
(2011) 08 DEL CK 0123
In the Delhi High Court
Case No : Writ Petition (C) 3306 of 2005

K.S.R. CHARI

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 23-08-2011

Acts Referred:

Citation : (2011) 7 AD 74 : (2011) 182 DLT 539

Hon'ble Judges : Dr. S. Muralidhar, J

Bench : Single Bench

Advocate : D.P. Mukherjee, S.K. Choudhary, D.S. Garg and Nandini Sen, for the Appellant; Anip Sachthey, Mohit Paul, Shagun Matta for R-2 and R-3, R.V. Sinha and A.S. Singh for R-1/UoI, for the Respondent

Final Decision : Allowed

Judgement

S. Muralidhar, J.—The Petitioner, who is 91 years old, has approached this Court seeking directions to the Government of India ("GoI") in the Ministry of Coal and Mines ("MoCM") (Respondent No. 1), Coal India Limited ("CIL") (Respondent No. 2), and the Central Coalfields Ltd. ("CCL") (Respondent No. 3) to provide him the benefits of the Railway Pension and Family Pension Scheme ("RP/FPS") with retrospective effect from 1st December 1977, the date of his retirement, and also pay interest on the arrears of pension. The Petitioner also challenges a decision dated 24th October 1998 of the CIL rejecting the Petitioner's application seeking to opt for the liberalized pension and Family Pension Scheme ("FPS") as well as the decision dated 5th August 2004 of the MoCM rejecting a similar request.

2. The Petitioner joined the State Railways Coal Department on 14th January 1942. At that time, the Railways had no pension scheme. There was only a State Railways Provident Fund ("SRPF") Scheme. Consequently, the Petitioner commenced contributing to the SRPF from the beginning of his service career.

3. After Independence, a new public sector undertaking, i.e., the National Coal

Development Corporation Limited ("NCDC?") was formed. The State Railway Collieries along with their employees were en bloc transferred by the GoI to the NCDC. The Petitioner states that there was confusion as regards the service conditions of the transferred employees. As a result a Presidential Order dated 16th August 1965 was issued by the GoI in the Ministry of Steel and Mines ("MoSM?"). Para 2 of the said Presidential Order reads as under:

"2. The Corporation has agreed that if you are agreeable, the Corporation will take you in their employment with effect from the 1st day of October, 1956, on the same tenure, the same remuneration, the same seniority, the same terms and conditions and the same rights and privileges as to pension, leave, gratuity, provident fund and other matters as would have been admissible to you had you continued to be in Government service. If you are agreeable to this arrangement, you may signify your assent in the enclosed Form I on or before... day of ... 1965."

4. Further, in response to a query "Whether pension and gratuity will be made available according to the Government Pension Rules" it was clarified by the Deputy General Manager (A) NCDC by a letter dated 26th November 1965 that "As these employees will be governed by the Civil Services Rules, on their exercising option for Corporation Service, they will be entitled to pension and gratuity according to the Central Government Pension Rules. Similarly, they will be allowed to commute pension as admissible under Central Government Pension Rules."

5. The Petitioner states that although on 16th November 1957 the Railway Board for the first time introduced a pension scheme for its employees, the Petitioner and others whose services had been transferred to the NCDC continued to remain under the SRPF as the terms and conditions of their transfer to the NCDC were still being negotiated. The Petitioner states that the promise held out in para 2 of the aforementioned Presidential Order dated 16th August 1965 was one reason why the ex-employees of the State Railway Collieries who were transferred to the NCDC continued in the SRPF.

6. The Petitioner was selected by the Union Public Service Commission ("UPSC?") and appointed as the Coal Mining Adviser on deputation in the GoI in the Ministry of Mines and Metals with effect from 6th August 1966.

7. The Petitioner received a communication dated 29th April 1968 from the NCDC whereby he was given an option as per the Presidential Order to switch over to the pension scheme of the NCDC which was equivalent to opting to the pension scheme of the Indian Railways. By letter dated 17th August 1968, the Petitioner exercised his option for continuing in the SRPF.

8. The main issue that arises in the present writ petition is whether despite the Petitioner opting to remain in the SRPF by his letter dated 17th August 1968, there was any obligation on the part of the NCDC or the GoI to inform him of the periodic extensions of time given thereafter to ex-employees of the Railways to

opt for the FPS. According to the Respondents, there was no such obligation. However, the tone and tenor of the circulars by which the time for opting for the pension scheme was extended indicates that notwithstanding that Railway employees had at one point in time decided to continue in the SRPF, such employees would also be given the further option of moving to the pension scheme.

9. Mr. D.P. Mukherjee, learned Senior counsel appearing for the Petitioner apart from reiterating the submissions made in the written submissions drew the attention of the Court to the replies received to certain queries raised by the Petitioner by way of the application under the Right to Information Act, 2005 ("RTI Act?"). Mr. Mukherjee submitted that it was not sufficient for the NCDC to have communicated just once to the Petitioner by way of a circular dated 29th April 1968 seeking his option for the liberalized FPS. The Petitioner had maintained his lien throughout in the NCDC even when he was posted to the Department of Coal in Delhi. CCL however never bothered to inform him about the subsequent Railway circulars issued between 1974 and 1981. Mr. Mukherjee relied upon the decisions of the Supreme Court in *Union of India (UOI) and Others Vs. D.R.R. Sastri*, *Harjinder Singh Vs. Punjab State Warehousing Corporation*, and *Dakshin Haryana Bijli Vitran Nigam v. Bachan Singh* [decision dated 30th July 2009 in CA No. 4903 of 2009]. He also relied on the decisions in *Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, and *Delhi Cloth and General Mills Ltd. Vs. Union of India (UOI)*, to urge that the principle of promissory estoppel precluded the Respondents from denying to the Petitioner the chance of opting for pension on the plea of limitation. On the strength of the observations of the Supreme Court in *Grid Corporation of Orissa and Others Vs. Rasananda Das*, it was submitted that pension was a hard earned bounty which could not be taken away. Citing the case of Mr. B.L. Ohri who after coming over to the NCDC was admitted to FPS, it was submitted by Mr. Mukherjee that the Petitioner was similarly placed and could not be discriminated against.

10. Appearing for Respondents 2 and 3, Mr. Anip Sachthey, learned Counsel submitted that the Petitioner had been given an offer way back on 29th April 1968 to exercise his option for pension scheme. He had consciously made a choice by the letter dated 17th August 1968 to remain in the SRPF. He wrote a letter to this effect on 17th August 1968 and thereafter there was no necessity for the Respondents to time and again inform him of the extension of the dates for exercising his options. As regards the instances cited by the Petitioner of other employees having been given the facility of exercising their options even after the last date having been crossed, Mr. Sachthey submitted that these were perhaps wrongly granted and two wrongs could not make a right. Mr. Sachthey submitted that the present writ petition was itself barred by laches. The Petitioner retired in 1977 and made no efforts to claim pension till 1998 when on his own showing he suddenly realized after a conversation with an acquaintance that he ought to have been informed of the extension of the time for opting for

the pension. Relying extensively on the decision of the Supreme Court in Union of India (UOI) and Others Vs. M.K. Sarkar, , it is submitted that a similar claim was negated by the Supreme Court. It is submitted that the delay of over 22 years in seeking relief was fatal to the case of the Petitioner. Mr. Sachthy submitted that the Respondents could not be stated to have acted unfairly or arbitrarily in not acceding to the Petitioner's request for opting for the liberalized FPS.

11. The sequence of events as narrated in the petition show that in the circular dated 16th August 1965 an assurance was indeed held out to all the ex-railway employees who were transferred en bloc to the NCDC that their retiral, security and other service conditions would be the same as would have been admissible to them had they continued in government service. The Petitioner could not continue throughout in NCDC and was sent on deputation to the Ministry of Mines and Metals in 1966. The Petitioner does not deny that he received the communication dated 29th April 1968 in response to which he wrote to the NCDC on 17th August 1968 opting to remain in the SRPF. His point is that thereafter he was not informed of the extension of dates by the Railways from time to time for opting for the pension.

12. Significant in this connection is the note prepared for the 183rd Meeting of the Board of Directors of CCL. Item No. 16 (ii) of the Agenda note reads as under:

"Item No. 16(ii)

Sub: Grant of option to Railway Servants governed by the State Railway Provident Fund (Contributory) Rules to come over to pensionable service and to the Family Pension Scheme, 1964.

The employees governed by Railway Rule and who have retained SRPF (Contributory) benefits are required to be given option for Railway pension including Family Pension. The last opportunity given by us was 31.03.1976. Thereafter, the Railway Board have themselves extended the deadline and have issued circulars inviting options from time to time. The last circular was issued by the Railway Board vide their No. F. (E) III 79 PNI/4 dated 01.09.1980. Vide above circular, the eligible officers and staff governed by Railway Rules who are desirous of exercising option of Family Pension Scheme for Railway Employees, 1964, are requested to do so in the prescribed proforma on or before 22nd Feb., 1981.

The said circular was not received in this office in time and accordingly the same could not be circulated to obtain options from such employees who were desirous of exercising their option. As stated above, the last opportunity given by us was 31.03.1976 although the Railway Board from time to time had been extending the date for submission of option.

Since the last date is already over as the management could not circulate the

same due to reason stated above, it is submitted that we may extend the date for option till 30.09.1981 or 3 months time from the date of issue of this circular."

13. Annexed to the agenda note was the copy of the Railway Board's circular dated 23rd July 1974. A further annexure to the agenda was a note on the options given up to that time by the Railway Board and the extensions given for opting for pension. The above proposal was approved at the Board meeting.

14. Consequent upon the above meeting of the CCL, a note dated 29th June 1981 was sent by the CCL to all the Heads of Departments of its various units throughout the country. A reference was made to the Railway Board's circulars issued from time to time extending the period for exercising option. The gist of the above circulars was summarized as under:

"It will be noticed from these circulars that the following categories of railway servants will be allowed to exercise fresh option for Railway Pension/Family Pension scheme 1964:

1. Those who have retained the SRPF (Contributory) benefits and
2. Who were in service on 01.01.1973 and those who quitted/retired on or after 01.01.1973 and that this option should also be allowed in the cases of Railway servants who were in service on 01.01.1973 but who died/may die during the period from 01.01.1973 to the last date for exercise of the above option. It has been decided to adopt these circulars which will be applicable in the case of monthly rated employees of former NCDC who were governed by Railway Rules and who were members of SRPF (contributory) and also those employees who are still on the rolls of the company who continued to retain the State Railway PF benefit. The last date for exercising the option will be till 30.09.1981 or 3 months time from the date of issue of this circular. No option will be accepted after this fixed date. In the case of those employees who have since retired from service, the employer's share of contribution and the excess special contribution to S.R.P.F. drawn by them or the death-cum-retirement gratuity will be adjusted against the accrued pension. In the case of those Railway employees who are still in service and are retaining their State Railway Provident Fund benefits, their existing SRPF account will be converted to non-contributory account if they now opt for pensionary benefit."

15. The said letter dated 29th June 1981 of the CCL required all the Heads of Departments "to take urgent steps to bring the provisions of the Railway Board's circular to the notice of all concerned employees under their administrative control." The above circulars make it abundantly clear that even those ex-railway employees who had opted to continue the SRPF after coming over to the NCDC would be given a chance to opt for the RP/FPS. The only requirement was that the employer's share of contribution and the excess special contribution to SRPF drawn by them or the death-cum-retirement gratuity would be adjusted against the accrued pension.

16. The core argument of the learned Counsel for Respondents 2 and 3 that since Mr. Chari had opted for the SRPF by its letter dated 17th August 1968 he was thereafter precluded from exercising his option for the pension scheme is totally belied by the aforementioned decision taken by the Board of Directors of the CCL at the meeting held on 1st June 1981.

17. The further factual position that emanates from a perusal of the records is that at no point in time was the Petitioner actually informed of the extension of time granted by the Railway Board to ex-railway employees for exercising their options. This has been clarified by the CCL in response to the queries raised by the Petitioner under the RTI Act copies of which have been placed by the Petitioner on record together with an affidavit dated 6th November 2009. In particular reference to the Petitioner, a query was raised whether he was informed of the circulars issued by the Railway Board regarding the liberalized FPS issued between 1976 and 1981. The answer to this query read as under:

"Though the liberty to exercise option was circulated in June 1981, the same was not circulated individually to all such employees. This is no evidence in the file so as to ascertain that Sri Chari was intimated about the scheme in person to ask for his option."

18. A further query was whether any information had been given to the Department of Coal about the options available to the Petitioner regarding the liberalised pension scheme during the aforementioned years. The reply was that there were no such documents available on the file. An affidavit dated 3rd November 2009 was filed by a Senior Personnel Officer working in the CCL stating that "there are no records to show that the circulars/options 1975-77 were sent through the Ministry of Energy or directly to the Petitioner." One other query related to similar facilities granted to other ex-Railway employees. On this, there was a note made by the Chairman and Managing Director ("CMD?") that there were sixty-one other employees availing pension under the liberalized FPS. In a modified reply of the CCL filed by the Petitioner on 22nd March 2010, the Petitioner's queries and its replies have been placed on record. It appears that a note was prepared at the 183rd Meeting of the Board of Directors of the CCL which had recommended on 1st June 1981 that the date for opting for the FPS 1964 should be extended till 30th September 1981. In this, it was acknowledged that the Railway Board's Circular dated on 1st September 1980 extending time for exercising an option on or before 22nd February 1981 was not received in time. Therefore, it could not be circulated to those employees desirous of exercising option. Nevertheless, in reply to the RTI query, it was clarified that a request had been made to the Head of Departments ("HO Ds?") of the CCL at Ranchi/Calcutta to take urgent steps to bring to the notice of all employees and ex- employees the Railway circulars extending the time for exercising their options till 30th September 1981. The CCL also admitted in its reply to the RTI application that one Mr. B.L. Ohri, an ex-Railway employee who was also transferred from a State Railway Colliery to the NCDC retired from the NCDC on

30th September 1962 was sanctioned pension from the date of his retirement eight years after his retirement from the NCDC by a letter dated 27th February 1970.

19. Once it was made clear by the NCDC by its letter dated 26th November 1965 that the benefits provided to the government employees would automatically be admissible to those who had come over to the NCDC, there was an obligation on the part of the NCDC to ensure that all the benefits available to ex-employees of the Railways would be available to them. Since the Petitioner had moved over to the Ministry of Mines and Metals, it was unlikely that he would have been aware of the various circulars issued by the Railway Board or the decisions taken by the Board of Directors of the CIL or CCL extending the time for the former railway employees who had shifted to CCL or NCDC to exercise their option for RP/FPS. The responsibility lay on the Heads of Departments in CCL or CIL to reach this information to all their employees including those like the Petitioner who had retained lien in the NCDC while being sent on deputation to the Ministry of Mines and Metals. This admittedly was not done. Yet, the handwritten note of the CMD, CCL in response to the queries raised by the Petitioner under the RTI Act, has noted that over sixty persons were availing pension at the headquarters under the pension scheme. There is no reason why the Petitioner should not be extended the same facility.

20. This then brings up the issue of the delay in the Petitioner approaching the Respondents for relief. A retired employee who has moved away from the place of his employment and is located over thousands of miles away in his post-retirement days is unlikely to come across the information concerning the revision of pensionary benefits or the extension of time for exercising options unless it is specifically brought to his notice. The Petitioner who relocated to Bangalore after retirement from service in 1977 was not expected to keep track of the various circulars issued from time to time by the CCL or the NCDC. Admittedly, the circulars were not communicated to him. It has been clarified by the CCL in response to the queries under the RTI Act as well as in a separate affidavit filed on behalf of the CCL that there are no records to show that the Petitioner was in fact informed of the extension of dates for exercising option for RP/FPS. It is in this context that the Petitioner's version that it is only some time in 1998 that he came to know of the extension of dates for exercising option appears probable and credible. He then wrote to the CMD, CCL on 15th May 1998. In his letter dated 14th August 1998 the CMD, CCL acknowledged that the Petitioner was not aware of the exercise of options. He said:

"I could see that though the liberty to exercise option was circulated in June, 1981, the same could not come to your notice. As you had not known about that, I could appreciate that it was not possible for you decide for opting or not."

21. The list of dates shows that the Petitioner has been continuously following up the matter ever since. At one point in time, he filed a writ petition in the Supreme Court on 23rd April 2003 but that was dismissed as withdrawn on 10th

July 2003 with liberty to approach the High Court. The present writ petition was filed in February 2005 after further attempts by the Petitioner to seek redress failed. In those circumstances, this Court is not inclined to accept the submission of the Respondents that the present writ petition is barred by laches.

22. The decision of the Supreme Court in *Union of India v. MK Sarkar* has been heavily relied upon by learned Counsel for Respondents to urge that the facts being similar, the present writ petition should also be dismissed. In that case, the Petitioner was a railway employee who had been sent on deputation to the Government of India as a Controller of Stores. He approached the Central Administrative Tribunal ("CAT") for a direction to the Railway Administration to permit him to exercise an option to switch over to the FPS. The CAT disposed of his application by directing the applicant to take a decision on his representation by a reasoned order. Thereafter the Chairman, Railway Board passed a reasoned order rejecting his request. That was challenged before the CAT again. This time the CAT allowed the application and directed Union of India to permit the retired employee to opt for the pension scheme. After the High Court dismissed Union of India's writ petition, it approached the Supreme Court. The Supreme Court while setting aside the orders of the CAT and the High Court, held that the Respondents in the said case "consciously chose not to exercise the option as he admittedly thought that receiving a substantial amount in a lump sum under the provident fund scheme (which enabled creation of a corpus for investment) was more advantageous than receiving small amounts as monthly pension under the pension scheme." It was held that "having enjoyed the benefits and income from the provident fund amount for more than 22 years, the Respondent could not seek switch over to pension scheme which would result in the Respondent getting in addition to the PF amount already received, a large amount as arrears of pension for 22 years (which also be much more than the provident fund amount that will have to be refunded in the event of switch over) and also monthly pension for the rest of his life." What seemed to have weighed with the Supreme Court was that MK Sarkar was at the time of retirement from the Railways himself working as HOD and was receiving all communications relating to option (for being circulated) to the employees. It was in those circumstances that the Supreme Court held that "the question of Respondent not being aware of the option does not arise."

23. The facts in the present case differ from those in *MK Sarkar* on two important aspects. In the present case, however, the Petitioner shifted to the Ministry of Mines and Metals in Delhi on deputation in 1966. He was given an option only once in April 1968 and not thereafter. Such option was available to all ex-employees of the Railways, even those who had earlier decided to continue in the SRPF. Secondly, the responses to the applications under the RTI Act make it abundantly clear that the Petitioner was not informed of the subsequent extensions of time for giving the option. The affidavit filed on behalf of the CCL also shows that there is no record which would show that the Petitioner was informed of the subsequent Railway circulars. The decisions taken by the Board

of Directors of CCL acknowledge that there were ex-employees of the Railways who had retired from CCL who were perhaps not made aware of the extension of the time for opting for FPS. Despite the HoDs being asked to communicate the decision to all former employees, the Petitioner was not so informed.

24. On the other hand, this Court is of the view that the facts of the present case are much closer to the facts in the DRR Sastri case which was distinguished by the Supreme Court in the MK Sarkar case. As noted in para 20 of the decision in MK Sarkar, the DRR Sastri case was decided on its peculiar facts as the Railway employee was initially sent on deputation to the Heavy Engineering Corporation and later resigned from the service of Railways on 26th June 1973. He was not made aware of the extension of time for opting for FPS even though there was a specific instruction that all employees who had retired after 1st January 1973 should be informed of the option. Another similarly placed employee Mr. K.V. Kasthuri had been granted the benefit of pension. In the circumstances the Supreme Court observed:

"In the aforesaid premises and in the absence of any explanation from the Appellant to indicate any special feature for granting similar relief as late as in the year 1994 to Shri K.V. Kasthuri, we see no justification for our interference with the impugned direction of the Tribunal. The Respondent had served for about 22 years and he should not be deprived of the pensionary benefit when the Government itself had come forward with the Liberalised Pension Scheme and gave option to the persons already retired to come over to the pension scheme. But his pension is to be calculated as on 31-7-1972 in accordance with the Railway Board's letter dated 23-7-1974 and in compliance with all the necessary formalities by the Respondent in accordance with the said circular."

25. The facts of the present case are not very different. There is no denial that one Mr. B.L. Ohri who was similarly placed as the Petitioner was permitted to opt for FPS. The very circulars issued by the Railway Board and further disseminated by the CCL make it clear that even where an ex-employee had opted at one time to continue in the SRPF he would be permitted to change over to the FPS.

26. In conclusion this Court would like to take judicial notice of the fact that with rising inflation and spiraling prices of basic commodities, the lives of the elderly in our country is becoming increasingly difficult. For a majority of the retired government servants, the social security cover, if it can be called that, is palpably inadequate to ensure them a decent living. With every passing day they feel the pinch of rising prices whether it is food, provisions, transport or health care. The government owes to this segment of the population a better standard of living that comports with their dignity. The objections on the grounds of laches and delay and the foreclosing of options once exercised are arguments based on technicalities, not justice. The provident fund amount that some of the retired employees got after many years of dedicated service is meagre by today's rates of income. Moreover, the rates of return on the lump sum amounts have drastically reduced over the years. The elderly cannot risk investing their

precious savings in the volatile and uncertain share market. Had some of them opted for pension, they would have a better level of sustenance. It is not surprising then that those who gave the best of their productive lives for the progress of the country and the betterment of our lives justifiably feel that they are being treated unfairly and that the government owes them more. With the constant revision in the pay scales and the corresponding revisions in pension, those unfortunate persons who had opted for PF long ago have had to suffer invidious discrimination. It is essential, therefore, for the government to acknowledge the harsh ground reality faced by the retired government servants and adopt a policy that enables those who may have not opted for pension earlier to do so now, subject of course to whatever conditions that are otherwise applicable. The excuse of financial constraint should not be allowed to be pleaded by the government because this concerns the right to life and dignity of the elderly. The plea of limitation ought not to be used to defeat their legitimate claims.

27. This Court accordingly holds that the Petitioner should be permitted to opt for the FPS. The decisions of the Respondents rejecting the Petitioner's claim are hereby set aside. Considering that the Petitioner waited till 1998 to first make his claim and then approached this Court in 2005, it is directed that the Petitioner should be paid pension under the FPS adopted by CCL with effect from 1st January 2002. The liability to pay pension to the Petitioner would be that of the CCL which had officially adopted the RP Scheme for employees who had been transferred to it from the Railways. Although the pension amounts including arrears would be subject to adjustment of the pro rata retirement benefits already received by the Petitioner under the SRPF, considering that the Petitioner is ninety-one years old and the amounts already availed of by him would not be substantial, the CCL ought to consider waiving this condition as a special case. The Respondents will comply with the above directions by issuing appropriate orders granting the Petitioner pension, including the arrears, within a period of four weeks.

28. The writ petition is allowed in the above terms with costs of Rs. 10,000/-, which will be paid by the Union of India and the CCL in equal halves of Rs. 5,000/- each, to the Petitioner within four weeks.