

A

SHRI D.P. PATIL
v.
UNION OF INDIA AND ORS.

APRIL 7, 1997

B

[K. RAMASWAMY AND D.P. WADHWA, JJ.]

C

Service Law—Pension—Employee not exercising option for switching over to pension scheme—Employee availing retiral benefits—Claim for switchover to pension scheme at a belated stage—Claim allowed by Tribunal—On appeal by Union of India order of Tribunal granting benefit of pension to appellant set aside by Supreme Court—Held there was no illegality in recalling the pension order granted by Tribunal.

D

Krishna Kumar v. Union of India & Ors., AIR (1990) SC 1782 = JT (1990) 3 SC 173, referred to.

E

Adjournment—When the petitioner choses to appear in person, the Court is not expected to give an intimation to the parties of the date of adjournment—Once intimation is given, it is the duty of the party to make note of the subsequent dates and make himself available and appear when the case is called out.

CIVIL APPELLATE JURISDICTION : Interlocutory Application
No. 3.

In

F

Civil Appeal No. 11380 of 1996.

From the Judgment and Order dated 9.3.94 of the Central Administrative Tribunal, Bombay in O.A. No. 268 of 1991.

G

H.L. Agarwal and Arvind Kumar Sharma for the Appellant.

A.K. Goel and Mrs. Sheela Goel for the Respondents.

The following Order of the Court was delivered :

H

By Order dated August 20, 1996, we allowed the appeal of the respondent-Union of India and set aside the order of the Tribunal granting

the benefit of pension to the applicant. The applicant has filed the present applications to recall the order. It is stated therein that since he was not well, could not appear on 13.8.1996 when the appeal was initially listed and intimation to that effect was given by him. The matter was thereafter listed on 20.8.1996 but he was not informed of such adjournment. Therefore, he could not be present on that date and the matter was disposed of *ex parte*. When the petitioner chooses to appear in person, the Court is not expected to give an intimation to the parties of the date of adjournment. Once intimation is given, it is the duty of the party to make note of the subsequent dates and make himself available and appear when the case is called out. However, we took care to satisfy ourselves of the grievance of the applicant by calling upon the respondents to explain us the position.

The controversy is no longer *res integra*. The entitlement to the benefit of the pension was considered by this Court in *Krishna Kumar v. Union of India & Ors*, AIR (1990) SC 1782 - JT (1990) 3 SC 173. Following that judgment, this Court had set aside the order of the Tribunal. It is seen that the claim of the petitioner is that he did not have knowledge of the extension of the last date for giving the option. It is his case that he retired in November 30, 1975 and he did not have any opportunity of knowing the extended date. That is falsified by the record. For the first time, it was extended upto January 1, 1973. It was further extended upto July 23, 1974; thereafter, upto June 25, 1975, June, 30, 1976, January 3, 1977, July 12, 1977, April 17, 1978, December 7, 1978 and the last of the extensions was till December 31, 1978. While he was in service, he had the opportunity to register the option on three occasions, namely on January 1, 1973, July 23, 1974 and June 1975. He did not exercise the option at that time. The option was as regards principle of gratuity. He thought that, that would be a better principle advantageous to him. He withdrew the retiral benefits. Later, when the pension scheme was sought to be given to several persons, he came forward at a belated stage saying that he was not in know of extension till 1991. When others were given benefit by the Tribunal, he came to file the petition. In view of the aforesaid facts, it is hard to believe that he had no notice of exercising the option for the pensionary benefit. Under these circumstances, we do not find any illegality in the order passed by this Court for recalling the order.

The interlocutory application is, accordingly dismissed. No costs.