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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIFUR BENCH, JAIPUR.

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Date of Decision: 15.10.96

OA 569/95

Behari s/o Shri Chetram, r/o House No.339/34, Beesla Mala, Opposite Deena Mali-ki-Tal, Ajmer.

... Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager (Eatt.), Western Railway, Ajmer.
3. The Medical Superintendent, Railway Hospital, Beawar Road, Western Railway, Ajmer.

... Respondents

CORAM:

HON'BLE MR. GOPAL IRISHNA, VICE CHAIRMAN

For the Applicant

... Mr. W. Wales

For the Respondents

... Mr. T. P. Sharma

O R D E R

PER HON'BLE MR. GOPAL IRISHNA, VICE CHAIRMAN

Applicant, Behari, in this application u/s 19 of the Administrative Tribunals Act, 1985, has mainly prayed for a direction to respondent No.2 to grant and fix monthly regular pension to him w.e.f. 8.4.72 as per rules in existence on the said date of his retirement, subject to consequential revisions.

2. The case of the applicant is that he joined the B.B. & C.I. Railway/ Western Railway on 10.4.42 as a Cook and retired from the post of a Cook on attaining the age of superannuation, after serving for about 30 years w.e.f. 8.4.72, under the SFPP Rules. At the time of his retirement he held the substantive post of Cook and was drawing a basic pay of Rs.110/- plus Rs.3/- as Personal Pay and Rs.70/- as Dearness Pay under the administrative control of the Divisional Superintendent, Western Railway, Ajmer. The applicant submitted representations to the concerned authorities requesting for grant of pension but his representations did not evoke any response. His contention is that he could not avail the opportunity to opt for the Pension Scheme for the simple reason that even if he had opted in favour of pension on 8.4.72, the same would have been rejected because no such option was available to him during the period from 1.4.69 to 14.7.72. The applicant is willing to deposit the retirement benefits which were given to him on his retirement and to which he would have been entitled if he had opted in favour

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of pension before the due date.

3. The respondents have resisted this application by filing an exhaustive written statement. The main contention of the respondents is that despite opportunities available to the applicant for opting in favour of pension, while he was in service, he did not choose to opt in favour of pension and now he is not entitled to claim the benefit of the Pension Scheme. It is also stated that the present application is barred by limitation.

4. Heard the learned counsel for the parties.

5. The learned counsel for the applicant has cited AIR 1995 SC 983, P.Subramaniam v. Chief Personnel Officer, Central Railway, Ministry of Railways. The order of the Hon'ble Supreme Court reads as follows :-

"By this petition the petitioner who was a Railway employee and who retired in the year 1971 but did not opt for Pension Scheme as introduced by the Railway Board by its letter dated 16th November 1957, rather opted for the Provident Fund System seeks direction to the opposite party to grant him same benefit as was granted to others by the Central Administrative Tribunal, Bombay by its order dated 11th November 1987. The relevant portion of the order passed by the Tribunal is extracted below :

"The respondents are directed to implement 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 1.4.1969 to 14.7.1972 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."

It is not disputed that the SLP filed by the Union against the Order has been dismissed by this Court and the Review Petition was also dismissed on 6th May 1991. The Union, in our opinion, cannot successfully resist the claim of the petitioner when the Tribunal has directed that this benefit shall be granted even to those employees who retired on or before the Pension Scheme was introduced and opt for it even now. Since the petitioner opted for the Pension Scheme in terms of the order passed by the Tribunal may be in 1990, we are of the opinion that in the facts and circumstances of the case the respondent should extend same benefit to the petitioner as has been extended to others.

*CKR/HM* 2. In the result, this petition succeeds and is allowed. Rule is made

absolute. The respondent is directed to accept the option of the petitioner and grant him benefit of Pension Scheme. The petitioner is further directed to deposit the entire amount which he received in lieu of Provident Fund System within three months from the date the Government accepts the option of the petitioner. The option shall be accepted within two months from the date a copy of this order is produced.

3. Parties shall bear their own costs.

Rule made absolute."

The applicant's case is fully covered by the judgement of the Hon'ble Supreme Court, cited supra, and as such the applicant, who retired on 8.4.72, is entitled to the benefit of the Pension Scheme.

6. In the result, this application succeeds and is allowed. Respondent No.2 is directed to accept the option of the applicant and grant him benefit of the Pension Scheme. The applicant is directed to deposit the entire amount which he received in lieu of Provident Fund System within three months from the date the Government accepts the option of the applicant. The option shall be accepted within two months from the date a copy of this order is produced. No order as to costs.

Gopal Krishna  
(Gopal Krishna)  
Vice Chairman

VK