

UNION OF INDIA AND ORS.

v.

D.R.R. SASTRI

NOVEMBER 22, 1996

[K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

Pension—Liberalised Pension scheme—Option not communicated—Representation after expiry of option date—Rejected—Relief granted to another employee—No special reasons indicated—Tribunal held that employee is entitled to exercise option—Held, No interference with the order of Tribunal warranted in the absence of any special feature for granting relief to any other employee—Hence the Respondent Employee not to be deprived of exercising option.

The respondent, an employee of Indian Railways, went on deputation to the Heavy Engineering Corporation in the year 1972. While he was in Railways he had opted for Contributory Provident Fund Scheme. He resigned from the Railways and was permanently absorbed in Heavy Engineering Corporation. Employees governed by the Provident Fund Scheme were given opportunity to opt for the liberalised pension Scheme. The respondent was not informed about the scheme, and he made a representation requesting the Board to allow him to exercise the option. The Board rejected the request. The respondent approached the Tribunal which held that respondent was entitled to exercise his option. Aggrieved by the direction of the Tribunal, Railways preferred the present appeal.

The contention of the appellant was that the respondent having not exercised his option for the pension scheme within the time specified in the Board's letter, the Tribunal erred in law in granting the relief.

The contention of the respondent on the other hand was that the liberalised Pension Scheme having been introduced when he was an employee under the Railways, he was entitled to opt for the scheme. It was also contended that when similar opportunity having been given to another employee he cannot be denied to exercise the option.

A Dismissing the appeal, this Court

B HELD : 1. The Tribunal took note of the fact that another employee was allowed to exercise the option long after the date of exercising of the option has expired and therefore, there should be no ground to discriminate the respondent. The appellant was not in a position to indicate any special reason why similar opportunity had been given to another employee. No affidavit was filed or material placed on record to indicate any distinguishing feature granting opportunity to another employee. In the absence of any explanation from the appellant to indicate any special feature for granting similar relief to another employee, there is no justification for interfering with the impugned direction of the Tribunal. [153-H; 154-A; 155-C]

D 2. The Court had called upon the Railway administration to indicate whether the period of service rendered by the respondent under Railways was taken into account by the Heavy Engineering Corporation for fixing his pension on his retirement from the service of the Corporation and whether proportionality of the period of service till the retirement are separated to compute the pension and if so computed whether respondent would stand to gain any higher pension than is being actually drawn. No affidavit was placed by the appellant. The respondent has filled an affidavit stating that he has not received any pension on his retirement from the Corporation. [154-G-H; 155-A-B]

E 3. The respondent, having served for about 22 years, 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. [155-C]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 14752 of 1996.

From the Judgment and Order dated 23.9.94 of the Central Administrative Tribunal, Madras in O.A. No. 1711 of 1993.

G Y.P. Mahajan and Arvind Kumar Sharma for the Appellants.

T.C. Chingalvarajan, M.A. Krishna Murthy and Ms. Kokila Vani for the Respondent.

H The Judgment of the Court was delivered by

PATTANAİK, J. Leave granted.

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This appeal by special leave as directed against the order of the Central Administrative Tribunal, Madras dated 23rd September, 1994 in OA No. 711 of 1993. By the impugned order the Tribunal has directed the appellant to allow the respondent the benefit of option for the pension scheme, on respondent refunding the amount he has received on his retirement.

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The admitted facts are that the respondent joined the Indian Railways in the year 1950 and while continuing there went on deputation to the Heavy Engineering Corporation during the year 1972. While he was in the railway he had opted for Contributory Provident Fund Scheme. The said respondent exercised his option for permanent absorption in Heavy Engineering Corporation and submitted his resignation from the railways which was accepted by Railway Board and communicated by letter dated 26th June, 1973. In the year 1973 on the basis of recommendations of the Third Pay Commission, liberalised Pension Scheme was introduced and the Railway Board in its letter dated 22nd July, 1974 decided to give an opportunity to all the persons governed by the Provided Fund Scheme to opt for the liberalised Pension Scheme. The Railway Board's letter was communicated to all the General Managers with the direction that it shall be brought to the notice of all retired railway servants. The case of the respondent is that the liberalised Pension Scheme having been introduced at a point of time when he was an employee under the railways, he was entitled to opt for the said scheme. But the aforesaid letter of the Railway Board was not brought to his notice. It is only on 12th June, 1993 the said respondent made a representation requesting the Railway Board that he may be allowed to exercise the option and the Railway Board having rejected the same by its communication dated 13th July, 1993, respondent approached the Tribunal. The Tribunal by the impugned order came to the conclusion that the respondent being in service of the railways on 1st January, 1973 was entitled to exercise option for coming over to the pension scheme in terms of Railway Board's letter dated 23rd July, 1974. The Tribunal further came to the conclusion that notwithstanding the clear statement in the Board's letter that it should be brought to the notice of all the retirees, it had not been brought to the notice of the respondent on account of which he was prevented from exercising his option. The Tribunal also took note of the fact that another railway employee was

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A allowed to exercise the option long after the date of exercising of option has expired and, therefore, there should be no ground to discriminate the respondent. Challenging the aforesaid direction of the Tribunal the Union of India has come in appeal.

B Mr. Mahajan appearing for the appellant contended that the respondent having not exercised his option to opt for the pension scheme within the time specified in the Board's letter dated 23rd July, 1974 the Tribunal erred in law granting him the relief in question. The learned counsel, however, was not in a position to indicate any special reason why the similar opportunity has been given to another railway employee which has
C been noticed by the Tribunal while granting the relief to the respondent. Mr. Mahajan, however contended that in view of the Constitution Bench's decision of this Court in *Krishan Kumar's* case [1990] 4 SCC 207 the impugned direction of the Tribunal cannot be sustained. When this case
D listed before this Court on 6th May, 1995, it was brought to the notice of the Court that the Government itself has granted a similar benefit to one K.V. Kasthuri by an order dated September 19, 1994, even though he had retired in the year 1973. The Court, therefore, called upon the Union Government to place the necessary material which enabled the Govern-
E ment to grant the relief to Shri Kasthuri and how his case stands on a different footing than the case of the respondent. But no further affidavit was filed by the Union of India nor any material was placed to indicate any distinguishing feature for granting the relief to Shri K.V. Kasthuri and refusing the same to the respondent. Be that as it may when the matter was again argued on 20th August, 1996, it was contended on behalf of the
F appellant that the respondent having resigned from the railways and having been absorbed by the Heavy Engineering Corporation would be entitled to the benefits available to him under the Heavy Engineering Corporation and the counsel for the appellant also contended that the Heavy Engineering Corporation has already determined the pension of the respondent by taking into account the entire period of service from 1952. In view of the
G aforesaid submissions of the learned counsel appearing for the appellant the Court had called upon the railway administration to indicate whether the period of service rendered by the respondent from 1950 till July 22, 1972 under the railways was taken into account by the Heavy Engineering Corporation in fixing his pension on his retirement from the service of Heavy Engineering Corporation and whether the proportionality of the
H period of service from 1950 to July 31, 1972 and from August 1, 1972 till

the retirement are separated to compute the pension and if so computed whether the respondent would stand to gain any higher pension than is being actually drawn. But unfortunately no further affidavit or material was placed by the appellant. On the other hand the respondent has filed an affidavit stating therein that he has not received any pension on his retirement from the Heavy Engineering Corporation as the Corporation itself had no pensionable scheme. 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 it to be calculated as on July 31, 1972 in accordance with the Railway Board's letter dated 23rd of July, 1974 and on compliance with all the necessary formalities by the respondent in accordance with the said circular. Subject to the aforesaid observations this appeal is dismissed but in the circumstance there will be no order as to costs.

S.V.K.I.

Appeal dismissed.