

PETITIONER:
SHRI D.P. PATIL

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT: 07/04/1997

BENCH:
K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

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 has 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 be present on that date and the matter was disposed of ex parte. 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. 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 vs. 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, 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 25, 1975. He did not exercise the option at that time. The option was as regards principle of gratuity. He thought that would be a better principle advantageous to him. He withdrew the retinal 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 benefits. 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 cost.

JUDIS