

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 29<sup>th</sup> day of August, 2006

ORIGINAL APPLICATION No 210/2006

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)  
HON'BLE MR. J.P.SHUKLA, MEMBER (ADMINISTRATIVE)

Smt. Kamla Devi,  
widow of late Shri Hanuman Prasad,  
aged about 50 years,  
r/o Sitabari,  
Infront of Laxmi Kirana Sotre,  
Jhotwara, Jaipur.

..Applicant

(By Advocate : Mr. Akshya Sharma, proxy counsel to Dr.  
Mahesh Sharma)

Versus

1. Union of India through  
General Manager,  
North West Railway,  
Jaipur.
2. The Divisional Railway Manager,  
North Western Railway,  
D.R.M. Office, Jaipur
3. The Senior Divisional Accounts Officer,  
Western Railway,  
Jaipur

.. Respondents

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"In view of the facts and grounds stated above, the Original Application may kindly be allowed and the respondent department be directed to give family pension from the date of death of her husband with interest.

Any other appropriate order or direction which the Hon'ble Court thinks just and proper in the facts and circumstances of the case and which is in favour of the applicant may kindly also be passed with heavy costs in favour of the applicants."

2. Undisputed facts of the case are that husband of the applicant started his career as railway employee in the year 1956 and he died on 26.9.1971. After death of husband of the applicant, she was appointed as Daftry (Class-IV) in the respondent department on 5.9.1976. It is the case of the applicant that the applicant applied for family pension before the respondent department but the respondent department inspite of giving family pension, granted ex-gratia pension to the applicant i.e. Rs. 150/- per month which is continuing till date. Copy of letter dated 15.3.1989 alongwith Pension Payment Order has been enclosed as Ann.A1. The grievance of the applicant is that he has made repeated requests to the respondent department for payment of family pension but the respondent department has not granted the same by saying that service record of the deceased employee is not available with the respondent department. However, the applicant has not placed any contemporaneous

record regarding making several representations to the respondents for making family pension to the applicant except representation dated 10.2.2004 (Ann.A3). Perusal of this representation also makes it clear that the applicant has not made any such representation <sup>in the past</sup> and it is only for the first time in the year 2004 after a lapse of about 33 years that request has been made to the railway authorities to grant family pension to the applicant from the year 1971. However, the said request of the applicant was turned down vide letter dated 30.4.2004 (Ann.A4) thereby stating that husband of the applicant has not opted for pension scheme, as such, his claim was settled on the basis of CPF Scheme. It is on this basis that the applicant has filed this OA, thereby praying for the aforesaid reliefs.

3. Heard the learned counsel for the applicant at admission stage. The learned counsel for the applicant could not satisfy how the applicant is entitled to the relief as prayed for. As already stated above, husband of the applicant entered into railway service in the year 1956 when Pension Scheme was not in vogue. The Pension Scheme was introduced by the Railway Board since 16<sup>th</sup> November, 1957 while the applicant was in service. After introduction of the Pension Scheme, options were given to the railway employees to come over to the Pension Scheme. Till the date of death of

husband of the applicant in the year 1971 as many as six opportunities had been given <sup>to</sup> him to come over to the Pension Scheme and yet the husband of the applicant did not choose to come to the Pension scheme. On the other hand, he deliberately chose to remain under CPF scheme till his death in the year 1971. Even after 1971 till 1987, Railway Board issued as many as 12 orders for the purpose of exercising options to the railway employees as to whether they want to remain under the CPF scheme or to switch over to the Pension Scheme. It is not the case of the applicant that even after death of husband of the applicant, the applicant has ever exercised option to switch over to the Pension scheme. Rather, from the material placed on record, it is also clear that on the basis of recommendations of 4<sup>th</sup> Pay Commission employees who retired prior to January 1, 1986 were also granted ex-gratia payment. The applicant has also availed this facility. Thus, the irresistible conclusion which can be drawn from the facts as stated above is that neither husband of the applicant nor the applicant has ever exercised any option to switch over to the Pension Scheme and it is only for the first time after a lapse of about 33 years that request has been made by the applicant to grant benefit of family pension w.e.f. 1971 which request of the applicant cannot be accepted in view of the law laid down by the Apex Court in the case of V.K.Ramamurthy vs. Union of

India, AIR 1996 SC 2658. At this stage it will be useful to quote paragraphs 3,4 and relevant portion of para 5 of the judgment, which thus reads:-

“3. That the Pension Scheme was introduced by the Railway Board since 16<sup>th</sup> November, 1957 while the petitioner was still in service is not disputed. Further, the assertion of the railway administration that prior to the superannuation of the petitioner on 14<sup>th</sup> July, 1972 as many as six options had been given to the petitioner to come over to the Pension Scheme and yet he did not choose to come over to the Pension Scheme and on the other hand deliberately chose to continue in the Provident Fund Scheme is also not disputed. The question that arise for consideration, therefore, is whether still the petitioner can be allowed an option to go back to the Pension Scheme ? In the Constitution Bench decision in Krishna Kumar’s case this Court was also considering an identical case of a retired railway employee who had opted for the Contributory Provident Fund Scheme but after his retirement wanted to switch over to the Pension Scheme. This court did not allow the relief of switching over to the Pension Scheme on a conclusion that the Pension Scheme on a conclusion that the Pension Scheme and the Provident Fund Scheme are structurally different and they belong to one class. It was also observed that in the matter of expenditure includible in the Annual Financial Statement, this Court has to be loath to pass any order or give any direction, because of the division of functions between the three co-equal organs of the Government under the Constitution. Referring to the earlier decision of the Court in Nakara’s case (AIR 1983 SC 130) it was observed that in the Nakara it was never held that both the pension retirees and the provident fund retirees form a homogeneous class and further in Nakara it was never required to be decided that all the retirees form a class. It was also observed that while deciding the case of pension retirees in Nakara’s case the provident fund retirees were not in mind. This Court also further held in Krishena Kumar’s case: (AIR 1990 SC 1782, Para 30):

“The Railway Contributory Provident Fund is by definition a fund. Besides, the Government’s obligation towards an employee under CPF Scheme to given the matching contribution begins as soon as his account is opened and ends with his retirement when his rights qua the Government in respect of the Provident Fund is finally crystallized and thereafter no statutory obligation continues. Whether there still remained a moral obligation is a different matter. On the other hand under the Pension Scheme the Government’s obligation does not begin until the employees retires when only it begins and it continues till the death of the employee. Thus, on the retirement of an employee Government’s legal obligation under the Provident Fund Account ends while under the Pension Scheme it begins. The rules governing the Provident Fund and its contribution are entirely different from the rules

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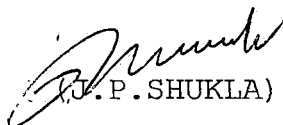
governing pension. It would not, therefore, be reasonable to argue that what is applicable to the pension retirees must also equally be applicable to PF retirees. This being the legal position the rights of each individual PF retirees finally crystallized on his retirement whereafter no continuing obligation remained while on the other hand, as regard Pension retirees, the obligation continued till their death. The continuing obligation of the State in respect of Pension retirees is adversely affected by fall in rupee value and rising prices which, considering the corpus already received by the PF retirees they would not be so adversely affected ipso facto. It cannot, therefore, be said that it was the ratio decidendi in Nakara that the State's obligation towards its PF retirees must be the same as that towards the Pension retirees."

4. In *State of Rajasthan v. Rajasthan Pensioner Samal*, 1991 Supp (2) SCC 141 : (1991 AIR SCW 1824) this Court also came to hold that the Contributory Provident Fund retirees form a different class from those who had opted for Pension Scheme according to the decision in *Krishena Kumar's case* (AIR 1990 SCC 1782) and as such they are not entitled to claim as of right to switch over from Provident Fund Scheme to Pension Scheme and consequently the Contributory Provident Fund Scheme retirees are not entitled to the benefit granted to the Pension Retirees. In yet another case of *All India Reserve Bank Retired Officers Association vs. Union of India*, 1992 Supp (1) SCC 664: (1992 AIR SCW 460), the Court was also considering the case of the Pension Scheme and contributory Provident Fund Scheme and held that in the case of an employee governed by the Contributory Provident Fund Scheme his retirement and receipt of the Contributory Provident Fund amount but in the case of an employee governed under the Pension Scheme his relations with the employer merely undergo a change but do not snap altogether. It is for this reason in case a pensioners it is necessary to revise the Pension periodically as the continuous fall in the rupee value and the rise in prices of essential commodities necessitates an adjustment of the Pension amount but that is not the case of employees governed under the Contributory Provident Fund Scheme, since they had received the lump sum payment which they were at liberty to invest in a manner that would yield optimum return which would take care of the inflationary trends and this distinction between those belonging to the Pension Scheme and those belonging to the Contributory Provident Fund Scheme has rightly emphasized by this Court in *Krishena Kumar's case*.

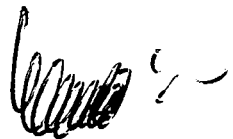
5. In view of the aforesaid series of decisions of this Court explaining the distinguishing *Naraka's case* (AIR 1983 SC 130) the conclusion is irresistible that the petitioner who retired in the year 1972 and did not exercise his option to come over to the Pension Scheme even though he was granted six opportunities is not entitled to opt for Pension Scheme at this length of time....."

4. The law laid down by the Apex Court in the case of V.K.Ramamurthy is squarely applicable in the facts and circumstances of this case. The Pension Scheme was introduced by the railway since 16<sup>th</sup> November, 1957 when the husband of the applicant was in service. Prior to death of husband of the applicant in the year 1971 as many as six options were given to the husband of the applicant to come over to the Pension Scheme and yet the husband of the applicant did not choose to switch over to the Pension Scheme and deliberately chose to remain under CPF scheme. Thus, he was not entitled to Pension Scheme. Pension Scheme and CPF Schemes are structurally different as held by the Apex Court in the case of V.K.Ramamurthy as reproduced above. As such, the applicant is not entitled to any relief.

6. For the foregoing reasons, the present OA is bereft of merit and is accordingly dismissed with no order as to costs.

  
(J.P. SHUKLA)

MEMBER (A)

  
(M.L. CHAUHAN)

MEMBER (J)

R/