

SUPREME COURT OF INDIA

Calcutta Port Trust

Vs.

Anadi Kumar Das (Capt.)

C.A.No.7148 of 2008

(G.S.Singhvi and V.Gopala Gowda, JJ.)

13.11.2013

JUDGMENT

G.S.Singhvi, J.

1. Whether respondent No.1 was entitled to opt for the Pension Scheme after 18 years of his retirement is the question which arises for consideration in this appeal filed by the appellants against judgment dated 4.8.2006 passed by the Division Bench of the Calcutta High Court. The appellants have also challenged order dated 8.12.2006 by which the Division Bench of the High Court dismissed the application filed for review of judgment dated 4.8.2006.

2. Respondent No.1 joined the service of appellant No.1-The Calcutta Port Trust on 19.8.1957 as Class-I Officer. He was posted as Chief Officer (D&D) under the Marine Department of the then Commissioners for the Port of Calcutta, which was re-named as the Calcutta Port Trust on 19.8.1957. He got several promotions and ultimately retired from service w.e.f.1.4.1983 under the Voluntary Retirement Scheme.

3. At the time of appointment of respondent No.1, there was no Pension Scheme for the employees of appellant No.1 and they were given monetary benefits of the Contributory Provident Fund Scheme (CPF Scheme). For the first time, Pension Scheme was introduced for the Commissioner's employees vide circular dated 29th May, 1962 and made effective from 1.6.1962. All the existing employees, who were in service on

1.6.1962 were given the choice to opt for the Pension Scheme, but respondent No.1 did not exercise the option.

4. Vide circular dated 11.8.1979, appellant No.1 extended the cutoff date fixed for exercise of option under the Pension Scheme by Class-I and Class-II officers and fixed 9.11.1979 as the last date. Many officers opted for the Pension Scheme but respondent No.1 did not opt for the same. Similar options were given to the employees vide circulars dated 17.1.1981, 11.3.1981, 29.12.1984 and 19.2.1986, but respondent No.1 did not avail any of the opportunities.

5. In the year 2000, the Central Government issued circular dated 7.1.2000 and sanctioned ex gratia at the rate of Rs.600 per month for the CPF beneficiaries. Respondent No.1 took benefit of that circular and received the amount of ex gratia.

6. In June 2001, the Government of India announced liberalized pensionary benefits for retired Class-I and Class-II officers of Major Ports. This resulted in manifold increase in the pension payable to them. With a view to take advantage of the policy decision taken by the Central Government, respondent No.1 submitted application dated 23.7.2001 for grant of permission to exercise of option in terms of circulars dated 29.12.1984 or 19.2.1986. The relevant portions of the application read as under:

“This is to bearing to your kind notice that I joined my service as Chief Officer D & D under the Marine Department of the then Commissioners for the Port of Calcutta, since renamed as Calcutta Port Trust on 19th August, 1957. During the tenure of my service I got several promotions and ultimately retired from service under Voluntary Retirement Scheme with effect from 1st April, 1983 after completion of 25th years and 4 months of continuous service.

At the time of my appointment there was no pension scheme for the employees of the Calcutta Port Trust and as such like all other employees I was given the benefit of Contributory Provident Fund Scheme. Since the time of my retirement. I have no contact with my office.

During the tenure of my service pension scheme was introduced in the Calcutta Port Trust for its employees but the said scheme was not responded to by the majority of its employees partly due to non circulation of the said scheme amongst its employees and partly due to the fact that the scheme so introduced was not at all attractive. However, since a poor response was received by the Calcutta Port Trust, the said scheme did not materialize at all. I however could not exercise such option as I was never advised by the authority concerned either about the introduction of the said scheme or about the benefits arising there from.

I further state that at the time of my retirement no such scheme was in vogue for exercising any option to switch over to the pension scheme. As such the provident

fund benefits was given to me by way of my terminal benefits.

I further state that even after my retirement the Calcutta Port Trust extended the benefits of the scheme of such pension to the retired persons at least on two occasions. Once is December 1984 and Second in February 1986. But unfortunately even those schemes were neither circulated through mass media nor brought to the notice of retired pension including myself as a result of which I also could not exercise such option pursuant to the said schemes though the said scheme appears to be much more beneficial than the earlier ones. I further state that in these hard days of inflation it is practically impossible to survive without pension and as such I opted for the scheme of ex gratia payment to the retired employees which was introduced in January 2000 whenever it came to my notice through the newspaper circulation. Similarly I also availed of the scheme for medical benefits employees which was introduced in 1998 as per notification issued through newspaper publication.

Very recently it has come to my notice from one of my colleagues that the Calcutta Port Trust also extended the benefits of such pension scheme to the retired pensioners on condonation of delay on sympathetic grounds though there was delayed exercise of such option.

Accordingly I mostly humbly and respectfully pray to you for allowing me to exercise my option by condonation of delay as I am otherwise entitled to avail of the said benefits as per the circular issued by the Calcutta Port Trust either on 29th December 1984 or on 19th February 1986 which I could not avail of within the stipulated time due to my ignorance about the introduction of the said scheme as it was not at all noticed to me. I undertake to refund the Trustee's contribution towards provident fund together with interest as per your said schemes.” (emphasis supplied)

7. The application of respondent No.1 was rejected by the Financial Adviser and Chief Accounts Officer of appellant No.1 on the ground that option to switch over to the Pension Scheme under Circular dated 29.12.1984 was open upto 31.5.1985 and under Circular dated 19.12.1986, it was open up to 30.6.1986. This was conveyed to respondent No.1 vide letter dated 7.8.2001.

8. Respondent No.1 challenged the rejection of his prayer for permission to opt for pension in Writ Petition No.1830/2001 filed before the Calcutta High Court. After chronologically presenting the facts relating to the Pension Scheme and the circulars issued from time to time for giving opportunity to the retirees to exercise option, respondent No.1 averred that he was never informed or made aware of the same by way of publication in the newspapers or otherwise and he came to know about the same only in June 2001 from his friend to whom he had paid a courtesy visit and immediately thereafter, he submitted application dated 23.7.2001 for exercise of option in terms of circular dated 19.2.1986.

9. In the written statement filed on behalf of the appellants, it was averred that respondent No.1 was very much aware of the Pension Scheme introduced in 1962 and circulars issued from time to time giving additional opportunities to the retired employees and officers to opt for the pension. According to the appellants, respondent No.1 availed benefits under CPF Scheme because it was more beneficial and deliberately refrained from exercising option for the Pension Scheme till it was liberalized in 2001 by the Central Government. The appellants further pleaded that the application made by respondent No.1 after 18 years of his retirement was rightly rejected by the Financial Advisor and Chief Accounts Officer because it was submitted after more than 15 years of the issue of circular dated 19.2.1986.

10. After analyzing the pleadings of the parties and the documents produced by them, the learned Single Judge opined that the plea of ignorance put forth by the writ petitioner (respondent No.1) cannot be accepted because being a Class-I officer he was very much aware of the Pension Scheme introduced in 1962 and the circulars issued from time to time for giving opportunity to the retirees to exercise option. The relevant portion of the order of the learned Single Judge is extracted below:

“The case has to be judged on the basis of the averment made in the petition so far as ignorance of the petitioner about the aforesaid notification is concerned. In paragraph 10 of the petition it has been stated that petitioner sometimes in the month of June 2001 went to the residence of one of his friends and /or colleagues in the Calcutta Port Trust on a courtesy visit and only then he came to know about the introduction of pension scheme after his retirement. This story of ignorance cannot be accepted as there was no particular as to the date of his visit. No name of his alleged friend nor address of his residence has been given. On the other hand, the petitioner had occasion to know about the above pension scheme. Admittedly on 17th August 2000 he went to the office of the respondent for submitting an application for ex-gratis payment in prescribed form. It is unbelievable story that one will not be knowing of existence of such pension scheme. Actually the petitioner was not really interested in availing of pension scheme at any stage, as this scheme was not advantageous and gainful for him. Now for the reason best known to him, the return yielded from the corpus of provident fund amount is not perhaps advantageous for him, so he has come to switch over his option pension scheme at this belated stage. Mr. Majumdar is right in saying that the approach of the petitioner is not bonafide as at no point of time he was in favour of the pension scheme. In the case cited by Mr. Bhattacharjee the petitioner therein at the first available opportunity exercised his option. Moreover, in that case there was delay of less than two years and such delay for ignorance of existence of the said pension scheme during that period is quite reasonable. In this case it is an unbelievable story further that 1984 till June 2001 he would not be knowing of existence of this pension scheme. I am of the view that story made out by the petitioner's absolutely concocted as no supporting affidavit has been filed by the said friend in order to strengthen the belief of such case. It appears further that the petitioner has

connection with the pensioners' association of the Calcutta Port Trust wherefrom he has collected copies of the circular of the pension scheme sometimes in the month of July 2001. So, the petitioner could have ascertained the existence of the pension scheme introduced in 1984 had he reasonably been diligent.”

11. The Division Bench of the High Court allowed the appeal filed by respondent No.1 and reversed the order of the learned Single Judge by observing that the circulars issued by appellant No.1 were neither published in the daily newspaper nor the same were circulated among the concerned retired employees. The Division Bench was of the view that appellant No.1 was duty bound to publish the circulars in the daily newspapers or circulate the same amongst all the concerned retired employees and that the learned Single Judge committed an error by declining relief to him on the assumption that he must be aware of the circulars issued in 1984 and 1986. The relevant portions of the judgment of the Division Bench are extracted below:

“There is nothing to show that the said circular allowing the retired employees to exercise option to come under the said pension scheme was circulated amongst all the retired employees. There is also nothing to show that there was any attempt on the part of Port Trust Authority to publish the said circular in the daily newspaper either English or Bengali for bringing the said beneficial order to the notice of the retired employees. To the contrary, it appears that on 19.2.1986 there was another circular to all Heads of Department, Calcutta Port Trust for granting fresh opportunity to Class-I and Class-II officers who were on the Contributory Provident Fund Scheme to elect the pension scheme by exercising option within 30.6.86. There is also nothing to show that this circular was circulated amongst all the concerned retired employees of Calcutta Port Trust and the same was published in any daily newspaper.

It is needless to say that the circulation of the said orders extending benefit to the retired employees amongst all the concerned retired employees including the writ petitioner was a must and it was incumbent upon the Port Trust Authority to show that the said circular was brought to the knowledge of each and every concerned retired employee by the authority. In order to discharge the heavy onus upon the Calcutta Port Trust not a single scrap of paper was produced by the respondent to show that the said matter was circulated and reached the writ petitioner. It is not claimed by the respondent that the concerned circulars were circulated by publishing the same in any daily newspaper. In para 4(F) of the Affidavit in opposition submitted on behalf of the respondent Nos.1 to 7 it was stated that all the circulars were made through circulation of the Heads of Departments which were in turn circulated through Sectional Heads by displaying in notice board and there was no reason why the writ petitioner being a Class-I employee would not know the same at least till he retired. There is no paper to show that there was any order of displaying the circulars in the Notice Board and really the same was displayed in the Notice Board of the office of the respondent. The first circular granting fresh opportunity to Class-I and Class-II officers who were enjoying the benefits of the Contributory Provident Fund Schemes to elect the pension scheme

was issued by the Calcutta Port Trust to all Heads of Department on 29.12.84 whereas the writ petitioner retired from service on 1.4.83. If it is assumed that the said circular was displayed in the Notice Board of the office still then it cannot be definitely said that the said circular came to the notice of all the retired employees of Calcutta Port Trust including the writ petitioner who retired from service before the date of issue of the circular. It was incumbent on the part of the Calcutta Port Trust to serve the said copy of circular upon the writ petitioner but the Calcutta Port Trust Authority did not make any attempt to send the said circular to the writ petitioner. The same was not published in the newspaper. The Calcutta Port Trust Authority thus failed to discharge the onus of proving that the said circular was brought to the knowledge of the writ petitioner by it and despite the fact that the said circular was brought to the notice of the writ petitioner, the writ petitioner failed to exercise his choice within the stipulated period.”

12. The Division Bench noted that even though respondent No.1 did not file affidavit of his friend from whom he is said to have acquired knowledge about the circulars issued by appellant No.1 in 1984 and 1986 but held that it was the duty of the latter to bring those circulars to the notice of respondent No.1 and it cannot take advantage of the weakness of his case.

13. Shri Mohan Parasaran, learned Solicitor General and Shri Jayant Bhushan, learned senior counsel appearing for the appellants relied upon the judgment of this court in *Union of India vs. M.K. Sarkar*¹, and argued that even though the circulars issued by appellant No.1 giving an opportunity to the retirees to opt for pension were not published in the newspapers or through radio/television and copies thereof were not sent to the concerned individuals, respondent No.1 was not entitled to exercise option after a time gap of 15 years counted from the date of issue of circular dated 19.2.1986 and over 16 years counted from 13.11.1984 because being a Class-I officer, who remained posted at Calcutta, he will be deemed to be aware of the Pension Scheme introduced in 1962 and multiple opportunities afforded to the employees and officers to opt for pension. Both Shri Parasaran and Shri Jayant Bhushan emphasized that respondent No.1 did not opt for the Pension Scheme because till his retirement the CPF Scheme was more beneficial and he submitted representation in July 2001 only after the Pension Scheme was liberalized and became very lucrative and argued that the Division Bench of the High Court committed serious error by entertaining the claim lodged by respondent No.1 after more than 15 years of the issue of circular dated 19.2.1986.

14. Shri Ajay Majithia, learned counsel for respondent No.1 relied upon the judgment in *Dakshin Haryana Bijli Vitran Nigam vs. Bachan Singh*², and argued that the Division Bench of the High Court did not commit any error by granting an opportunity to his client to opt for the Pension Scheme because at no point of time the circulars issued in 1984 and 1986 were communicated to him.

15. We have considered the respective arguments and scrutinized the record. In support of

his plea that till 2001 he was unaware of the circulars issued by appellant No.1 in 1984 and 1986, respondent No.1 made the following averments in paragraphs 7 to 17 of the writ petition:

“7. Your petitioner states that from a newspaper publication your petitioner came to a know that the Government of India, Ministry of Surface Transport (Port Wing) by a letter being No.A- 38011/11/98 PET dated 7th January, 2000 decided to grant ex gratia payment to C.P.F. beneficiaries who had retired between 18th November, 1960 to 31st December, 1985 at the rate of 600/- per month with effect from 1st November, 1997 subject to a condition that such persons should have rendered at least 20 years of service.

8. Your petitioner states that after coming to know about the introduction of the said scheme for ex gratia payment your petitioner submitted an application in prescribed form on 17th August, 2000 for grant of ex gratia payment and your Petitioner was granted such ex gratia payment.

9. Your petitioner further states that your petitioner also availed of the scheme for medical benefits extended by the Calcutta Port Trust to its retired employees which was introduced in 1998 as per the notification issued through newspaper publication.

10. Your petitioner states that sometimes in the month of June, 2001 your petitioner went to the residence of one of his friends and/or colleague in the Calcutta Port Trust on courtesy visit. It is only then that your petitioner came to know about the introduction of pension scheme introduced even after his retirement. On further enquiry your petitioner came to know that the Calcutta Port Trust extended the benefits of such pension scheme to many of its employees by condoning their defaults for delayed exercise of their options, sometimes on its own and sometimes following the orders passed by this Hon'ble Court in its constitutional writ jurisdiction on different writ petitions filed by various retired employees of the Calcutta Port Trust from time to time.

11. Your petitioner states that your petitioner came to know that on or about 29th December, 1984. the Financial Adviser and Chief Accounts officer issued a circular to all departmental heads allowing fresh opportunity to all class-I and Class-II officers who were in service on 1st August, 1982 but have retired from service with Contributory Provident Fund benefits after 1st August 1982 and till the date of issue of the said Government order dated 30th November, 1984 provided such retired employees exercise their option by 31st may 1985 and is agreeable to first refund the Trustees contribution towards the provident fund benefits inclusive of interest thereof.

A true copy of the said circular which your petitioner collected from the petitioner's association of the Calcutta Port Trust subsequently sometimes in early July, 2001 is annexed hereto and is marked with Annexure "A" to this petition.

12. Your petitioner states that the said circular was never intimated to your

petitioner by the Calcutta Port Trust though it is incumbent upon the Calcutta Port Trust to intimate the retired employees personally about the scheme introduced for the benefit of the retired employees.

13. Your petitioner states that the said circular was also not circulated by the Calcutta Port Trust through the Mass Media such as newspaper publication broadcasting of news over Radio, Television etc. to keep the retired employee informed about the introduction of such scheme. As a result your petitioner could not know about the introduction of the said scheme.

14. Your petitioner states that your petitioner further came to know that by a subsequent notification issued by the Calcutta Port Trust vide Memo No. 1720 P dated 19th February 1986, another opportunity for exercising fresh option to the retired Class I and Class II officers who retired from service after 1st August, 1982 with Contributory Provident Fund benefits and till 1st January 1986 was given by the Calcutta Port Trust provided such retired employees exercised their option within 30th June, 1986 and is agreeable to refund the Trustees contribution towards the Contributory Provident Fund Scheme including interest thereof.

A true copy of the said notice/circular which you petitioner collected subsequently sometimes in early July 2001 is annexed hereto and is marked with Annexure "B" to this petition.

15. Your petitioner states that even the said circular was not intimated to your Petitioner personally by the Calcutta port Trust though the Calcutta Port Trust was aware of your petitioners residential address. Your petitioner further states that like the earlier one, this time also the Calcutta Port Trust did not circulate the said circular through the Mass Media as a result your petitioner could not know about the said circular. Thus for the reasons as aforesaid your petitioner could not exercise his option though he was ready to avail of the benefits of the said pension scheme.

16. Your petitioner states that since the introduction of the aforesaid pension schemes by the Calcutta Port Trust was not known to your petitioner, your petitioner was finding it extremely difficult to survive without pension in these hard days of inflation and as such your petitioner opted for the scheme of ex gratia payment to the retired employees which was introduced in January, 2000 whenever it came to the notice of your petitioner through the newspaper circulation. Your petitioner further states that had your petitioner had known about the said pension scheme earlier then your petitioner would have exercised his option within the stipulated period as the said scheme is much more beneficial to your petitioner.

17. Your petitioner states that however, immediately after coming to know that the Calcutta Port Trust allowed some of its retired employees to come over to the pension scheme by condoning their delayed exercise of option, your petitioner submitted a representation to the concerned respondents by his letter dated 23rd

July, 2001 inter alia praying for allowing your petitioner to come over to pension scheme on condonation of delay for exercising such option.

A true copy of the said representation which was received by the concerned respondents on 27th July, 2001 is annexed hereto and is marked with Annexure "C" to this petition.”

16. The learned Single Judge critically analyzed the above reproduced averments and recorded a well reasoned finding that respondent No.1 was aware of the Pension Scheme and the circulars issued by appellant No.1. The learned Single Judge discarded the story of respondent No.1 that he came to know about circular dated 19.2.1986 in the month of June from his friend/colleague. The Division Bench of the High Court neither adverted to the averments contained in the writ petition nor referred to the reasoning of the learned Single Judge and granted relief to respondent No.1 on the premise that appellant No.1 is duty bound to get the circulars published in the daily newspapers and display thereof on the notice board was not sufficient to give an intimation to the retirees.

17. In *Union of India vs. D.R.R. Sastri*³, to which reference has been made in *Union of India vs. M.K. Sarkar* (supra) relied upon by the learned counsel for the appellants, a two Judge Bench of this Court considered whether the Central Administrative Tribunal was right in directing the Railway Board to allow the respondent to exercise option for Pension Scheme after expiry of the cutoff date fixed for that purpose. While approving the order of the High Court, which dismissed the writ petition filed by the appellant, this Court observed:

“When this case was listed before this Court on 6-5-1995, 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 19-9-1994, 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 Government 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 was any material 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 20-8-1996, it was contended on behalf of the 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 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 22-7-1972 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 period of service from 1950 to 31-7-1972 and from 1-8-1972 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 Liberalized 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. ”

18. The question whether it was incumbent upon appellant No.1 to get the circulars published in the newspapers and communicate the same to the individual employees was considered by a two-Judge Bench in *Union of India and others v. M.K. Sarkar (supra)* and answered in the following words:

“The Tribunal in this case has assumed that being “aware” of the scheme was not sufficient notice to a retiree to exercise the option and individual written communication was mandatory. The Tribunal was of the view that as the Railways remained unrepresented and failed to prove by positive evidence, that the respondent was informed of the availability of the option, it should be assumed that there was non-compliance with the requirements relating to notice. The High Court has impliedly accepted and affirmed this view. The assumption is not sound.

The Tribunal was examining the issue with reference to a case where there was a delay of 22 years. A person, who is aware of the availability of option, cannot contend that he was not served a written notice of the availability of the option after 22 years. In such a case, even if Railway Administration was represented, it was not reasonable to expect the department to maintain the records of such intimation(s) of individual notice to each employee after 22 years. In fact by the time the matter was considered more than nearly 27 years had elapsed. Further when notice or knowledge of the availability of the option was clearly inferable, the employee cannot after a long time (in this case 22 years) be heard to contend that in the absence of written intimation of the option, he is still entitled to exercise the option.” In the above noted case, the Court found that the respondent had made application after 22 years of his retirement for grant of opportunity to opt for the Pension Scheme. The Chairman, Railway Board rejected his representation on the ground that it was highly belated. The Tribunal set aside the decision of the Chairman, Railway Board and the Division Bench of the Calcutta High Court upheld the same. This Court reversed the orders of the Tribunal and the High Court and observed:

“When a belated representation in regard to a “stale” or “dead” issue/dispute is considered and decided, in compliance with a direction by the court/tribunal to do so, the date of such decision cannot be considered as furnishing a fresh cause of action for reviving the “dead” issue or time-barred dispute. The issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court’s direction. Neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

A court or tribunal, before directing “consideration” of a claim or representation should examine whether the claim or representation is with reference to a “live” issue or whether it is with reference to a “dead” or “stale” issue. If it is with reference to a “dead” or “stale” issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration. If the court or tribunal deciding to direct “consideration” without itself examining the merits, it should make it clear that such consideration will be without prejudice to any contention relating to limitation or delay and laches. Even if the court does not expressly say so, that would be the legal position and effect.”

19. In *Dakshin Haryana Bijli Vitran Nigam vs. Bachan Singh* (supra) on which reliance was placed by Shri Ajay Majithia, this Court approved the order of the Punjab and Haryana High Court which had taken the view that the employer was duty bound to inform the retired employees about the instructions issued for giving them opportunity to switch over to the Pension Scheme. This Court referred to the judgment of the Full Bench of the Punjab and Haryana High Court in *Kesar Chand vs. State of Punjab*⁴, the judgments of this Court in *D.S. Nakara vs. Union of India*⁵, *Subrata Sen vs. Union of India*⁶, and held:

“In view of the law as has been articulated in a large number of cases where this Court has observed that any discriminatory action on the part of the Government would be liable to be struck down. Hence, in this case, it would be totally unreasonable and irrational to deny the respondent the pensionary benefits under the scheme particularly when the appellants have failed to produce any record showing that the instructions dated 6-8-1993 and 9-8-1994 were actually got noted in writing by the respondent. In the absence of any such material it can well be inferred that the respondent had no knowledge about the options called by the appellants.” From the above extracted observation, it is evident that this Court felt persuaded to approve the order of the High Court because no evidence was produced by the appellant to prove that the respondent knew about the options called by the appellants.”

20. We would like to observe that whenever an employer introduces the Pension Scheme or makes the same applicable to retired employees and give them opportunity to exercise

option, the circulars/instructions issued for that purpose should either be communicated to the retirees or made known to them by some reasonable mode. Mere display of such notice/instructions on the notice board of the Head Office cannot be treated as intimation thereof to the retired employees/officers. The employer cannot presume that all the retirees have settled in the city where the Head Office is located. If the employees belong to the services of the Central Government or its agencies/instrumentalities, they are likely to settle in their native places which may be far away from the seat of the Government or Head Office of the establishment or organization. The retirees are not expected to frequently travel from their native places to the seat of the Government or Head Office to know about additional benefits, if any, extended by the Government or their establishment/organization and it is the duty of the employer to adopt a suitable mechanism for communicating the decision to the retired employees so as to enable them to exercise option. This could be done either by publishing a notice in the newspaper about which the retirees are told at the time of their retirement or by sending copies of the circulars/instructions to the retirees or by sending a copy thereof to the association of the employees and/or officers with a direction to them to circulate the same among the concerned retirees. By taking advantage of the modern technology, the employer can also display the circulars/instructions on a designated website about which prior information is made available to the employees at the time of their retirement. If one of these modes is not adopted, the retired employees can legitimately complain that they have been denied right to exercise the option and can seek intervention of the Court.

21. If an aggrieved retiree seeks intervention of the Court for issue of a direction to the employer to give him opportunity to exercise option to switch over from one scheme to the other, the employer can produce evidence to show that the concerned employee had knowledge about the particular scheme etc. The employer can also show that even though the scheme etc. had not been communicated to the concerned employee in person, he was aware of the same. Each such case will have to be decided by the competent Court keeping in view the pleadings and evidence produced by the parties and it cannot be laid down as a general rule that each and every circular/instruction issued by the employer giving additional monetary benefits to the retired employees must be published in the newspapers and that in the absence of such publication or personal communication to the retired employee would entitle him to seek intervention of the Court after lapse of many years.

22. We may now revert to the facts of this case. It is not in dispute that at the time of the introduction of the Pension Scheme, respondent No.1 was very much in service as Class-I officer. Circulars dated 11.8.1979, 17.1.1981 and 11.3.1981 were also issued during his tenure as a senior officer of appellant No.1. Therefore, it is not possible for any person of ordinary prudence to believe that respondent No.1 was not aware of the Pension Scheme and the opportunities given to the retired employees/officers to exercise option to switch over from the CPF Scheme to the Pension Scheme. This is precisely what the learned Single Judge did and we do not find any error in the approach adopted by him. The story put forth by respondent No.1 of having acquired knowledge about the circulars issued in 1984 and 1986 from his friend/colleague was rightly discarded by the learned Single

Judge. The failure of respondent No.1 to disclose the name of the concerned friend/colleague adequately supports the inference drawn by the learned Single Judge and the Division Bench of the High Court committed serious error by interfering with the order of the learned Single Judge.

23. We may add that it was neither the pleaded case of respondent No.1 before the High Court nor any evidence was produced by him to show that the copies of the circulars issued by appellant No.1 were not sent to the Association of employees. It was also not the pleaded case of respondent No.1 that he had visited the Association for the first time in 2000 for collecting the circular issued by the Government of India for grant of ex gratia of Rs.600 per month. This being the position, it is not possible to accept the specious argument of respondent No.1 that he had no knowledge of the Pension Scheme and the circulars issued in 1984 and 1986.

24. In the result, the appeal is allowed, the impugned judgment and order are set aside and the one passed by the learned Single Judge is restored. However, keeping in view the peculiar facts of this case, we direct the appellants to allow respondent No.1 to exercise option in terms of circular dated 19.2.1986. The needful be done within a period of two months from the date of receipt of copy of this judgment. At the same time, we make it clear that this direction shall not be treated as a precedent for other cases pending before the High Court, which shall be decided in the backdrop of their own facts.

Judgment referred

¹2010 (2) SCC 0059

²2009 (14) SCC 0793

³1997 (1) SCC 0514

⁴AIR 1988 Punjab 0265

⁵(1983) 1 SCC 0305

⁶(2001) 8 SCC 0071