

Pension Option

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

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

NEW DELHI

Dated: 8.01.2003

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

Sub: Judgement dt. 24.9.2002 of CAT/Calcutta in O.A. No. 1273/2000
filed by Shri K.K. Das, Ex. CCS/E.Rly Vs. UOI & Others.

In continuation of Board's letter of even number dt. 1.8.2002, a copy of another judgement dt. 24.9.2002 of CAT/Calcutta in O.A. No. 1273/2000 filed by Shri K.K. Das, ex.CCS/E.Rly against UOI for grant of pension option after a period of 21 years from his retirement on 31.1.1979, dismissed on merits and on the ground that it is time barred, is circulated herewith for information and guidance.

2. 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 CAT, Calcutta.

3. Please acknowledge receipt.


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

DA: As above.

Copy to:

EDPC-I, DPC, EDV(E), DS(D), DE, DE(G), 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 and ERB-I.

Copy to Smt. Ganga Murthy, Director (PP), DOP&PW, 3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi.

श्री के.के.दास द्वारा पेंशन विकल्प के लिए दापर याचिका सं. 1273/2000 को खारिज करते हुए केन्द्रीय प्रशासनिक अधिकरण, कोलकत्ता का दिनांक 24.9.2002 का फैसला सूचनाय पत्रोपबन्धित किया जाता है।

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1273 of 2000

Present :

Hon'ble Mr. Justice G.L. Gupta, Vice-Chairman
Hon'ble Mr. S. Biswas, Administrative Member

K. K. Das, S/o late Karuna Kumar Das,
retd. Chief Commercial Superintendent, E.
Rly., Calcutta, R/o "Sesh Kiran", 67,
Purva Palli, Shantiniketan, Bolpur,

... Applicant

VS

1. Union of Indian through the Chairman,
Railway Board & Ex-officio Principal
Secretary, Government of India, Ministry
of Railways, Rail Bhawan, New Delhi-1

2. The General Manager, Eastern Railway,
17, Netaji Subhas Road, Calcutta-7

3. The Chief Personnel Officer, Eastern
Railway, 17, Netaji Subhas Road,
Calcutta-1

... Respondents

For the Applicant : Mr. P. B. Misra, counsel

For the Respondents: Mr. M. K. Bandopadhyay, counsel

: : Date of order: 24.9.02

ORDER

Per Mr. Justice G. L. Gupta,

The applicant was in Railway service and he retired on
31.1.79. He was C.P.F. holder and he is more than 80 years old


2. The case for the applicant is that the pension scheme was
introduced in the Railway since 1957 and the options were given
to the employees from time to time including the retired ones for
opting the pension scheme, but the option for switching over to
the pension scheme was not available during the period from
1.1.79 to 31.3.79 and thus the applicant was deprived from opting
for pension. It is averred that in view of the decision of the
Bombay Bench which has been upheld by the Supreme Court, the

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applicant is entitled to switch over to the pension scheme. It has been prayed that the respondents be directed to grant pension to the applicant from the date of the retirement.

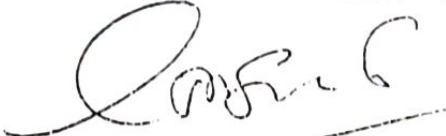
3. The reply of the respondents is that the applicant did not opt for pension while in service, whereas there were many opportunities for him to give his option. Therefore, he is not entitled to opt for pension now.

4. We have heard the learned counsel for the parties and perused the documents placed on record.



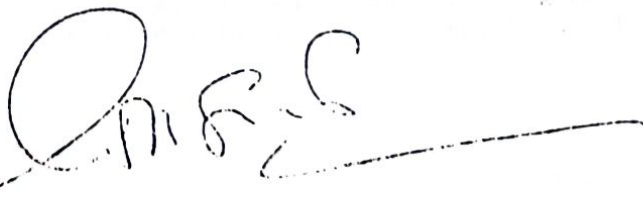
5. The contention of Mr. Misra, learned counsel for the applicant was that the Bombay Bench of this Tribunal in the case of Ghanasham Dass and D'Souza vs. CPO/Central Railway (TN No.27/1987) decided on 11.11.87 held that denial of the benefit of the pension scheme to the employees who retired during the period from 1.4.69 to 14.7.72 was arbitrary, discriminatory and unreasonable because the Railway servants who retired during that period did not have an opportunity to opt for pension scheme. He pointed out that the Hon'ble Supreme Court dismissed the SLP No.5973 of 1988 preferred against the order of the Bombay Bench vide order dated 6.5.91 and that the review application No.63 of 1987 filed in the same matter was also dismissed vide order dated 6.5.91. He canvassed that the case of Krishena Kumar v. Union of India & Ors. [AIR 1990(2) SC 555] does not come in the way of grant of relief to the applicant in view of the observations made at paras 28 and 29 of the report.

6. On the other hand, Mr. Bandopadhyay, learned counsel for the respondents contended that the applicant had enough opportunities to give option for the pension scheme, but he did not opt and chose to remain under the provident fund scheme



because it was beneficial to him. His contention was that it was not material whether on the date of the retirement of the applicant the option for pension was available, but the material thing is that whether the applicant had got opportunity to opt for pension or not. Relying on the cases of Union of India and Ors. vs. A. J. Fabian (1997) 10 SCC 465), Krishna Kumar & Ors. v. Union of India & Ors. cited by the learned counsel for the applicant and D.T.C. Retired Employees' Association and others etc. etc. v. Delhi Transport Corporation, etc. (2001 SC-SLR 481) he prayed that the application be dismissed.

7. We have given the matter our thoughtful consideration. It is not disputed that the Benchy Bench had granted the relief in such matter where the employees had filed petition long after his retirement on the ground that he did not have an opportunity to give option for pension scheme and the Hon'ble Supreme Court dismissed the SLP against the said judgement. However, the matter does not end here. In the case of Krishna Kumar (supra) the Constitution Bench of the Apex Court has laid down the principle that those who chose contributory fund scheme and received their contribution as also that of their employers at the time of retirement constitute a separate class and could not be compared with those who opted for pension scheme and chose to receive pension subsequent to their retirement, the total amount receivable upon their remaining life span. Their Lordships further observed that while in the case of pension retirees who are alive the Government has a continuing obligation and if one is affected by dearness the others may also be similarly affected, but in the case of P.F. retirees each one's rights having finally crystallised on the date of retirement and receipt of P.F. benefits and there being no continuing obligation thereafter they could not be treated at par with the living pensioners.



It is true that at paras 28 and 29 of the report their Lordships have referred to the decision of the Bombay Bench of this Tribunal and distinguished the same on facts. In our opinion on the basis of the observations made at para 29 of the report, it cannot be said that even after the decision in the case of Krishna Kumar & Ors. (supra) the PF retirees are entitled for pension though ^{they had} not opted for the same while in service.



The same question came to be considered by their Lordships of the Supreme Court in the case of V. K. Ramamurthy v. Union of India [1996 SCC(LAS) 1311] wherein the petitioner had retired in the year 1972 without exercising the option to come over to the pension scheme. It was observed that the petitioner had six opportunities to opt for pension scheme and he having failed to do so was not entitled to opt for pension. In that case their Lordships noticed the observations made by the Constitution Bench in the case of Krishna Kumar upholding the decision of the Bombay Bench of the Tribunal and thereafter the observation as follows :-

"In view of the aforesaid series of decisions of this Court explaining and distinguishing Nakara 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 case and granted the relief without considering that Nakara decision has been distinguished in the 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 case. The other decision of this Court, in the case of R. Subramaniam the Court merely relied upon the dismissal of special leave petition against the judgment of the 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. In the aforesaid

- 5 -
premises and in view of the legal position as discussed above the writ petition is dismissed but in the circumstances without any order as to costs.

9. It is significant to point out that in that case the date of retirement of the petitioner was 14.7.72 on which date also the option facility was not available since the date was not extended beyond 31.3.69. Thereafter options were permitted from 15.7.72. Thus this case applies on all fours to the instant case. In the instant case also the contention of the applicant is that the option was not available to him on the date of his retirement i.e., 31.1.79.

Their Lordships observed that the applicant had six opportunities to opt for the pension scheme during his service period but he did not opt and therefore, he is not entitled to come under the pension scheme. The matter was considered by the Hon'ble Apex Court in the case of A. J. Fabian (supra). In that case also the employee had retired on 21.4.72 without opting for the pension scheme. It is noticed that the option was not available on 21.4.72 as it was not extended beyond 31.3.69 and was again made available from 15.7.72, yet their Lordships did not allow the claim of the applicant to switch over to the Pension Scheme. In that case also the observation of the Constitution Bench in the Krishna Kumar case with regard to the Bombay Bench decisions were noticed. It was held that since the petitioner was given six opportunities to switch over to opt for the pension, but he did not avail of the same and the application made in the year 1993 to permit him to opt for the Pension Scheme was not acceptable.

10. It is obvious that the applicant cannot get the relief only on the ground that the option of pension was not available to him on the date of his retirement. The applicant had as many as 8 opportunities before the date of his retirement to switch

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over to the Pension Scheme, but he did not avail of the same, Obviously because he thought that the Provident Fund Scheme was more beneficial to him.

11. The Principal Bench of this Tribunal in the case of A. Balakrishnan vs UOI & Ors. and C. B. Lal vs. UOI & Ors. (OAs 1368/97 and OA 1372/97) decided on 27.10.99 has held the similar view.

This Bench also in the case of Salil Kumar Dutta vs. UOI & Ors. (OA 528/01) decided on 29.1.02 took the similar view. There is no cause to take a view different from the one taken consistently by this Tribunal which is based on the Supreme Court decision.

12. Having considered the entire material on record, we do not find any merit in this case and therefore, we dismiss this application with no order as to costs.

(S. Biswas)

MEMBER (A)

(G. L. Gupta)

VICE-CHAIRMAN

उत्तराखण्ड प्रवि न्यायिक
Certified to be true copy

Court Officer

उत्तराखण्ड प्रवि न्यायिक
Tribunal

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(b) Name of the applicant M. K. Bhand
(c) Dt. of presentation or application for copy 24.9.02
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