

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.132/94

Dt. of order: 24.1.1995

Henry Patrick

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr.W.Wales

: Counsel for Applicant

Mr.M.Rafiq

: Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Member(Adm.)

PER HON'BLE MR.O.P.SHARMA, MEMBER(ADM.).

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri Henry Patrick has prayed that the Tribunal may declare that the applicant is entitled to opt for Pension Scheme in terms of the Railway Board's letter dated 3.3.1966 after his retirement, declare that the applicant's case stands covered by the judgment of the New Bombay Bench of the Tribunal in O.A.No.842/89 decided on 26.4.1990 and direct the Divisional Railway Manager, Western Railway, Jaipur (respondent No.2) to fix and sanction regular monthly pension to the applicant, according to the rules. He has sought a further direction to respondent No.2 to recover from the applicant all amounts which would not have been due to him if he had opted for the Pension Scheme in terms of the Railway Board's letter 3.3.1966 and the amount so arrived at may be set off against the arrears of pension due to the applicant.

2. The applicant's case is that he retired from service of the Railways on 10.1.1966. By a circular letter dated 3.3.1966 (Annex.A1) the Railway Board extended Pension Scheme to those SRPF employees who were in service as on 31.12.1965. The liberalisation ~~Extension~~ Scheme came into effect retrospectively from 1.1.1966 and those employees who were governed by the SRPF rules and who were in service as on 31.12.1965 could exercise their option to ~~come~~ ^{opt} over to the Pension Scheme before 30.6.1966. There is no dispute that the applicant was governed by the SRPF Scheme till his retirement and was in service on 31.12.1965. Since the Railway Board's circular letter dated 3.3.1966 was issued after

the date of retirement, the contents thereof were not within his notice, as a result of which he could not avail himself of the opportunity to opt for the pension scheme before 30.6.1966. The applicant submitted a representation to the Minister of Pension^g, New Delhi on 30.2.1986 relying upon a judgment dated 6.9.85 of the Rajasthan High Court (Annex.A2) but received no reply. During 1992, the applicant was informed through his retired old friends that his case for opting for pension is similar to that which was decided by the New Bombay Bench of the Tribunal on 26.4.1990 in V.D.Vaidya's case referred to above (Annex.A3) and he is eligible to opt for pension scheme by preferring a representation to respondent No.2. Accordingly, the applicant made a representation dated 1.10.92 to respondent No.2 requesting for grant of pension but this has evoked no response. The representation dated 1.10.92 is at Annex.A4. The applicant's case is that he fulfills the eligibility conditions for exercising option for the pension scheme and he was not informed about the contents of the Railway Board's letter dated 3.3.1966 by respondent No.2 between 3.3.66 to 30.6.66 and therefore he was deprived of his legal right to opt for pension.

3. The respondents in their reply have stated that since the applicant did not opt for the pension scheme within the admissible time limit i.e. upto 30.6.66 in accordance with the Railway Board's letter dated 3.3.66, he cannot now be permitted to exercise this option after 28 years. They have denied that the applicant was not aware of the facility available for exercising option upto 30.6.1966. The availability of option was notified for the information of all the retired employees during the aforesaid period. Even if the applicant could not make the representation before 30.6.1966 he ought to have woken up by making a representation shortly thereafter. They have also denied that the applicant made any representation between 1966 to 1992.

4. During the arguments the learned counsel for the applicant stated that since it was the duty of the respondent No.2 to inform the applicant, a retired employee at that time, about the availability of option towards pension scheme which was available upto 30.6.66 and since the respondent No.2 had failed to discharge his duty, the applicant was entitled to opt for the pension scheme now in view of the judgment of the New Bench of the Tribunal in V.D. Vaidya's case. He has also relied upon the observations of the Hon'ble Supreme Court in Madras Port Trust Vs. Mymanshu International (1979) 4 SCC 1976 which have been reproduced in the judgment of the Delhi Bench of the Tribunal in the case of Dr. Vidya-bhushan Vs. Union of India & Ors. (1991) 17 AEC 507. These observations of the Hon'ble Supreme Court are to the effect that the plea of limitation should not be taken to defeat a just claim of a citizen and that the government and the public authorities adopt the practice of not relying upon technical pleas for the purpose of defeating legitimate claims of citizens. He also relied upon the judgment of Guwahati Bench of the Tribunal in Bankim Choudhury & Ors. Vs. Union of India & Ors. 1991(1) SLJ (CAT) 362. The observation of the Tribunal which the learned counsel for the applicant wants to rely upon, out of the various observations made by the Tribunal in this case, is that the technical plea of limitation cannot stand in the way of substantive justice. He also relied upon the judgment of the Calcutta High Court in State of West Bengal & Ors. Vs. Phanindra Kumar Das 1992(3) SLJ 26. The observations of the Hon'ble High Court which the learned counsel for the applicant wants to rely upon for the purpose of his present application are to the effect that where a rule can be applied in favour of as well as against the employee the favour should be preferred.

5. The counsel for the respondents has stated that the claim for opting for pension has been made after a lapse of 28 years and therefore, option cannot be made available to the applicant at this stage.

6. The learned counsel for the parties have been heard and the records and the judgments cited have been gone through. The

learned counsel for the applicant himself read out from the Railway Board's circular letter dated 3.3.66 that the Railway Administration was requested to bring the contents of the availability of option to the notice of all the concerned, including those on leave or in foreign service, etc. The Railway Board had also advised in this letter that to facilitate prompt circulation of this order, the contents of this letter dated 3.3.1966 should also be published by the Railways in their gazette within a week and copies thereof should be furnished to the recognised Unions. Even if an individual communication may not have gone to the applicant, the contents of the circular letter dated 3.3.66 must have been published in the official gazette and would have also brought to the notice of the recognised Unions. In these circumstances one can say that the Railway Administration did its best to give ^{as} much publicity as possible in the circumstances to the liberalisation and it is difficult to imagine that the applicant would have remained unaware the availability of the option, even though by the time the circular letter dated 3.3.66 was issued, the applicant had retired from service about 2 months earlier. The claim for ^{being} $\frac{1}{2}$ permitted to opt for the pension scheme now been sent forward on the basis of the judgment of the New Bombay Bench of the Tribunal in the case of V.D.Vaidya Vs. Union of India. In this connection, however, it is relevant to refer to the judgment of the Bombay Bench of the Tribunal in J.A.Sams Vs. Union of India & Anr. (1994) 27 ATC 804 which was delivered on 12.4.94 and wherein the judgment in the case of V.D.Vaidya has also been referred to. In this judgment the Tribunal has held that the Supreme Court judgment in the case of Krishan Kumar Vs. Union of India (1990) 4 SCC 207, settled the matter regarding validity of option orders issued by the Railway Board from time to time. The Tribunal further held that various judgments of the Tribunal holding otherwise are not good law. The Tribunal has further held that limitation applies ^{to} pension cases as well.

7. It is inconceivable that the applicant remained totally unaware of the availability of the option till 1992 when he claimed to have made a representation to the Railway Authorities. In fact

the applicant has himself admitted that in 1986 also he had made a representation in this regard (Annex.A2). As regards the representation dated 1.10.92 the respondents had denied that they received it and the applicant is unable to produce any proof to show that he had made any such representation. This case, therefore, largely turns on its own facts. In view of para 2 of the Railway Board's circular letter dated 3.3.66, wide publicity must have been given to the contents of the said circular letter. The applicant has come forward to ask for an opportunity to exercise option now for the pension scheme on account of the judgment in V.D.Vaidya's case. A judgment delivered in 1991 or there about cannot extend limitation with regard to what ought to have been done by the applicant in 1966 in view of the position that wide publicity must have been given by the authorities to the availability of option for pension scheme. None of the judgments cited by the learned counsel for the applicant have any direct applicability to the facts of the present case. In so far as the observation in Madras Prob Trust's case are concerned, these by themselves without referring to the context in which these were made, cannot have a bearing in the present case. Regarding the observations in other two judgments relied upon by the learned counsel for the applicant regarding technical plea of limitation not standing ⁱⁿ the way of substantive justice and where two interpretations are possible and a rule can be applied in favour of the applicant, the former should be preferred, no exception can be taken to these observations. However, all such observations have to be considered ~~by application~~ in the context of the case which is being decided. In the present case, the applicant has come forward with a plea to be permitted to exercise option after a period of 28 years, on the basis of a judgment of the Tribunal which was delivered in 1991 or there about. It is inconceivable that the applicant was totally unaware about the availability of such option. In view of the judgment in J.A.Sams case, the question of limitation applies to pension cases also. Considering

all the facts and circumstances of the present case, I hold that the applicant's plea to exercise option at such belated stage cannot be permitted. Also the applicant is not even able to adduce any proof to show that he sent any representation even on 1.10.92 as claimed by him as per Annex.A4. Thus, even the claim of making a representation on 1.10.92 after knowing about the contents of the judgment in V.D.Vaidya's case is unsubstantiated. This application has been made in March 1994. The O.A. is dismissed with no order as to costs.


(O.P.Sharma)
Member(A).