the respondents to furnish the notification in respect of departments letter dated 23.7.74 and accordingly remitted the matter to Division Bench to examine whether there was notice by publication in the gazette/press etc. and the parties to be afforded an opportunity to substantiate their pleadings before the Division Bench.

11. In pursuance of the Full Bench direction, the respondents have furnished the notification issued by the Western Railway dated 23.7.74 pursuance to Railway Board letter dated 23.7.74. From the above instructions it is clear that the issue pertains to the cases in which options for Pension were accepted wrongly after retirement from persons who quitted/retired/died in service during the period from 1.1.73 to 31.12.78 and be treated as valid and the cases be regularised accordingly in terms of the provisions made in para 2 of this Ministry's circular

dated 23.7.74, though they were not eligible to opt for pension. Therefore it is clear that the benefit of the option for pension should have been permitted only to persons who were in service as on 1.1.73 and who quitted/retired/died on or before 23.7.74.

12. The learned counsel for the applicant fairly conceded that if the 1974 circular is to apply, then in that count he had no case, since the respondents have notified the circular and press publication was made as was observed by the Full Bench, however, he submitted that the benefit of 1979 circular was not extended to them, and also has not been notified, thereby they could not avail of that opportunity. Hence they are discriminated. That contention of the applicant is not tenable, because, it is an admitted fact, that the 1979 circular is only a clarificatory in nature and not a fresh option and therefore, in our opinion that does not require further notification as is called for.

13. It is not the case of the applicants that they were unaware of the various circulars issued by the respondents in extending the benefit of pension scheme for the persons who were in service during the relevant period. In fact the controversy is no longer a res integra. In so far as Union of India and Ors. V/s D.R.R. Sastri cited by the counsel for

the applicants, that decision stands on a different footing and was decided on the peculiar facts of that case.

14. In our opinion, the O.As filed by the applicants are admittedly belated ones. It is not the contention of the applicant that they were unaware of the circular issued by the Department dated 23.7.74, they came to know from the judgement delivered by the Tribunal in 1993, that by itself does not give cause of action. The learned counsel for the respondents relied upon the decision of the Apex Court in the case of State of Karnataka and others V/s. S.M. Kotrayya and others 1996 SOC(L&S) 1488 wherein it is held that mere fact that the applicants filed the belated application immediately after coming to know that similar relief has been granted by the Tribunal, held not a proper explanation to justify condonation of delay. In Bhoop Singh's case AIR 1992 SC 1414, the Apex Court held that the judgement and orders of the Court in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. In the instant case, the cause of action arose in 1974 and the applicants have filed the applications after a lapse of 18 years, on that ground also the applications do not survive.

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15. In the light of the above, we are of the view, that the applicants were not made out any case for our interference . In our view there is no merits in these O.As and the same are dismissed. No order as to costs."

(M.R. Kolhatkar)
Member (A)

(B.S. Hegde)
Member(J)

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