
(2003) 12 DEL CK 0085
In the Delhi High Court
Case No : CW No. 6112 of 1999

M.L. Khullar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 12-12-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 148(5), 309

Citation : (2004) 73 DRJ 162 : (2003) 2 ILR Delhi 623

Hon'ble Judges : Madan B. Lokur, J;D.K. Jain, J

Bench : Division Bench

Advocate : V.P. Singh, Advocate and Mukul Talwar, for the Appellant; Nishakant Pandey, for the Respondent

Final Decision : Allowed

Judgement

D.K. Jain, J.

Rule D.B.

An order, dated 14 July 1999, passed by the Central Administrative Tribunal, Principal Bench, New Delhi (for short "the Tribunal") in OA No.492/1998 forms the subject-matter of challenge in this writ petition. By the impugned order, the Tribunal has dismissed petitioner's original application seeking a direction to the respondents to permit him to changeover from State Railway Provident Fund (in short "SRPF") to the pension scheme, introduced vide Railway Board's letter dated 22 July 1974 and further extended in terms of their letter dated 4 October 1982.

2. The background, in which the petition has come to be filed, is as follows:

The petitioner joined the services of Railways on 24 December 1948 as an Assistant Electrical Engineer on his selection by the Federal Public Service Commission. He superannuated on 31 July 1982 as Chief Administrative Officer, Metropolitan Transport Project (Railways) New Delhi. At the time when the

petitioner had joined the service, the Railways had no pension scheme . However, in the year 1957 a retirement benefit scheme known as SRPF was introduced. On the recommendations of the III Pay Commission, in the year 1974, a liberalised pension scheme was introduced. By their letter dated 22 July 1974, the Railway Board decided to give an opportunity to the persons governed by the SRPF scheme to opt for the liberalised pension scheme. Finding it to be not beneficial, the petitioner did not opt for the new scheme, as the Dearness Allowance was not taken into account for the purpose of calculating the pension. However, later on the pensionary benefits were further improved as a result of treatment of a portion of additional Dearness Allowance as pay for the purpose of calculating the pension. Vide letter dated 4 October 1982, the Railway Board decided to give another opportunity to the Railway employees who had continued in the SRPF to come over to the pension scheme. The option was open to those Railway servants who were in service on 31 August 1982 and was to be exercised latest by 28 February 1983. Since the petitioner had retired on 31 July 1982, he was not covered under the scheme. However, by a subsequent letter dated 9 November 1982, the Railway Board preponed the eligibility date to 31 January 1982 and, thus, the petitioner became eligible for fresh pension offer.

According to the petitioner the terms of the liberalised pension scheme dated 4 October 1982, as amended by letter dated 9 November 1982, were not brought to his notice as he was out of the country from 31 October 1982 to 13 January 1983 for treatment of his wife. It is averred that the petitioner did not get any intimation from the Railways regarding fresh option to be exercised by him in terms of the liberalised pension scheme announced on 4 October 1982 and amended by letter dated 9 November 1982, even though he was still living in the government accommodation at the relevant time and, Therefore, he could not exercise option to switchover to the pension scheme from SRPF. On 13 May 1983, in partial modification of Railway Board's letter dated 9 November 1982, the last date for exercising the option was extended up to 31 August 1983.

It is the case of the petitioner that under the pension scheme, introduced vide letter dated 4 October 1982, it was incumbent upon the Railways to inform all the retirees individually about the scheme, more so when they were required to refund Railway contribution to their Provident Fund, in case they were to opt for the pension scheme. But, the petitioner did not receive any communication from the Railways in this behalf.

The petitioner claims that some time in February 1997 he learnt about the judgment rendered by the Supreme Court in the case of one Sh.DRR Shastri wherein the Court had upheld the direction given by the Tribunal to the Railways to grant the benefit of the pension scheme to Shastri despite the fact that he had exercised option much after the stipulated date. It is also pleaded that another retired Railway employee Sh.K.V. Kasturirangan had also been allowed the change-over to the pension scheme after a gap of over 21 years by the Board itself. Having learnt so, the petitioner made a representation to the Ministry of

Railways to allow him the same benefit which had been granted to the said S/ Shri Shastri and Kasturirangan. Since the petitioner's representation did not evoke any response from the respondent he preferred an application u/s 19 of the Administrative Tribunals Act. As noted supra, by the impugned order, the Tribunal has dismissed petitioner's application. The Tribunal has not accepted the contention of the petitioner that he was not aware of the option till November 1997 and has come to the conclusion that since the option was not exercised by the petitioner within the stipulated time, he cannot be now permitted to switch over to the pension scheme.

3. The petition is resisted by the respondents. In the affidavit-in-opposition, it is averred that the petitioner having retired on 31 July 1982, the present petition seeking to reopen the issue already settled as far back as in 1982 is time barred and, Therefore, liable to be dismissed. It is pleaded that after 18 years of his retirement, the petitioner is now seeking to segregate himself from the broad class of SRPF retirees, whose claims for belated option for pension scheme have already been rejected by the Supreme Court in the case of Krishena Kumar and Others Vs. Union of India and others, . It is urged that the petitioner cannot be given an exceptional treatment in violation of the terms of the scheme. As regards the claim of parity with the case of DRR Shastri, it is stated that the facts of that case are conspicuously different from that of the petitioner, inasmuch as Shastri being away on deputation to the Heavy Engineering Corporation, he could not exercise the option. It is also pointed out that insofar as the Board is concerned, Shastri's request for retrospective switching over to pension scheme was rejected but he got relief on the intervention of the Tribunal and the Supreme Court. However, without indicating any distinguishing feature, it is stated that the case of Kasturirangan is also on a different footing and cannot be treated as a precedent. It is maintained that Railway Board's letters were communicated to all the General Managers with the direction that these should be brought to the notice of all the retired Railway servants. However, the reply is silent on the question as to what steps were taken by the General Managers in this behalf. Finally it is asserted that all the relevant aspects having been gone into by the Tribunal, and its view being in line with the ratio of the decision of Apex Court in Krishena Kumar's case (supra), the writ petition is misconceived and deserves to be dismissed.

4. We have heard Mr. V.P. Singh, learned senior counsel, for the petitioner and Mr. Nishakant Pandey, on behalf of the respondents.

5. Referring us to Railway Board's letter dated 4 October 1982, learned senior counsel for the petitioner has strenuously urged that under the scheme the Railways were under obligation to inform all the retirees individually about the pension scheme to enable them to exercise their option before the expiry of the last date and failure to do so has resulted in denying the petitioner an opportunity to opt for the pension scheme. It is contended that even assuming that the petitioner was "aware" of the pension scheme, as has been held by the

Tribunal, still he could not exercise the option, in the absence of an individual intimation about the amount he was required to refund in terms of the scheme. It is asserted that the decision of the Supreme Court in DRR Shastri's case (CA No.1455/96) is on all fours to the facts of the present case and, Therefore, the writ petition deserves to be allowed. It is also submitted that since similarly situated retirees, which included P.P. Ayyer, Y.R. Puri, G.Ghanshyamdas, besides DRR Shastri and Kasturirangan, have been permitted to migrate to the pension scheme, even after the expiry of the deadline, denial of the same relief to the petitioner would offend Article 14 of the Constitution of India.

6. Thus, the short question for consideration is whether the petitioner can be deprived of the benefit of the pension scheme introduced by the Railways on 4 October 1982, on the ground that he did not exercise the option within the stipulated time particularly when some of the retired personnel have been permitted to switch-over to the scheme, either by the Railways themselves or under the orders of the Court.

7. To appreciate the rival stands it would be necessary to take note of some salient features of the pension scheme announced on 4 October 1982. It is not in dispute that on subsequent modification of the scheme on 9 November 1992, the petitioner became eligible to opt for the pension and, Therefore, the controversy is confined to the implication of what is stipulated in paras 2(III) and 3 of Railway Board's letter dated 4 October 1982, which reads as follows:

"(III) The contents of this letter should be brought to the notice of all retired Railway servants who are eligible for this option and to the families of all the deceased Railway servants who may have died on or after 31.8.1982 without exercising an option within the time limit allowed. The amount to be refunded should also be advised to them simultaneously. If the retired Railway servants or the family members in question desire to take advantage of these orders, the request from them to that effect duly accompanied by the amount to be refunded by them, as aforementioned must be received before the last date for exercise of option, or within a period of one month from the date of receipt of the communication of these orders to them, whichever is later. General Managers may extend the above limit of one month to three months in consultation with their FA & CAOs on the merits of individual cases. It should be ensured that in cases covered under paras 2(I) & 2(II) above the requisite advice is issued as early as possible so that it reaches the retired Railway servant/family in time to enable option being exercised before the expiry of the last date.

(3) The railway servant who does not exercise an option within the prescribed period or quits service without exercising an option or whose option is incomplete or conditional or ambiguous shall be deemed to have opted to remain under SRPF (Contributory) Rules. It should be made clear to all concerned that this is the last opportunity for them to opt for pensionary scheme and no further options would be granted."

8. From a bare reading of the afore-extracted paragraphs, it is clear that the contents of the said letter were required to be brought to the notice of the eligible retired Railway servants individually. Moreover, each retiree was also required to be individually informed simultaneously of the Government's contribution to the provident fund received by them because excess of the contribution for the Death-cum-Retirement Gratuity to them under the pension rules was to be refunded. The language of the said paras of the scheme leaves little scope for doubt that each retiree had to be informed about the scheme individually because the request to migrate to the pension scheme was to be accompanied by the amount to be refunded by the person concerned. Obviously, the said amount would vary from case to case and unless the person concerned was intimated the amount, he could not exercise the option because refund of this amount, within a maximum period of one month of the receipt of the communication, was a condition precedent for switch-over to the scheme. The Railway Board's letter dated 9 November 1982, under which the petitioner became eligible to opt for pension, made it clear that except for the eligibility date, all other terms and conditions as laid down in the Ministry's letter dated 4 October 1982 would remain unchanged.

9. We have, Therefore, no hesitation in holding that under the pension scheme the respondents were obliged to inform each of its retired employees about the pension scheme giving them option to migrate to the same and also advising them about the amount to be refunded by them in the event of their opting for pension. In the present case, admittedly, the respondents have failed to do so. In our opinion the view taken by the Tribunal that the petitioner should have exercised the option within the stipulated time cannot be sustained. We are of the considered view that since the contents of the pension scheme were not brought to the notice of the petitioner, his right to exercise the option survived, in spite of the fact that last date to exercise the option had expired. Support to this view is also lent by the the decision of the Apex Court in DRR Shastri's case (supra) wherein, as noted supra, the Supreme Court has upheld the view taken by the Tribunal that intimation about the scheme was required to be sent to the retirees individually.

10. Insofar as the decision of the Supreme Court in Krishena Kumar's case (supra), heavily relied upon by learned counsel for the respondents, is concerned, we are of the view that it is not applicable to the facts in hand. It is well settled that a decision is an authority for which it is decided and not what can logically be deduced there from. One little difference in facts or additional facts may make a lot of difference in the precedential value of a decision. [See: Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, In this behalf it would be useful to notice a few observations of the Constitution Bench in Padmasundara Rao and Others Vs. State of Tamil Nadu and Others, . Speaking for the Bench, his Lordship Arijit Pasayat, J., taking note of the observations of Lord Morris in Herrington Vs. British Railways Board, (1972) 1 All E.R 749 to the effect that "there is always peril in treating the words of a speech or a judgment

as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in a setting of the facts of a particular case", said that "circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases". In Krishena Kumar's case the issue before the Supreme Court was whether the prescription of cut off dates by the Railways from time to time for exercising option for the pension scheme by those who had opted to retain the contributory provident fund scheme was discriminatory in the light of the decision of the Supreme Court in D.S. Nakara and Others Vs. Union of India (UOI), . While observing that the rules governing the provident fund and its contribution are entirely different from the rules governing pension; the rights of the provident fund retirees finally crystallised on the date of his retirement where after no continuing obligation remained, while, on the other hand, as regards the pension retirees, the obligation continued till their death, the decision in Nakara's case was not applicable to the provident fund retirees, their Lordships of the Supreme Court have held that prescription of cut off date for fresh option in each of the cases was valid as the specific date bore a definite nexus to the object sought to be achieved by giving the option. As noted above, there was no such challenge by the petitioner to the validity of the cut off date.

11. We are, Therefore, of the view that in the instant case the respondents having failed to comply with the specific terms of their own scheme cannot now be permitted to turn around and say that "awareness" of the scheme was a sufficient notice to a retiree to exercise his option because individual communication was not feasible. Administrative inconvenience cannot override the express provisions of the scheme, which is supposed to be benevolent in character. As observed by the Apex Court in DS Nakara's case (supra) pension is neither a bounty nor a matter of grace depending upon the sweet will of the employer nor an ex gratia payment. It is a social welfare measure rendering socio-economic justice to all those who in the hey-day of their life ceaselessly toiled for the employer on an assurance that in their old age they would not be left in lurch. Pension as a retirement benefit is in consonance with and furtherance of the goals of the Constitution. It creates a vested right and is governed by the statutory rules, which are enacted in exercise of power conferred by Articles 309 and 148(5) of the Constitution. Bearing in mind these observations, we are of the view that denial to the petitioner herein his right to migrate to the pension scheme, when the same benefit has been granted to some similarly situated persons, would be travesty of justice. It will be a clear case of hostile discrimination, which cannot be permitted.

12. Consequently, the writ petition is allowed; the impugned order is set aside and the Rule is made absolute. The respondents are directed to afford an opportunity to the petitioner to opt for the pension scheme by intimating to him the amount he is required to refund in terms of the scheme, in the event he still chooses to exercise his option. Intimation with regard to the amount he is required to refund shall be sent to the petitioner within eight weeks from the

date of receipt of this order. However, considering the facts and circumstances of the case, there shall be no order as to costs.