

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Date of order: 2-9-92.

O.A.No.863/89

Chagan Lal : Applicant
versus
Union of India & Ors. : Respondents
Mr.D.P. Ojha : Counsel for the applicant
Mr.S.S. Hasan : Counsel for the respondents

O.A.No.196/90

M.L.Garg : Applicant
versus
Union of India & Ors. : Respondents
Mr.D.P. Ojha : Counsel for the applicant
Mr.S.S. Hasan : Counsel for the respondents.

CORAM:

Hon'ble Mr.Gopal Krishna, Member (Judicial).

PER HON' BLE Mr.GOPAL KRISHNA, MEMBER (JUDICIAL).

These two applications have been filed under Sec.19 of the Administrative Tribunals Act, 1985 (for short the Act) for the grant of pension and arrears of pension. Since the facts which gave rise to these applications are more or less common and identical questions of law are involved, both the applications are being disposed of by this common judgment.

2. Applicant Chagan Lal Kabra in O.A. No.863/89 was posted as Chief Booking Clerk in the Ajmer Division of the Western Railway at Ajmer. He retired from service on 12.7.1972 on attaining the age of superannuation. Before his retirement he has been contributing to the State Railway Provident Fund. He applied for grant of pension on 1.12.85 vide Annexure:A-1. The Divisional Railway Manager did not accept the application vide his letter dated 24.2.86 on the ground that the circular of the Railway Board dated 18.6.85 was not applicable to him and consequently he was not entitled to opt for pension. On 11.11.87, the New Bombay Bench of

Chennai

(14)

the Central Administrative Tribunal rendered a decision in T.A. No.27/1987, Ghansham Das and another Vs. The Chief Personnel Officer (Mech.) and others, the operative portion of which reads as follows:

"11. In the result, we pass the following orders:

- i) The respondents are directed to hold that the applicants were entitled to the benefit of the pension scheme since their retirement and to determine the pension due to them according to the rules in existence at the time of their retirement taking into consideration the amendments made to the rules thereafter.
- ii) The respondents will be entitled to recover all the amount from the applicants which would not have been due to them if they had opted in favour of pension before their retirement.
- iii) The respondents shall calculate the arrears of pension due to the applicants and after deducting the amounts due from the latter as per clause (2) of this order, pay the balance, if any, to the applicants.
- iv) No interest is to be charged on the amounts due to each other.
- v) The above order should be implemented as early as possible and in any case within four months from the receipt of a copy of this order.
- vi) The respondents are directed to implement of the directions given in clauses (i) to (iv) of this order in respect of all the railway employees who were similarly placed like the applicants i.e. those who retired during the period from 1.4.69 to 14.7.72 and who had indicated their option in favour of pension scheme either at any time while in service or after their retirement and who now desire to opt for the pension scheme.
- vii) Parties to bear their own costs."

Despite four months time given by the Tribunal for implementation of the directions the concerned authorities did not pass any order as to the grant of pension. As soon as applicant Chagan Lal Kabra came to know about the aforesaid decision he moved an application to the Divisional Railway Manager on 10.1.89 for according the benefit of pension to him vide Annexure:A-3. No reply was received by him. He was compelled to file O.A. No.863/89 on 21.8.89.

3. Applicant M.L.Garg, in O.A. No.196/90 was posted as an Inspector of Works in the Office of the Divisional Railway Manager at Ajmer. He retired from service on superannuation

C.K.N.H.R

on 17.11.69. Before retirement he had been contributing to the State Railway Provident Fund. After retirement he made a representation to the Minister for Railways, New Delhi on 14.11.70 endorsing a copy thereof to the Head of Office indicating his option for the pension scheme vide Annexure:A-1A. Thereafter he made several representations in this behalf but in reply to his last representation dated 9.4.87, the Divisional Personnel Officer, Western Railway, Ajmer informed applicant M.L.Garg vide his letter dated 1.7.88 Annexure:A-2, that orders were awaited from the Railway Ministry in connection with the grant of pensionary benefits to the subscribers of the State Railway Provident Fund and hence his application dated 9.4.87 had been filed. After the rendering of the said decision of the New Bombay Bench of the Tribunal this applicant moved an application to the Divisional Personnel Officer and the Divisional Railway Manager, Western Railway for grant of pension but he was ultimately informed vide letter dated 29.11.89, Annexure:A-1 that pension could not be granted to him as no order regarding it was received from the Head Office. Hence this O.A. was presented on 6.2.90.

4. O.A. No.863/89 has been contested on the ground that it is hopelessly barred by limitation. It is contended that the applicant had retired from service on 12.7.72. He submitted his representation on 1.12.85 vide Annexure:A-1. The applicant should have invoked the jurisdiction of this Tribunal within one year from the date of expiry of six months after the representation was made as prescribed by Section 21 of the Act. O.A. No.196/90 has been contested on the ground of limitation as well as on the ground that the applicant did not submit any application exercising his option under the pension scheme. Since the applicant did not opt for the pension he is not entitled to get the same.

5. I have heard the learned counsel for the parties. I have carefully perused the records.

6. These applications have been vehemently contested on behalf of the respondents on the ground that they are hit by the bar of limitation. The counsel for the respondents urged that the cause of action in these cases arose more than three years before the establishment of the Tribunal and therefore, these applications cannot be entertained.

GPNHRE

6/12

The applicant in O.A No.196/90 was informed by the Divisional Personnel Officer, Western Railway, Ajmer that orders were awaited from the Railway Ministry in connection with the grant of pensionary benefits to the subscribers of the State Railway Provident Fund and his application dated 9.4.87 was filed. In regard to the applicant in O.A. No. 863/89, according to him, the cause of action arose when the New Bombay Bench of the Central Administrative Tribunal decided the T.A. No.27/87 Ghansham Das and others Vs. The Chief Personnel Officer (Mech) and Others in which decision there was a general direction to apply the pension scheme to all persons who retired between 1.4.69 to 14.7.72 and on the basis of that order the applicants made representations to the respondents for which the applicant in O.A. No.196/90 was informed vide letter dated 29.11.89 Annexure: A-1 that pension could not be granted to him as no order regarding it was received from the Head Office while the applicant in O.A. No.863/89 has not received any reply from the respondents. Reliance is placed by the applicants on a decision of the Bangalore Bench of this Tribunal in the case of M.G.Rajashankar Vs. The Chief Workshop Manager, Central Railway, Matunga, Bombay reported in 1990(3)CAT) SLJ 122 wherein it was observed at page 126 as follows:

"9. The counsel for the respondents contended that the cause of action in these cases arose three years before the constitution of the Tribunal and, therefore, we cannot deal with the matter. We are afraid that this contention is not tenable. The cause of action for the applicant in A.No.534/89 arose by the rejection of the application by a letter dated 2.4.88 wherein his claim was rejected. In regard to applicants in A.No.581/89 and 605/89, according to the applicants, the cause of action arose when the New Bombay Bench rendered its judgment in Ghansham Das's case where a general direction to apply the pension scheme to all persons who retired between 1.4.69 to 14.7.72 and on the basis of that order, the applicants made representations to the respondents for which they have not received any reply. In view of these facts we cannot agree that the cause of action arose before three years of the constitution of this Tribunal and hence we reject this contention."...

7. The applicants have produced a copy of the judgment in T.A No.27/87 Ghansham Das and Another Vs. The Chief Personnel Officer (Mech) and Others rendered on 11.11.1987 by the New Bombay Bench of this Tribunal wherein a Division Bench issued a direction to the respondents to give the benefit in respect of all Railway employees who were similarly placed like the applicants viz. those who retire from the period from 1.4.69. The judgment in the case of

C.K.N.D.K.

(17)

Ghansham Das was upheld by the Hon'ble Supreme Court in SLP No.5973/88 on 5.9.88. The decision in the case of Ghansham Das is a judgment in rem. It is not disputed by the respondents that the applicants are also similarly circumstanced like Ghansham Das. The learned counsel for the applicants cited an authority reported in I (1989) ATLT 730 (Prem Devi Vs. Delhi Administration) wherein Hon'ble Supreme Court made the following observations at pages 731-732:

"4. The facts as are not in dispute the case of one of the employees having been decided by this Court it was expected that without resorting to any of the methods the other employees identically placed would have been given the same benefit, which would have avoided not only unnecessary litigation but also of the waste of time and the movement of files and papers which only waste public time."

In this view, the objection raised by the respondents regarding limitation is untenable. No other objections were raised during the course of arguments.

8. The applicants retired from service during the period from 1.4.69 to 14.7.72. The decision of the New Bombay and Bangalore Benches of this Tribunal referred to above squarely cover the matters in hand.

9. Hence these applications are allowed. The respondents are directed to hold that the applicants are entitled to the benefits of pension scheme since their~~s~~ retirement and they are further directed to determine the pension due to them according to rules in existence at the time of their retirement and taking into consideration the amendments made to the rules thereafter. The respondents shall also be entitled to recover or adjust all amounts from the applicants which had been paid to them as per the State Railway Provident Fund Scheme. The respondents shall calculate the arrears and after deducting the amounts due from the applicants pay the balance to them. The said amounts shall be paid within four months from the date of receipt of this order. The applicants are not entitled to any interest. No order as to costs.

GK 2-9-92
(Gopal Krishna)
Member (Judicial).