**(2011) 09 GAU CK 0112**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No. 3345 of 2010

Sri Dina Nath Das — APPELLANT

Vs

Central Bank of India and others — RESPONDENT

**Date of Decision :** 27-09-2011

**Acts Referred:**

**Citation :** (2012) 2 GLD 240

**Hon'ble Judges :** Biplab Kumar Sharma, J

**Bench :** Single Bench

**Advocate :** S.K. Talukdar and Mr. P.K. Medhi, for the Appellant; N.C. Das and Mr. M.K. Mishra, for the Respondent

**Final Decision :** Allowed

# Judgement

B.K. Sharma, J.—By means of this writ petition, the petitioner, a discharged Bank employee, has prayed for a direction to the respondent-Bank to release the pension amounts including the outstanding pension. According to the petitioner, he is entitled to receive pension having regard to the nature of the penalty imposed and the option he had exercised for pension. The dispute involved is as to whether the petitioner had exercised his option for pension scheme. The petitioner was discharged from service with superannuation benefits as was due at the existing stage of pay. The petitioner was shown discharged by order dated 3.8.2000 (Annexure-1 to the writ petition) pursuant to a departmental proceeding.

2. According to the petitioner, he having opted for pension scheme as against the earlier Provident Fund Scheme, the Bank''s contribution against the petitioner''s contribution was stopped from January, 1997. In this connection, the petitioner has placed reliance on Annexure-3 series provident fund statement to show that prior to January, 1997, there was equal contribution towards provident fund account of the petitioner at the rate indicated in the said statement. However, the Bank''s contribution was stopped from January, 1997 on the basis of which, and even otherwise also, it is the claim of the petitioner that pursuant to the

introduction of the pension scheme, the petitioner had exercised his option, opting for pension scheme.

3. The petitioner has placed reliance on Annexures-4, 5, 6 and 7 letters dated 24.10.1997, 25.11.1997, and 27.11.1997 respectively. By Annexure-4 letter dated 24.10.1997, the Regional Office of the respondent-Bank circulated to all the Branches under Upper Assam Region the fact that the Central Office was seeking to calculate the pension liability as on 31.3.1996. Accordingly, by the said communication, all the Branches were advised to furnish required information in the particular format in respect of the existing employees who had opted for pension and was in service as on 30.9.1997. Be it stated here that the petitioner had been working in Upper Assam Region being posted at Kachua Tinali, Nagaon. By Annexure-5 letter dated 25.11.1997 addressed to the particular Branch, in which, the petitioner had been serving, a request was made to send required statement as the Zonal Office was pressing hard for the same.

4. After the aforesaid communications, the authority of the Kachua Tinali Branch of the respondent-Bank made the communication dated 27.11.1997 (Annexure-6 to the writ petition) to the Regional Office enclosing therewith required statement. In the statement, the name of the petitioner appeared with P.F. Account No. 44397, the statement was under the caption -- "List of Staff Members opted for Pension and in service as on 30.9.1997".

5. The aforesaid communications were followed by Annexure-12 and 13 communications dated 26.10.1998 and 20.4.2002. While Annexure-12 letter dated 26.10.1998 addressed to the Trustee, C.B.I. Employee P.F. Bombay by the Branch Manager, C.B.I. Kachua Tinali Branch the fact of option for pension having been exercised by the petitioner, coupled with the fact of debiting only his own contribution from January, 1997 onwards. It was intimated that no acceptance letter had been received in the office. By the second letter dated 20.4.2002 (Annexure-13 to the writ petition), the position relating to exercising option for pension scheme by the petitioner was confirmed, but at the same time, it was also intimated that the option letter of the petitioner was not found on record.

6. Amidst the aforesaid development, the petitioner also submitted application for revised pension after commutation of fraction of the same quantifying at one-third of the pension. However, neither pension nor commutation having been allowed, the petitioner filed the instant writ petition praying for the aforesaid direction.

7. The respondents have filed their counter affidavit, in which, while broadly admitting the aforesaid facts, it has however, been stated that the petitioner did not exercise his option for pension scheme, for which, the circular letter dated 12.10.1995 was issued. It has been stated that as per the said circular letter, the particular option was required to be exercised in the prescribed format, which the petitioner failed to do so. Referring to the revised exercise of option by the petitioner towards commutation of part of the pension, it is the stand of the

 

respondents that the petitioner had exercised the option for pension scheme only in the year 2001, which was beyond the stipulated period that was fixed in the circular letter dated 12.10.1995.

8. Mr. S.K. Talukdar, learned counsel for the petitioner has submitted that because of the fault of the respondent-Bank, the petitioner cannot be made to suffer. He submits that the respondent-Bank cannot deny the fact of exercising particular option by the petitioner, but for which, there would not have been stoppage of Bank''s contribution in addition to the petitioner''s contribution towards P.F. Account. He submitted that since the communications, referred to above, clearly establish the fact of exercising particular option by the petitioner, the respondent-Bank could not have refused to grant pension to the petitioner on the sole ground of the option letter being not traceable in record.

9. Mr. N.C. Das, learned senior counsel assisted by Mr. M.K. Mishra, learned counsel appearing for the respondent-Bank, however, submits that the petitioner having not exercised the particular option, he is not entitled to receive the benefit under the pension scheme. In this connection, he has referred to the statement made in paragraph 15 of the affidavit that the petitioner having accepted the terminal benefits extended to him, cannot apply for pension scheme and that it will go to show that the petitioner did not exercise option for pension scheme. However, the affidavit is silent about the aforesaid communications, which suggest that the petitioner had exercised his option, but the option letter was not available in record.

10. I have given my anxious consideration to the submissions made by the learned counsel for the parties. I have also considered entire materials on record.

11. The admitted fact is that while the Bank''s contribution towards RE Account was stopped from January, 1997, prior to that and before coming into operation of the particular pension scheme all along there was contribution to the said account from both sides i.e. the Bank and the petitioner. However, the Bank''s contribution was stopped from January, 1297, a fact which is clearly evidence on the basis of the Annexure-3 Statement of Provident Fund Account.

12. Apart from the above, when by Annexure-4 letter dated 24.10.1997, the statement of the existing employees, who had opted for pension and was in service as on 30.9.1997, was called for, such statement was furnished by annexure-6-letter dated 27.11.1997, clearly indicating the name of the petitioner as an optee for pension. Not only that, by Annexure-12 letter dated 26.10.1998 the Branch office, in which the petitioner had been working, had requested the Trustee, C.B.I. Employees RE Bombay to show response to the above exercise by the petitioner in anticipation of which the Bank''s contribution was stopped from January, 1997. Similar communication was made by Annexure-13 letter dated 20.4.2002, although in the said letter, it was stated that the option letter was not found in the record.

13. Above documents, which are not in dispute, will go to show that the option

 

exercised by the petitioner had been acted upon by the authorities of the respondent-Bank if the option letter of the petitioner is not available on record, that by itself will not and cannot obliterate the fact that all along petitioner had been treated as an optee for pension scheme. Although the Bank has referred to the communications of 2001-2002 so as to contend that the petitioner had opted for pension scheme only in those years beyond the stipulated period of time, but on a reading of the said communications, what is seen is that by the said communications, the petitioner had sought for commutation of fraction of pension. By the said communications, he had never opted for pension, which he had already opted in response to the aforesaid circular of the respondent-Bank.

14. As regards the plea of the respondent-Bank that the petitioner having accepted final statement, he is now precluded and/or stopped from raising any grievance relating to pension scheme, needless to say that the estoppel cannot operate against own wrong doing of the Bank. The particular scheme was accepted by the petitioner and the respondent-Bank acted upon the same. Later on, the Bank authority cannot turn around the said position so as to contend that the petitioner had not opted for pension scheme on the ground that the option letter is not available on record. The action that was undertaken by the Bank itself on the basis of the option exercised by the petitioner cannot be set at naught with the plea of non-availability of the option letter.

15. In view of the above, this writ petition is allowed directing the respondents to finalize the case of the petitioner as per the pension scheme, as was circulated by Annexure-A circular letter dated 12.10.1995 annexed to the counter affidavit. If for the purpose, any amount is required to be refunded by the petitioner, the same shall be refunded by him or may be adjusted from the payments of the petitioner on account of pension payable to him. As regards the claim of interest, the same is rejected, as the petitioner filed the instant writ petition in 2010, nearly about 8 years of exercising his option for commutation of fraction of pension.

16. The writ petition is allowed to the extent indicated above, without any order as to costs. The Bank shall now carry out necessary exercise on the basis of this order, as expeditiously as possible, but at any rate, not later than 31st December, 2011.

 