

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A No.109/98

Date of order: 11/12/2000

Ganga Narain Gupta, X/o late Sh:S.N.Gupta, R/o 1093,
Marin Mension, Pitlion ka Chowk, Jaipur.

...Applicant.

Vs.

1. Union of India through Secretary to the Govt, Mini. of Railways, Rail Bhawan, New Delhi.
2. General Manager, W.Rly, Churchgate, Bombay.
3. Financial Advisor & Chief Accounts Officer, W.Rly, Bombay.
4. The Dy.Chief Accounts Officer (Workshop) W.Rly, Ajmer.

...Respondents.

Mr.M.S.Gupta - Counsel for the applicant.

Mr.Manish Bhandari - Counsel for respondents.

CORAM:

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

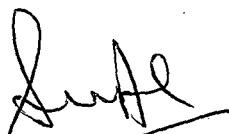
Hon'ble Mr.A.P.Nagrath, Administrative Member.

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 accord pensionary benefits to the applicant from the date of retirement in the light of judgment dated 11.11.87 passed by the Central Administrative Tribunal, Bombay Bench and upheld by the Supreme Court in Civil Writ Petition No.981/93 decided on 16.1.95.
- ii) to direct the respondents to pay interest @ 18% per annum on arrear amount.

2. In brief the case of the applicant is that he retired on 30.4.72 on attaining the age of superannuation but he was denied pensionary benefits in spite of the directions given by the Central Administrative Tribunal, Bombay Bench and upheld



by the Supreme Court. The applicant sent notice to the respondents for pension/pensionary benefits and also submitted an application on 7.11.92 regarding his option and for adjusting the Railway contribution paid to him at the time of retirement but no avail. The applicant is leading a miserable life at the age of 84 years in the absence of pension amount which he is legally entitled after the judgment of the Supreme Court dated 16.1.95. Therefore, the applicant filed the O.A for the relief as mentioned above.

3. Reply was filed. In the reply it was admitted that the applicant retired from service on 30.4.72 but it is stated that the applicant was a P.F optee instead of pension scheme. It is stated that the applicant failed to opt for pension scheme within the time allowed for this purpose and he opted for PF scheme. Thus, he is estopped to claim such benefit at this stage after 26 years of retirement especially when the applicant has already enjoyed the retiral benefits. It is stated that the pensionary benefit was to be allowed to only those employees who had opted for the same in accordance with the instructions issued for this purpose and the order passed by the Central Administrative Tribunal, Bombay Bench and the Hon'ble Supreme Court, does not help the applicant in any way. Therefore, the applicant has no case and this O.A is liable to be dismissed.

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

5. The learned counsel for the applicant has vehemently argued that in view of the order passed by the Bombay Bench of the Tribunal and the judgment delivered by the Hon'ble Supreme Court in Ghanshyam Dass Vs. Union of India & Ors, the applicant is entitled to pension/pensionary benefits after adjusting the PF amount which the applicant has received at



(12)

the time of his retirement. On the other hand, the learned counsel for the respondents while opposing the aforesaid submissions has argued that as per the law developed by the Hon'ble Supreme Court the applicant is not entitled to any pensionary benefit at such belated stage due to latches. He has also referred the orders of the Principal Bench in A.Balakrishnan Vs. The Chairman, Railway Board & Anr. decided on 27.10.99 and the orders of Madras Bench of the Tribunal in B.Barath Vs. UOI & Anr. decided on 1.6.1999.

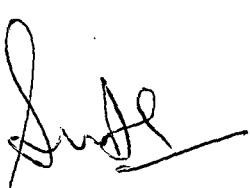
6. We have given anxious consideration to the rival contentions of the parties and also perused the whole record.

7. In Krishna 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 Krishna Kumar's judgment dealt with Provident Fund retirees and these two schemes were structurally different.

8. In V.K.Ramamurthy Vs. UOI & Anr, in Writ Petition (Civil) No.174 of 96 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.

9. 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.

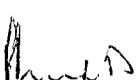
The answer was 'No'

10. 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 switchover. In this case, the respondent retired on 21.4.72, Pension option extended by Govt. six times but he did not opt. Later on in the year 93, he sought to switchover. Hon'ble Supreme Court disallowed to switchover the option for pension.

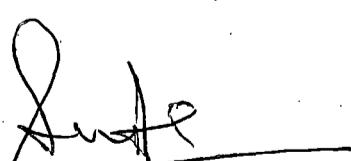
11. In the instant case, the applicant retired from service on 30.4.72. It is undisputed fact that the applicant never exercised his option to switchover to pension before he filed an application in the year 1992, meaning thereby after retirement, the applicant did not opt for pension scheme. Therefore, in view of the decision of Hon'ble Supreme Court as referred above, we are of the opinion that the applicant is not entitled to pension scheme in view of the order passed by the Bombay Bench of the Tribunal and the judgment of the Hon'ble Supreme Court in Ghansham Das case.

12. The learned counsel for the respondents vehemently argued that the claim of the applicant is not maintainable on account of delay and latches. We have also heard the learned counsel for the applicant on this count. After giving anxious consideration to the rival contentions of the parties, we are of the considered opinion that at such belated stage when no option was exercised by the applicant, inspite of repeated opportunities were afforded by the department, the applicant has no case of entitlement of pension scheme and this O.A devoid of any merit is liable to be dismissed.

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


(A.P.Nagrath)

Member (A).


(S.K.Agarwal)
Member (J).