

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 19/12/2007

OA No.527/2000

Wadhawa Singh s/o Shri Sardar Roor Singh retired
Chargeman, Ticket No. 3347, Shop No.28, Carriage and Wagon
Workshop, Western Railway, Ajmer and r/o House No. 39/26
Nai Basti, Ramganj, Ajmer.

..Applicant

Versus

1. Union of India through the General Manager,
Western Railway, Churchgate, Mumbai.
2. Chief Works Manager, Loco Workshop, Western
Railway, Ajmer.

.. Respondents

Mr.N.K.Gautam, counsel for the applicant

Mr. S.S.Hasan, ccounsel for the respondents

CORAM:

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

ORDER

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

In this Original Application filed under
Section 19 of the Administrative Tribunals Act, the
applicant makes following prayers:-

- "a) Direct the respondents to include the applicant
in pension scheme and grant him pension w.e.f.
1.7.69.
- b) Direct the respondents to arrange payment of
pension to the applicant after deducting the
amount paid to applicant under State Railway
Provident Fund Scheme.



- c) Cost of the application may be awarded to the applicant."

2. In brief, facts of the case, as stated by the applicant, are that applicant was superannuated from railway service while working as Charaman on 30.6.1969. It is stated that before retirement the applicant was contributing to State Railway Provident Fund scheme and after retirement vide his applications dated 1.11.70, 10.4.72, 26.2.87, 24.12.90 and 30.3.92 he requested the respondents to take him under pension scheme, but applicant was denied granting of pension. It is stated that issue of granting pension scheme was decided by Mumbai Bench on 11.11.87 in OA No. 27/87 and by the Bangalore Bench on 2.3.90 in OA No.534/89 and this Bench on 2.9.92 in OA No. 863/89 and the order of the Mumbai Bench was confirmed by Hon'ble the Supreme Court of India vide judgment dated 16.1.1995. The applicant has crossed the age of 85 years, but his demand for inclusion in the pension scheme has not been allowed. Therefore, applicant has filed this OA for the reliefs as above.

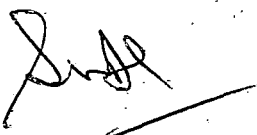
3. Reply was filed. It is stated that applicant was retired from railway service on 30.6.69 under State Railway Provident Fund (Contributory) Scheme (hereinafter called the SRPF Scheme). The applicant has not submitted any application upto 31.12.1972 for opting for pension, as such pension was not granted to the applicant. It is also stated that applicant never submitted any application on 1.10.70, 10.4.72, 26.2.87, 24.12.90 and 30.3.92 as stated by him in this OA. It is stated that application dated

12.11.93 for grant of pension was filed by the applicant for the first time and applicant was replied vide letter dated 26.11.1993 in which it was specifically mentioned that applicant has not filed any application for opting for pension on or before 31.12.72 and hence the request of the applicant for grant of pension cannot be accepted. It is also stated that after the judgment of the Mumbai Bench in OA No.27/87, the General Manager, Western Railway Headquarters has issued instructions vide order dated 5.2.92 in pursuance to Railway Board letter dated 2.1.92 and the case of the applicant is not covered by the circular passed in implementation of judgment of the Mumbai Bench of Central Administrative Tribunal. The applicant has not submitted any application for opting for pension upto 31.12.72. Hence, the applicant has no case and this OA is devoid of any merit and is liable to be dismissed.

4. Rejoinder has also been filed reiterating the facts stated in the OA.

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

6. In V.K.Ramamurthy v. UOI and Anr in Writ Petition (Civil) No.174 of 1996, decided on 13.8.96, Hon'ble the 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

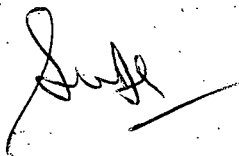


pension scheme at a belated stage. It is further held that

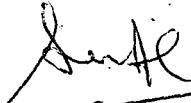
"In view of the aforesaid series of decisions of this Court explaining and distinguishing Naraka's case the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not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

7. In another case UOI and Ors. vs. A.K.Fabian, 1997 SCC (L&S) 1635, it was held that those who had not opted for pension despite repeated chance, cannot now switch over.

8. In the instant case, the applicant was superannuated on 30.6.1969 and he did not opt upto 31.12.72 for pension. Therefore, applicant's case is not covered by any circular/instructions issued by the General Manager, Western Railway, Mumbai and applicant is not entitled to any relief sought for.



9. I, therefore, dismiss this OA having no merits with no order as to costs.


(S.K.AGARWAL)
Judl.Member