

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.573/1996

Date of order: 9/5/2000

Smt.Gulab Devi, W/o late Shri Sitaram Vijay, R/o 46,
Paltan Bazar, Ajmer.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly, Churchgate,
Mumbai.
2. The Divisional Rly.Manager, W.Rly, Ajmer.

...Respondents.

Mr.W.Wales - Counsel for applicant.

Mr.K.S.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this Original application filed under Sec.19 of the
Administrative Tribunals Act, 1985, the applicant makes the
following prayers:

(i) to direct the respondents to treat the applicant's late
husband as similarly placed employee and fully entitled to pension
scheme in view of the judgment dated 11.11.87 delivered by Mumbai
Bench of the Tribunal in T.A No.27/87 which was later on followed
by various Benches of the Tribunal in the country and by the
Supreme Court in SLP No.891/93;

(ii) to direct respondent No.2 to compute/workout the monthly
pension due to the applicant's late husband and to pay life time
arrears of pension to the applicant from 15.1.71 to 7.6.95 and

(iii) to direct respondent No.2 to grant monthly pension to the
applicant w.e.f. 8.6.95 as admissible under the Family Pension
Scheme with arrears and interest.

2. Facts of the case as stated by the applicant are that the
applicant's late husband Shri Sitaram Vijay was retired from the
Railway service on attaining the age of superannuation on 14.1.72.
It is stated that the applicant's husband could not avail the
opportunity of opting pension sheme at the time of his retirement
as at the relevant time the option for pension stood closed.
Therefore, the applicant's husband made representation on 18.12.92
and 15.3.95. It is stated that the applicant husband died on 7.6.95
and thereafter the applicant made representation on 5.12.95 and
9.12.95 and a similar request was made before the Pension Adalat on
15.12.95 which were replied and the applicant was asked to complete
certain formalities for Exgratia payment. It is stated that the
applicant's late husband was entitled to pension scheme in view of

the aforementioned judgment dated 11.11.87 delivered by the Mumbai Bench of the Tribunal in Ghansham Das & Anr Vs. UOI & Ors, against which Review Application and SLP was dismissed. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply, it is stated that Shri Sitaram Vijay did not opt for pension scheme during his service tenure. It is also made clear in the reply that during his life time he did not make any representation for opting pension scheme. It is denied that Shri Sitaram Vijay filed representation dated 18.12.92. It is stated that the judgment of the Mumbai Bench of the Tribunal delivered on 11.11.87 in Ghansham Das & Anr. Vs. UOI & Ors was judgment in personam and not the judgment in rem and the applicant was not a party to the said O.A hence no cause of action has arisen to the applicant on the basis of the judgment delivered on 11.11.87. It is admitted that the applicant submitted an application on 5.12.97 to respondent No.2 which was suitably replied. Therefore, the applicant is not entitled to life time arrears or family pension as claimed by her. It is denied that the applicant's husband was similarly placed person with reference to the judgment dated 11.11.87 (supra). It is further stated that the applicant's husband has not refunded the amount of Provident Fund received by him and the applicant is receiving ex-gratia pension after the death of her husband. Therefore, the O.A is devoid of any merit and liable to be dismissed.

4. Rejoinder was also filed reiterating the facts stated in the O.A which is on record.

5. Heard the learned counsel for the parties and also perused the whole record.

6. The learned counsel for the applicant has vehemently argued that Mumbai Bench of the Tribunal in Ghansham Das & Anr. Vs. UOI & Ors delivered on 11.11.87 against which review petition and SLP was dismissed and the applicant's late husband being similarly placed employee was fully entitled to pension scheme in view of the aforesaid judgment which has been denied. In support of his contention he has referred to: (i) Ghansham Das & Anr. Vs. The CPO & Ors delivered on 11.11.1987 of CAT Mumbai Bench, (ii) D.R.R.Sastri Vs. UOI & Anr, (1995) 30 ATC 681, (iii) UOI & Ors. Vs. D.R.R.Sastri, 1997 SCC(L&S) 555 and (iv) UOI & Ors Vs. A.J.Fabian, 1997 SCC (L&S) 1635.

7. On the other hand, the learned counsel for the respondents has argued that the applicant's husband during his tenure of service did not opt for pension scheme and even when opportunity was there the applicant's husband did not opt for pension scheme

during his life time. He also argued that the O.A is not maintainable because of delay and laches and liable to be dismissed on this ground alone. He further argued that the applicant is being paid ex-gratia pension after death of her husband and that her husband did not refund the benefits given to him under the SRPF Scheme, therefore, the applicant has no case. In support of his contentions he has referred the following judgments: (i) Bhoop Singh Vs. UOI & Ors, 1992(2) SLJ 103, (ii) Jacob Abraham & Ors Vs. UOI & Ors, (1994) 28 ATC(FB) 177. (iii) Omprakash Satija Vs. UOI & Ors, (1995) 29 ATC 1 and (iv) Bhagwan Das Vs. UOI & Anr, (1996) 34 ATC 405.

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

9. Admittedly, the applicant's husband neither exercised his option during his service tenure nor during his life time, i.e. till his death on 7.6.95.

10. In C.L.Amin & Ors Vs. UOI & Ors, 1997(2) ATJ 100, decided on 6.12.96 (F.B, Mumbai), the following question was referred to the Full Bench for answer:

Whether Rly.Board circular dated 23.7.74 read with circular dated 29.12.79 requires that a personal or individual notice be given to the effected parties in this regard.

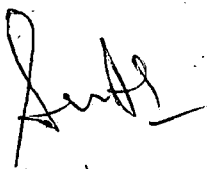
The answer was 'NO'.

11. In Krishena Kumar Vs. UOI & Ors, AIR 1990 SC 1782, Hon'ble Supreme Court in para 34 of the judgment had distinguished the judgment of Ghansham Das & Anr. Vs. UOI & Ors and the judgment of Rajasthan High Court on facts. The Hon'ble Supreme Court had further observed that Nakara's judgment dealt with pension retirees whereas Krishena Kumar's judgment dealt with Provident Fund retirees and these two schemes were structurally different.

12. In V.K.Ramamurthy Vs. UOI & Anr in Writ Petition (Civil No.174 of 1996, decided on 13.8.96, Hon'ble Supreme Court has refused to allow the petitioner to switchover from Provident Fund Scheme to Pension Scheme and held that once an employee who has not exercised his option to come over to pension scheme even though he was granted an opportunity, is not entitled to pension scheme at a belated stage.

It is further held that

"In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara's case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for pension scheme at



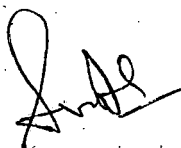
this length of time. The decision of Ghansham Das case on which the learned counsel for the petitioner placed reliance, the Tribunal relied upon Nakara's case and granted the relief without considering that Nakara's decision has been distinguished in that Constitution Bench case of Krishena Kumar and other cases referred to supra. Therefore, dismissal of the Special Leave Petition against the said judgment of the Tribunal cannot be held to be law laid down by this Court, in view of what has been stated in Krishena Kumar's case. The other decision of this Court in the case of R.Subramanian (W.P.(Civil) No.881 of 93) the Court merely relied upon the dismissal of Special Leave petition against the judgment of Tribunal in Ghansham Das case and disposed of the matter and therefore, the same also cannot be held to be a decision on any question of law."

13. In another case UOI & Ors Vs. A.J.Fabian, 1997 SCC(L&S) 1635, it was held that those who had not opted for pension despite repeated chance, cannot now switch over. In this case, the respondent retired on 21.4.72, pension option extended by Govt 6 times but he did not opt. Later on in the year 93, he sought to switch over. Hon'ble Supreme Court disallowed to switchover the option for pension.

14. In the instant case, the applicant's husband superannuated on 14.1.72, he never exercised his option to switchover to pension. After retirement also he did not opt for pension scheme and he died on 7.6.95. The respondents have categorically denied that the representation of the applicant's husband was ever received. Further that the applicant is receiving ex-gratia @ Rs.150/- per month. Merely that the applicant filed an application on 5.12.95 and 9.12.95 which was suitably replied does not establish the fact that the applicant's late husband is entitled to pension and the applicant is entitled to life time arrears of pension i.e. upto 7.6.95. On the basis of the foregoing discussions, we are of the opinion that the applicant's husband is not similarly placed employee or he is entitled to pension scheme in view of the judgment dated 11.11.87 delivered by the Mumbai Bench of the Tribunal and does not support the claim of the applicant in any way.

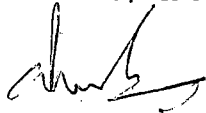
15. The learned counsel for the respondents has vehemently stressed that the claim of the applicant is not maintainable on account of delay and laches and in support of this contention he has referred the cases as referred above.

16. We have given anxious consideration to the legal citations referred by the counsel for the respondents and we are of the opinion that at such a belated stage when no option was exercised by the applicant's husband and the applicant is also receiving monthly ex-gratia from the respondents, and the amount received by



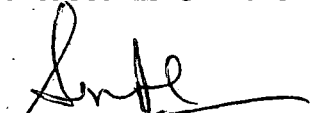
the applicant's late husband under the SRPF scheme has not refunded to the respondents, the applicant has no case for entitlement of life time arrears of pension of her husband and family pension as claimed by her and this O.A is devoid of any merit is liable to be dismissed.

17. We, therefore, dismiss the O.A with no order as to costs.



(N.P.Nawani)

Member (A).



(S.K.Agarwal)

Member(J).