

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

ORIGINAL APPLICATION NO. 515/98

Date of Decision: 21.12.2001

Shri R.S. Borse.

Applicant(s)

Shri P.G. Zare

Advocate for applicant

Versus

Union of India & 3 others

.. Respondents

Shri V.S. Masurkar.

Advocate for Respondents

CORAM: SHRI S.L. JAIN.
SMT. SHANTA SHASTRY.

.. MEMBER (J)
... MEMBER (A)

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

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 515/98

THIS THE ^{21st} ~~TH~~ DAY OF DECEMBER, 2001

CORAM: SHRI S.L. JAIN. . MEMBER (J)
SMT. SHANTA SHASTRY . MEMBER (A)

Shri Raghunath Shankar Borse,
Retired Motorman, Western Railway,
Residing at B-18, Iaxmi Prasad Corp,
Hsg. Sec., 4th floor, Tilak Nagar,
Dombivli (East) Dist. Thane. .. Applicant

By Advocate Shri P.G. Zare.

Versus

1. Union of India, represented by
Chairman/Secretary Railway Board,
Rail Bhavan, New Delhi.
2. The General manager,
Western Railway, Churchgate,
Mumbai.
3. The Chief Personnel Officer,
Western Railway, Churchgate,
Mumbai.
4. The Divisional Railway Manager
(Elec), Western Railway, Churchgate,
Mumbai. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R

Smt. Shanta Shastry. Member (A)

This application is filed by the applicant who is an ex Railway employee, retired from service on 30.6.1993 as Motorman after superannuation. The relief sought is for a direction to the respondents for grant of pensionary benefits with family pension. The same was denied to the applicant vide letters dated 03.6.97 and 22.11.1997. Aggrieved, the applicant has approached this Tribunal.

2. The applicant states that he joined the Western Railway service as an apprentice Fireman Grade-A and after successful training he was appointed to the working post with effect from 04.6.1958 as Fireman vide letter dated 06.6.1958. He was confirmed from 09.10.1958. According to the applicant since he was appointed after 16.11.1957 when the Railways introduced the pension scheme, there was no question of exercising option to come over to the pension scheme, it was automatic that he should have come under the pension scheme. However, the respondents treated him only as an SRPF account holder. Further, the Railways had issued circulars from time to time asking the employees to exercise their option to switch over to the pension scheme. One such circular was issued in 1987 after the IVth Pay Commission had recommended that all CPF pensioners in service on January, 01 1986 should be deemed to have come over to the pension scheme on that day unless they specifically opt out to continue under the CPF scheme. They were to exercise the option by 30.9.1987 in the prescribed form. The applicant submits that he was wrongfully treated as SRPF optee since he was covered under the Railway Pension Scheme and automatically was covered by the scheme. If option was executed by the applicant in 1987, it should not have been accepted by the Railway Administration as the declaration of option was only applicable for employees appointed before 16.11.1957 and even if ~~no~~ option was executed to remain under the SRPF rules by the applicant, it was of no consequence and should have been treated as void. The applicant has stated that although he remained contented with the SRPF, he did not forfeit

4

his claim and to overcome this hurdle he has submitted his option on 04.10.1991 for pensionary benefits before his date of retirement on superannuation. This he did merely to comply with the statutory obligation and to set right the mistake committed by the Western Railway Administration in treating him as a SRPF account holder (see para 4.9 of the OA). However, the Railway Administration denied him the pensionary benefits only on the ground that he had given option to remain under SRPF before the last date in 1987.

3. The applicant has also pointed out cases of some other employees who were similarly placed as the applicant. There were 13 Motormen who had given option to remain in SRPF on 06.02.1987 along with the applicant and all the options were forwarded through Motorman Incharge, Churchgate to Divisional Personnel officer, Bombay Central. They were acknowledged on 09.02.1987. According to the circular of 1987 option once exercised shall be final. The applicant argues that if this were so how is it that seven motormen who were SRPF optees were given pensionary benefits denying the same to other six including the applicant. The administration should have refused grant of pensionary benefits to all or should have granted the same to all. The applicant has listed out the employees who were allowed the benefits inspite of opting for the SRPF.

4. The applicant has further referred to another similar case of one Shri A.V. Kasturi Rangan Ex-Additional Member of Railway Board who was granted pension by allowing ex-post-facto option to come over to


14

the pension scheme from the SRPF scheme on his widow's application after 22 years of his death. The orders were given effect from the date of his retirement i.e. 14.3.1973 with arrears of pension as admissible. This letter was issued on 19.9.1994 in terms of the provision in Rule No.107 of the Indian Railway Establishment Manual. This rule provides powers of relaxation to the sanctioning authority which has to consider the cases of pension in consultation with the DOP&T. According to the applicant his case should have been considered by the Railway authorities as in the case of Shri Kasturirangan.

5. The applicant submitted a number of representations on 04.10.1991, 27.5.1993, 15.5.1995, 23.9.1995 and so on till 16.4.1997 addressed to various authorities. According to the applicant, he is legally entitled to the grant of pension. The applicant amended his OA to amend the relief sought for by him. The MP No.798/99 was allowed on 27.01.2000. According to the amended OA the applicant has claimed that since he was appointed as regular employee of the Railways on 04.6.1958 after completion of training of apprentice Fireman, he is entitled to receive the pensionary benefits from the Railway Administration as applicable to the staff appointed on or after 16.11.1957 and therefore to grant him the benefit of pension from the date of his retirement with all other consequential benefits.

6. The respondents submit that in response to the circular dated 08th May, 1987 regarding change over of Railway employees from the SRPF to pension scheme the applicant had given his option to continue with SRPF and as per the circular the option once exercised shall be final. Since the applicant had exercised the option it had become final and therefore, there is no question of applicant switching over to the pension scheme and therefore he was granted all benefits of the SRPF when he retired. He was therefore, informed on 03.6.1997 that his case could not be considered. He had been informed earlier also on 04.9.1997 as well as on 10.01.1996.

7. The learned counsel for the applicant contended that the Railways had failed to produce any option form filed by the applicant in response to the circular of 1987. In the absence of it, it cannot be said that the applicant had opted to continue with the SRPF. Even otherwise, the applicant had again applied in 1991 to treat him as a pensioner under the pension scheme. This was prior to retirement. The Railway Board could have considered his case under the powers for relaxation under the Rule 107. More over, irrespective of option. Whether it was given or not given, the fact is that he was actually appointed in the Railway after 16.11.1957 and he is therefore, automatically deemed to have been covered under the pension scheme of 1957 and therefore also the respondents should have considered his case for grant of pension.



8. The respondents have taken the stand that the applicant gave his option for being retained in the SRPF in 1987 in response to the circular dated 08th May, 1987 and it is not that the applicant is illiterate or did not know the provisions. Having sent his option that has become final as per the circular of 1987. There is, therefore, no question of granting any pensionary benefit to the applicant. On his being engaged as apprentice Fireman Grade 'A' w.e.f. 13.10.1995 he was allotted P.F. Account No.527081 in the year 1955-56. Whatever dues of SRPF were there, they were duly paid to the applicant on his retirement and he accepted the same. According to the respondents the date of appointment of the applicant was 13.10.1955 which is prior to the date of pension scheme of 16.11.1957. He did not opt for the pension scheme at the relevant time even after opportunity was given after 31st December, 1978. The respondents, as per letter dated 22.12.1987 had forwarded the application of the applicant for retaining him in SRPF scheme along with six others to the Senior DAO BCT. It clearly shows that the applicant had opted to remain in SRPF.

9. The respondents have also taken the plea that the applicant retired in 1993 and has filed the present OA in 1998. It is merely an after-thought and not any bonafide exercise. Therefore, the application deserves to be dismissed on the ground of delay and laches. The applicant had filed several pleadings by way of rejoinder and MPs etc., but had not taken any steps to explain the delay and laches. When the matter was heard for final hearing on several occasions, the applicant

b

took out the MP for condonation of delay on 02.5.2000. Both the MP and OA deserve to be dismissed. The respondents are relying on some judgments in support as follows: (i) Ratan Chandra Sammanta & Others Vs. Union of India & Others JT 1993 (3) SC 418; (ii) S.S. Rathore Vs. State of M.P. 1989 (11) ATC 913; (iii) Bhoop Singh Vs. Union of India & Others JT 1992 (3) SC 322.

10. Even on merits, the respondents have opposed the OA. They have relied on the judgment in the case of (a) Krishna Kumar Vs. Union of India 1991 SCC(L&S) 207; (b) V.K. Ramamurthy Vs. Union of India AIR 1996 SC 2658; (c) Union of India Vs. A.J. Fabian AIR 1997 SC 1921; (d) Union of India Vs. Kailash (1998)9 SCC 721.

11. We have heard the learned counsel for both the sides and have given careful consideration to the pleadings. It is seen that though the applicant has asked the respondents to produce the option form in which he gave his option to remain in SRPF in 1987 the applicant himself in his OA has admitted in several places that he did exercise option for SRPF scheme in 1987. Having himself admitted to having given the option, he cannot now go back on the same by asking the respondents to produce the option form. However, the respondents have produced the forwarding letter dated 22nd December, 1987 addressed to the Senior DAO BCT. It clearly states that the following option forms received from seven Motormen are sent herewith for initiating further action. There were seven names and the applicant's name is at Sl. No.6. The applicant has referred to 13 employees who had given their option

including the applicant. He is questioning as to how six employees were granted the pension while seven employees were left out. But it is seen from this letter of 22.12.1987 that out of 13 employees seven opted for remaining in the SRPF. That explains why the applicant was not granted the benefit of pension scheme. Therefore, we accept the stand of the respondents that the applicant had opted for SRPF in 1987 and it being final the applicant cannot now agitate bringing in new grounds that he was entitled to the pension scheme.

12. The applicant has argued that though he was engaged as an apprentice in 1955 his actual appointment as Railway employee is only from 04.6.1958 and therefore, he is deemed to have automatically become a pensioner under the Railway Pension Scheme of 1957, irrespective of the option exercised by him in 1987 he is entitled to the pension. The issue is whether an apprentice can be treated as a regular employee. This has been answered in the past in some judgments of this Tribunal (Sunil Kumar Singh Vs. Railway Board (1991) 15 ATC 342 (Lucknow)) wherein it was held that an apprentice has no right for employment unless and until he is actually appointed as a regular employee. If we go into this, then naturally the appointment will have to be taken from 04.6.1958 in the case of the applicant. But Railway Board's own circular letter dated 14.3.95 (Ex. 'B' page 56 of the OA) has clarified that if the training period is followed immediately by regular appointment then it counts as qualifying service for pension in case of Group 'C' and 'D' employees. In the present case, the applicant was under training prior to

16.11.1957 and was appointed as a Railway employee from 04.6.1958 after completion of the training period. Therefore, it has to be taken that the applicant was appointed prior to 16.11.1957.

13. That apart the fact is that the applicant has approached this Tribunal only in 1998 i.e. 41 years after the scheme was introduced, five years after he retired in 1993 and nine years after the circular for exercising option was issued on 08th May, 1987. The application suffers from delay and laches. Further recently the Supreme Court has ruled in the case of Union of India & Ors Vs. Shankar (JT 2000 (8) 77) that even in the matters of pension limitation applies. Therefore, on the ground of limitation and delay and laches also the OA deserves to be dismissed. As already discussed, in view of the fact that the applicant has himself admitted in his OA that he had opted for SRPF in 1987 and since that option became final, on merits also in our considered view, the application fails. Accordingly the OA is dismissed. No costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L. Jain

(S.L. JAIN)
MEMBER (J)

Gajan