

Pension Option

**GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS (RAIL MANTRALAYA)
RAILWAY BOARD**

**MOST IMMEDIATE
COURT CASE**

No. F(E)III/2001/PN1/46.

NEW DELHI

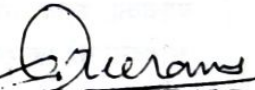
Dated: 19.07.2002

**The General Managers & FA&CAOs,
All Zonal Railways.**

Sub: Judgement dt. 22.3.2002 of the High Court of Judicature at Madras upholding Writ Petition No. 18256/1998 and W.M. P.No. 27656/98 filed by Southern Railway on behalf of UOI against CAT/Chennai order dt. 3.8.1998 in OA No. 387/96.

In continuation of Board's letter No. F(E)III/2001/PN1/46 dt. 30/8/ 3.9.2001 circulating a copy of judgement dt. 27.3.2001 of the High Court of Judicature at Madras dismissing the Writ Petition No. 12751 of 1999 filed by Shri S. Sarath, ex-Railway Board Member (Staff) regarding grant of fresh pension option, a copy of yet another judgement dt. 22.3.2002 of High Court of Judicature at Madras upholding the W.P. No. 18256/98 and W.M.P. No. 27656/98 filed by Southern Railway on behalf of UOI (Secretary and Chairman, Railway Board) against CAT/Chennai order dt. 3.8.1998 in OA No. 387/1996 granting pension option to late Shri S. Narasimhan, Retd. Chief Clerk/S.Rly is circulated herewith for information and guidance. It is desired that in respect of similar applications, if any, counters should be filed in consultation with the conducting Railway counsel, praying for dismissal of applications on the basis of aforementioned judgement of the High Court of Judicature at Madras.

2. Please acknowledge receipt.
3. Hindi version is enclosed.


(S. SREERAM)
**Dy. Director Finance (Estt.)III.,
Railway Board.**

DA: As above.

Copy to:

**EDPC-I, DPC, EDV(E), DS(D),EDE(Res), EDE,JS, JS(G),JS(E),JDE (G), JD (PG),
E(G),ERB-III, E(O)I, II, III & (CC), PC-III, IV,V, E(P&A)I, II & ERB-I.**

Copy to Smt. Ganga Murthy, Director, Department of Pension & Pensioners' Welfare, 3rd Floor, Lok Nayak Bhavan, Khan Market, New Delhi.

भारत सरकार
रेल मंत्रालय (रेलवे बोर्ड)

सं. एफ (ई) III/2001/पी एन 1/46

नई दिल्ली, दिनांक

महाप्रबंधक एवं विस मुलेधि,
सभी क्षेत्रीय रेलें.

विषय :- ओ ए सं. 387/96 में केन्द्रीय प्रशासनिक अधिकरण/चेन्नै के दिनांक 3.8.1998 के आदेश के विरुद्ध भारतीय संघ की ओर से दक्षिण रेलवे द्वारा दायर अनुमति याचिका सं. 18256/1998 तथा डब्ल्यू एम अनुमति याचिका सं. 27656/98 के समर्थन में उच्च न्यायालय के मद्रास न्यायाधिकरण का दिनांक 22.3.2002 का फैसला.

बोर्ड के दिनांक 30.8/3.9.2001 के पत्र सं. एफ (ई) III/2001/पी एन 1/46, जिसके साथ पेंशन संबंधी नया विकल्प प्रदान करने के संबंध में श्री एस. शरत, रेलवे बोर्ड के पूर्व सदस्य (कार्मिक) द्वारा दायर 1999 की अनुमति याचिका सं. 12751 को खारिज करने से संबंधित उच्च न्यायालय के मद्रास न्यायाधिकरण के दिनांक 27.3.2001 के फैसले की एक प्रति परिपत्रित की गई है, के क्रम में ओ. ए. सं. 387/1996 में केन्द्रीय प्रशासनिक अधिकरण/चेन्नै के दिनांक 3.8.1998 के निर्णय के विरुद्ध भारतीय संघ (सचिव तथा अध्यक्ष, रेलवे बोर्ड) की ओर से दक्षिण रेलवे द्वारा दायर अनुमति याचिका सं. 18256/98 तथा डब्ल्यू एम. याचिका सं. 27656/98 के समर्थन में उच्च न्यायालय के मद्रास न्यायाधिकरण द्वारा दिए गए दिनांक 22.3.2002 के एक अन्य निर्णय की प्रति भी सूचना और मार्गदर्शन के लिए इसके साथ परिपत्रित की जा रही है. यह वांछा की जाती है कि इसी प्रकार के आवेदनों, यदि कोई हों, के संबंध में उनके विरुद्ध कोई भी याचिका, रेलवे अधिकारियों से मद्रास उच्च न्यायालय के न्यायाधिकरण के उपर्युक्त फैसले के आधार पर आवेदनों को खारिज करने का अनुरोध करते हुए, दायर की जाए.

2. कृपया पावती दें.

संलग्नक : यथोक्त.

उत्सव श्रीराम
(एस. श्रीराम)

उप निदेशक, वित्त (स्था.) III,
रेलवे बोर्ड

प्रतिलिपि -

श्रीमती गंगामूर्ति, निदेशक, पेंशन एवं पेंशन भोगी कल्याण विभाग, तीसरी मंजिल, लोक नायक भवन, खान मार्किट, नई दिल्ली.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22-03-2002

CORAM:

THE HONOURABLE MR. JUSTICE R. JAYASIMHABABU

AND

THE HONOURABLE MR. JUSTICE F. M. IBRAHIM KALIFULLA

WRIT PETITION NO. 18256 OF 1998 AND
WRIT MISCELLANEOUS PETITION NO. 27656 OF 1998

Union of India, rep. by
Secretary,
Ministry of Railways,
Bhavan,
New Delhi-110 001.

The Chairman,
Railway Board,
Government of India,
Bhavan,
New Delhi-110 001.

The General Manager,
Eastern Railway,
Town,
Kolkata-600 003.

..Petitioners

Versus

The Central Administrative Tribunal
Kolkata Bench, rep. by its Registrar,
Kolkata-600 104.

S. Alamelu Narasimhan

Chandramouli

Allyani Ramkumar

Mohana

..Respondents

For Petitioners :: Mr. V. Radhakrishna

For Respondents :: Tribunal -R1
No appearance for R2 to R5

:: ORDER ::

IBRAHIM KALIFULLA, J.

The challenge in this Writ Petition is to the order of the Central Administrative Tribunal dated 3-8-1998 made in O.A.No.387/96, in and by which, the Tribunal issued a direction to the petitioner to apply the liberalised pension

scheme in the case of the deceased applicant by following of the necessary formalities in accordance with the Circular dated 23-7-1974 subject to the condition that the legal heirs of the deceased applicant, namely, the respondents 2 to 5 herein refund the amount received by the deceased applicant by way of government contribution as well as special contribution to provident fund.

2. While granting the above said relief, the Tribunal mainly relied on a judgment of the Honourable Supreme Court reported in 1997 (1) SCC 514 (UNION OF INDIA AND OTHERS versus D.R.R.SASTRI). In the above stated judgment of the Honourable Supreme Court, a direction came to be issued to the Railways in respect of an employee who happened to be in the service of the Railways on 1-1-1973, to whom the circular dated 23-7-1994 was applicable, who came forward to exercise the option only in the year 1993, which was turned down by the Railways and when the said rejection was challenged by him before the Tribunal, the challenge was accepted, whereby, the Railways was directed to accept the option exercised by the retiree, even though, the option was exercised nearly after 18 years. The direction of the Tribunal was upheld by the Honourable Supreme Court on the ground that the Railways granted a similar benefit to another employee who also retired in the year 1973, but who was granted the relief in the year 1994. In fact, a contention was raised before the Honourable Supreme Court that in view of the Constitutional Bench decision of the Supreme Court, Court reported in 1990(4) SCC 207 (KRISHENA KUMAR versus UNION OF INDIA AND OTHERS, ETC.), the direction of the Tribunal cannot be sustained. However, the Honourable Supreme Court, in view of the special facts involved in that case, declined to interfere with the order of the Tribunal.

3. Mr.V.Radhakrishnan, learned counsel appearing for the petitioner contended that the issue concerning the grant of relief was dealt with in extenso in the Constitutional Bench judgment of the Honourable Supreme Court reported in 1990(4) SCC 207, wherein the Honourable Supreme Court, while considering the various orders of the Railways, right from the year 1957 till the year 1987, in and by which, at different point of time, the Railways came forward to extend the benefit to its employees who opted to accept the provident fund benefits as their service benefit, to switch over to the pensionary benefits for different reasons.

4. The Circular dated 23-7-1994 was one such order which was considered by the Honourable Supreme Court and while dealing with the said Circular, the position relating to the same was noted as under :

(viii) Pension Option dated July 23, 1974.

This option was based on similar orders issued by Ministry of Finance. The rationale behind this option was that the recommendations of the 3rd Pay Commission became effective from January 1, 1973 but pay structure of all employees who were in service on January 1, 1973 got altered through orders issued piecemeal from time to time. There were liberalisations in the pension scheme also in the form of

increase in the amount of gratuity as also introduction of the concept of Dearness Relief made available to the pensioners. This option was made available to all employees who were in service on January 1, 1973. Employees who had retired earlier did not get affected in any way by the recommendations of the 3rd Pay Commission and were accordingly not given this option to come over to Pension Scheme. This option was available up to January 22, 1975, a period of 6 months.

The option given vide letter of July 23, 1974 was extended from time to time till December 31, 1978. The reason why this extension had to be allowed was that the revised pay scales recommended by the Pay Commission for many of the categories could not be finalised and notified. Till such time, the revised pay scale admissible to each category was made known, it was impossible for the concerned staff to assess the benefit admissible for opting for the revised scale as also for the pension option. The pension option had therefore to be extended from time to time in this manner.

The letters authorising extension of the date of option were not very clearly worded with the result that the pension option during the periods of extension was granted even to those who had retired before such extension became admissible but who were in service on January 1, 1973. The clarification was accordingly issued to all the Railways stating that the subsequent orders extending the date of option were applicable to serving employees only, but the cases already decided otherwise may be treated as closed and need not be opened again.

It was subsequently represented by the organised labour that the options actually exercised up to December 31, 1978 should be treated valid even though such cases may not have been decided by that date. This was agreed to and orders issued accordingly." and in para 14 of the said order, the Honourable Supreme Court was pleased to observe as under:

"14. The learned Additional Solicitor General states that each option was given for stated reasons related to the options. On each occasion, time was given not only to the persons in service on the date of Railway Board's letter but also to persons who were in service till the stated anterior date but had retired in the meantime. The period of validity of option was extended in all the options except Nos. 3rd, 4th, 5th and 7th. We find the statements to have been substantiated by facts. The cut-off dates were not arbitrarily chosen but had nexus with the purpose for which the option was given."

5. The learned counsel also brought to our notice the subsequent Judgment of the Honourable Supreme Court reported in 1998(9) SCC 721 (UNION OF INDIA AND OTHERS versus KAILASH), where again, when a similar belated claim was countenanced by the Central Administrative Tribunal of Calcutta Bench, and when the same was challenged by the Union of India before the Honourable Supreme Court, the respondents

in that case sought reliance upon the Honourable Supreme Court reported in 1997(1) SCC 514 (INDIA & OTHERS versus D.R.R. SASTRI), to sustain the order of the Tribunal. However, the Honourable Supreme Court of the Constitutional Bench decision of the Honourable Supreme Court reported in 1990(4) SCC 207 (KRISHENA KUMAR versus UNION OF INDIA AND OTHERS, ETC.), the Tribunal was wrong in taking a contrary view by relying upon some other decision which was decided on its own facts.

6. The learned counsel therefore contended that the order of the Tribunal in the case on hand is also therefore liable to be set aside in the light of the decision of the Constitutional Bench of the Honourable Supreme Court reported in 1990(4) SCC 207 (KRISHENA KUMAR versus UNION OF INDIA AND OTHERS, ETC.). We are in full agreement with the submission of the learned counsel for the petitioner. The subsequent judgment of the Honourable Supreme Court reported in 1998(9) SCC 721 (UNION OF INDIA & OTHERS versus KAILASH), is also very relevant for the disposal of this Writ Petition. The said judgment is extracted in full which reads as under:

"1. Leave granted. Heard learned counsel for the parties. Learned counsel for the appellants submitted that the point raised in this appeal is clearly covered by the decision of this Court in Krishna Kumar V. Union of India (1990(4) SCC 207) and the Tribunal was wrong in taking a contrary view relying upon the decision of this Court in R. Subramaniam v. Chief Personnel Officer, Central Railway, Ministry of Railways (1996 (10) SCC 72). In R. Subramaniam what had happened was that benefit of the order passed in his favour was not given to him even though SLP filed by the Union of India against it was dismissed and the review application filed by it thereafter was also dismissed. R. Subramaniam therefore filed a writ petition which came to be allowed. That case was thus decided on its own facts. The Tribunal was therefore not right in deciding the respondent's application in his favour by following that decision. Releasing this difficulty in this way, learned counsel for the respondent tried to support the order of the Tribunal with the decision of this Court in Union of India V. D.R.R. Sastri (1997 (1) SCC 514). That case also was decided on facts special to it. This Court refused to interfere with the order of the Tribunal because the Union of India had failed to explain why the benefit, which was given to K.R. Kasturi was not given to D.R.R. Sastri even though his case was similar. Obviously the two-Judge Bench would not have intended to take a view contrary to what was held by the Constitution Bench of five Judges in Krishena Kumar case (1990(4) SCC 207). Nor would it have intended to lay down that because a wrong benefit is given to one, similar benefit is required to be given to others similarly situated as denial of the same would amount to discrimination violative of Article 14 of the Constitution. Therefore, D.R.R. Sastri case has to be regarded as a case decided on its special facts.

2. Following the decision in Krishena Kumar case, we allow this appeal and set aside the order passed by the Central Administrative Tribunal, Calcutta Bench with the

result that the application filed by the respondent before the Tribunal stands dismissed."

7. On a reading of the Constitutional Bench decision of the Honourable Supreme Court, it is clear that the date fixed in each of the Notification for exercise of the option for the employees to switch over to pension scheme was to be adhered to and that the cut-off dates were not arbitrarily chosen but had nexus with the purpose for which the option was given. It was also made clear that the period of validity of the option was extended on certain circumstances for stated reasons. When the position was stated in such categorical terms by the Hon'ble Supreme Court with reference to the various circulars which inter alia included the circular dated 23-7-1974 there is no gain saying that merely because in a different case, namely, in the one reported in 1997(1) SCC 514 (UNION OF INDIA & OTHERS versus D.R.R.SASTRI) in view of the special facts involved in that case, the Honourable Supreme Court was pleased to confirm the order of the Tribunal which chose to grant the relief, on the basis of the said decision, the employees who failed to exercise their option within the stipulated time and who came forward to exercise their option at a highly belated point of time, such option should also be accepted irrespective of the belated nature of exercise of such option and grant the relief in their favour. As interpreted by the Honourable Supreme Court in the subsequent decision reported in 1998(9) SCC 721 (UNION OF INDIA AND OTHERS versus KAILASH) in the light of the decision of the Constitutional Bench of the Honourable Supreme Court reported in 1990(4) SCC 207, there is no scope for entertaining the claim of the deceased applicant in the case on hand as well who came forward to exercise the option after a delay of nearly 18 years. We are therefore unable to sustain the order of the Tribunal impugned in this Writ Petition.

In the result, the Writ Petition is, therefore, allowed. The order impugned in this Writ Petition is hereby set aside. No costs. Consequently, W.M.P. is closed.

22-03-2002

suk

Index: Yes

Web site: Yes

Sd/-

Assistant Registrar

/ True Copy /

B. Sakkn Bas 1.4.202
Sub. Assistant Registrar

Copy to

1. The Secretary,
Union of India,
Ministry of Railways,
Rail Bhavan,
New Delhi-110 001.

2. The Chairman,
The Railway Board,
Government of India,
Rail Bhavan,
New Delhi-110 001.

3. The General Manager,
Southern Railway,
Park Town,
Chennai-600 003.

4. The Registrar,
The Central Administrative Tribunal
Chennai Bench,
Chennai-600 104.

WP.No.18256 of 1998.

MK