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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA 274/94

: Date of order 23.11.94

R.I. David

: Applicant

V/s

Union of India & Others : Respondents

Mr. W. Wales : Counsel for the applicant

Mr. M. Rafiq : Counsel for the respondents

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

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

(1) Applicant Shri R.I. David has filed this application u/s 19 of the Administrative Tribunals Act, 1985, prayed that directions be issued to the respondents to treat him as a similarly placed retired employee eligible for pension under the judgement dated 11.11.87 delivered by the Hon'ble Central Administrative Tribunal, New Bombay, in TA no. 27/87 (and) subsequent judgements rendered by this Tribunal dated 2.9.92 and 4.1.94. He has sought directions to the respondents to grant and fix monthly regular pension w.e.f. 18.7.71 as per ~~existing~~ rules and was also to recover from him all amounts, which would have been due to him, if he had opted for the Pension Scheme prior to his retirement. He has prayed that the amount so arrived at may be set off (adjusted) against the arrears of pension payable to the applicant without any interest to be charged/payable on the amounts due to each others.

2. Heard the learned counsel for the parties.

3. The applicant's case is that he joined the Railway on 18.3.41 and retired w.e.f. 17.7.71 on superannuation under the SRPF rules. At the time of his retirement from the Railway service, he was holding the post of Head Clerk in the substantive capacity under the Administrative Control of SM (Workshops) in the Western Railway at Ajmer, drawing a basic salary of Rs. 305/- per month with the usual allowances. He

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could not exercise the option for switching over to the Pension Scheme at the time of his retirement. Since at that point of time, the option stood fore-closed, it was in the month of January, 1993 that the applicant came to know from certain members of the Retired Employees Association at Ajmer that he is entitled to request the Administration to allow him option for the Pension Scheme as a result of the judgement rendered by the Central Administrative Tribunal, New Bombay Bench in the case of Ghansham Das V/s CPO Central Railway in TA no. 27/87 (decided on 11.11.87). He, therefore, moved an application on 6.1.93 vide Annexure A-1 praying for allowing him to opt for pension. This application was addressed to the respondent no. 2. It is stated by the applicant that since he has retired on the afternoon on 17.7.71, his case for grant of pension is squarely covered by the aforesaid decision of the Central Administrative Tribunal, New Bombay Bench, referred to above. It has also been stated that the Railway Board as well had issued a circular no. E/(G)88-FNI-6 dated 2.1.92 (Annexure A-3) to all the General Managers to grant reliefs to those Railway employees, who had retired between 1.4.69 and 14.7.72 and since the applicant had retired on the afternoon of 17.7.71, there was a legal obligation on the part of the respondent no.2 to forward a copy of the Railway Board's letter to the applicant at his residential address so that he could have opted for the Pension Scheme.

4. The contention of the respondents are that the applicant had retired on 17.7.71 and since he had not exercised the option for pension in time, this application is time barred and it should, therefore, be dismissed. It is stated by the respondents in their reply that the retirees ^{ought} to have indicated their option in favour of the Pension Scheme either during their service or after their retirement and in no case later than 31.12.72. The operative portion of the judgement of the New Bombay Bench of the Central Administrative Tribunal dated 11.11.87 in

Chivhar TA no. 27/87 in Ghansham Das & Another V/s Chief Personnel

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Officer (Mech) & Others (Annexure A-2) reads as follows-

"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 amounts 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 the directions given in clauses (1) to (11) 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 retirement and who now desire to opt for the pension scheme.
- vii) Parties to bear their own costs."

5. The applicant's case is fully covered by the judgement cited supra and as such the applicant who retired on 17.7.71 is entitled to the benefit of the Pension Scheme.

6. In the result, this application is allowed. The respondents are directed to hold that the applicant is entitled to the benefits of pension scheme since his retirement and they are further directed to determine the pension due to him according to rules in existence at the time of his 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 applicant which had been paid

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to him as per the State Railway Provident Fund Scheme. The respondents shall calculate the arrears and after deducting the amounts due from the applicant pay the balance to him. The said amounts shall be paid within four months from the date of receipt of a copy of this order. The applicant shall not be entitled to any interest. No order as to costs.

C. Krishna
(Gopal Krishna)
Member(J)