

Central Administrative Tribunal
Mumbai Bench

1. OA No. 462/98
2. OA No. 464/98

Mumbai this the 21st day of June, 2002.

Hon'ble Mrs. Shanta Shastry, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

OA No.462/98

Manohar V Basrur,
C/o late Venugopal Rao Basrur,
Saubhagya
9. Anand Niketan,
Karve nagar,
Pune 411 052.

-Applicant

(By Advocate Shri Divekar)

OA No.464/98

Sharad Moreshwar Joglekar,
S/o late Sri Moreshwar Vasudeo Joglekar,
1246, Apte Road,
Pune 411 004,

-Applicant

(By Advocate Shri Divekar)

-Versus-

1. The Union of India,
Ministry of Railways,
Rail Bhavan,
New Delhi-110 001.
2. The Chairman, Railway Board,
Ministry of Railways,
Rail Bhawan,
New Delhi-110 001.
3. General Manager,
Central Railway,
C.S.T. Mumbai.

-Respondents

(By Advocate Shri V.D. Vadhavkar)

ORDER

Mr. Shanker Raju, Member (J):

As the issue involved in these OAs is founded on the same facts ~~of~~ law, they are being disposed of by this common order.

2. Applicants in these OAs have sought benefit of the decision of the Apex Court in Union of India v. D.R.R. Sastri, (1997) 1 SCC 514, and have sought change over to pension scheme

from Contributory Provident Fund Scheme (CRPF Scheme) with effect from the date of retirement, with all consequential benefits.

3. In OA-462/98 applicant was initially appointed as Assistant Engineer and retired on 28.2.83 as Member, Engineering Railway Board on attaining the age of superannuation. At that time pension scheme was in existence introduced in 1957. Before it, a retirement scheme known as State Railway Provident Fund (SRPF), was introduced. Despite Ministry of Railways, Railway Board's letter dated 4.10.82 seeking option from Railway servants governed by the SRPF to come over to pension Scheme 1964 an option was sought till 28.2.83. Applicant who retired on the same day has not exercised this option. Thereafter by Railway Board's another fax letter dated 13.5.83 where the option date has been extended to 31.8.83 and would be applicable to all those who retired upto May, 1993.

4. Subsequently on 16.4.87 Ministry of Personnel, Public Grievances and Pensions issued OM rationalising the pension structure for pre 1.1.86 pensioners and was applicable to those who were in service on 1.1.86 and they have been deemed to have comeover to the pension scheme unless they specifically opt to continue under SRPF Scheme. The last day for exercising option was 20.9.87. Applicant taking resort to the decision of Apex court in K.V. Kasthurirangan's case, CA No.1455/96, on 23.5.97 made a representation to the respondents to accord him the benefit of pension in view of the decision of the Apex Court and also alleged discriminatory treatment accorded to pre 1.1.86 retirees.

5. Applicant in OA-464/98 applicant retired on 31.1.1984 and has not responded to the option extended vide letter dated 31.8.82 as well as extended option and in view of Sastri's case (supra) made a representation to the respondents opting for pension by his representation made on 27.7.97.

6. In both these OAs the main contention of the learned counsel is that having circulated options for pension scheme on 4.10.82 the same was extended till 31.8.83 with the terms and conditions laid down in letter dated 4.10.82 mutatis mutandis applicable. No due notice of the aforesaid extension was extended to the applicants wherein by referring to the terms and conditions of letter dated 4.10.82 it is contended that the applicants have been legally extended an opportunity to refund the entire contribution and to opt for the pension, it was mandated upon the respondents to bring to the notice of all retired servants who were eligible for option and this extends even to the extended period of exercising period of option upto 31.8.83. As the applicants retired on 28.2.83 and 31.1.84 they have still a right to switch over to the pension scheme had this extended option being communicated to them. Furthermore, it is stated that the cut off date stipulated in the letter of 1987 has no nexus with the object sought to be achieved and is arbitrary despite a policy decision it does not conform to the principles of equality and is malafide, the same is to be treated as arbitrary and would be interfered with. According to him, after 1987 modification the earlier scheme of SRPF and an option to switch over to pension ceases to exist, applicants should have been extended a fresh choice to opt for pensionary benefits. This is in consonance with the doctrine of legitimate expectation. Further it is stated that in case of Kashturirangan Railway Board issued order dated 19.9.94 which has been in view of Sastry's case. As the applicants are

similarly circumstanced they are to be accorded the same benefits and denial of the same would amount to hostile discrimination under Article 14 and 16 of the Constitution of India.

7. In so far as delay is concerned, it is contended that being a recurring cause of action the representations of the applicants which have not been responded to by the respondents, the OAs are within the prescribed period of limitation under Section 21 of the Administrative Tribunals Act, 1985.

8. Respondents' counsel in his reply to both the OAs took a preliminary objection by stating that the applicants at the time of retirement in 1983 and 1984 though not opted for pensionary benefits their request at this belated stage after a period of more than 14 years is without any justification of delay and despite retired under the SRPF Scheme with a conscious decision of theirs it is not open to them to now switch over to pension scheme. Learned counsel has placed reliance on a decision of the Apex Court in Union of India and Others v. Kailash, 1998 SCC (L&S) 1531, wherein the following observations have been made:

"1. Leave granted. Heard learned counsel for the parties. Learned counsel for the appellants submitted that the point raised in this appeal is clearly covered by the decision of this Court in Krishna Kumar v. Union of India and the Tribunal ^{was} wrong in taking a contrary view relying upon the decision of this Court in R. Subramaniam v. Chief Personnel Officer, Central Rly, Ministry of Railways. In R. Subramaniam what had happened was that benefit of the order passing in his favour was not given to him even though SLP filed by the Union of India against it was dismissed and the review application filed by it thereafter was also dismissed. R. Subramaniam therefore filed a writ petition which came to be allowed. That case was thus decided on its own facts. The Tribunal was therefore not right in deciding the respondent's application in his favour by following that decision. Realising this difficulty in this way, learned counsel for the respondent tried to support the order of the Tribunal with the decision of this Court in Union of India v. D.R.R. Sastri. That case also was decided on facts special to it. This Court refused to interfere with the order of the Tribunal because the Union of India had failed to explain why the benefit, which was given to K.R. Kasturi ^{was} not given to D.R.R. Sastri even though his case was similar. Obviously the

two-Judge Bench would not have intended to take a view contrary to what was held by the Constitution Bench of five-Judges in Krishena Kumar case. Nor would it have intended to lay down that because a wrong benefit is given to one, similar benefit is required to be given to others similarly situated as denial of the same would amount to discrimination violative of Article 14 of the Constitution. Therefore, D.R.R. Sastri case has to be regarded as a case decided on its special facts.

2. Following the decision in Krishena Kumar case we allow this appeal and set aside the order passed by the Central Administrative Tribunal, Calcutta Bench with the result that the application filed by the respondent before the Tribunal stands dismissed."

9. It is further stated that the Constitutional Bench decision in Krishena Kumar v. Union of India, 1990 (14) ATC 846 has upheld the vires of 1987 letter issued as well as the vires of the cut off date by making the following observations:

"14. The learned Additional Solicitor General states that each option was given for stated reasons related to the options. On each occasion time was given not only to the persons in service on the date of the Railway Board's letter but also to persons who were in service till the stated anterior date but had retired in the meantime. The period of validity of option was extended in all the options except Nos. 3rd, 4th, 5th and 7th. We find the statements to have been substantiated by facts. The cut-off dates were not arbitrarily chosen but had nexus with the purpose for which the option was given."

10. In this backdrop it is stated that the decision of Kasturirangan as well as Sastri (supra) have been discussed in Kailash's case (supra) and the same would have no application in the facts and circumstances of the present case. Applicants who were in service in 1982 when the option was sought deliberately chose ~~to~~ to continue under the SRPF Scheme are estopped from taking a contrary stand. In Sastri's case (supra) he was entitled to opt for pension by the Board's letter dated 3.7.74 but as it had not been brought to his notice and has not opted the OA was accordingly allowed but in the instant case as before retirement of the applicants the pension scheme was circulated despite this they ~~had~~ not responded to it and hence they are not covered by the aforesaid decision.

11. In case of Kasturirangam he was not intimated about the pension option but in the case of the applicants before us they have the pension option available till their retirement on 28.2.83 and 31.1.84 respectively. As the applicants have also accepted the SRPF benefits of ex-gratia payment it is not open for them to claim the benefit of the Scheme.

12. In so far as the cut off date of 1.1.86 is concerned, the Constitutional Bench decision in Krishena Kumar's case (supra) has upheld the vires of the cut off date as such the same is no more res integra and the claims of the applicants are liable to be rejected at the outset.

13. We have carefully considered the rival contentions of the parties and perused the material on record. The claim of the applicant in OA-464/98 is liable to be rejected at the outset as having been apprised of the option to switch over to pension scheme in 1982 as well as the extended date 31.8.83 which has been communicated to him as he retired on 31.1.84 his failure to exercise option with his conscious decision stops him, at this belated stage, to opt for the pensionary benefits. In so far as his claim that post 1.1.86 retirees have been meted out a differential treatment and the cut off date in the notification of 1987 where option for pension was extended to the identically situated persons the cut off date prescribed is arbitrary and cannot be sustained in view of the Constitutional Bench decision in Krishena Kumar's case (supra), upholding the validity of the cut off date.

14. As regards the claim of the applicants in OA-462/98 is concerned, he having retired on 28.2.83 and the circular notification for option to switch over to pensionary benefits having been published on 4.10.82 and the last date being 28.2.83

on his own volition opted for retaining the SRPF benefits and has not exercised any option, his contention that option was extended till 31.8.83 with the same conditions as figuring in 1982 letter mandates the respondents to extend the option even to the retirees prior to 31.8.83 and by this extension which has not been communicated to him he has been deprived of an opportunity to re-exercise the option and his resort to Sastri and Kasturirangam's cases (supra) is not well founded. These cases have been decided on a different footing where the information regarding option was not communicated to him but as the applicants were very much in service when the option was extended to them their decision not to exercise it has impliedly to be construed as their conscious decision to be continued under the SRPF Scheme. The resort of the applicants that by an extended option till 31.8.83 by extension of the option scheme they should be extended the same, cannot be countenanced, as the extension would not amount to a fresh option and once they have decided not to exercise option as per 1982 letter they are now estopped from claiming the same. In similar circumstances the Apex Court in State of Haryana & Ors v. Ram Kumar Mann, 1997 SCC (L&S) 801 also rejected the grant of post facto pension.

15. These OAs are liable to be rejected on the ground of limitation as well. Applicants have filed their representations in 1997, i.e., after a period of 14 years from their retirement and cut off date. As they have not exercised⁴ option despite opportunity till cut off date, they are not entitled to be included in the pension scheme. The aforesaid view is fortified by the Apex Court in Kailash's case (supra). The claim of the applicants is time barred and is liable to be rejected on that ground alone.

16. In the result and having regard to the reasons recorded above, we do not find merit in these OAs. The same are accordingly dismissed, but without any order as to costs.

17. Let a copy of this order be placed in the case file of OA-464/98 also.

S. Raju

(Shanker Raju)
Member (J)

Shanta S

(Smt. Shanta Shastray)
Member (A)

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