

SJP/SR/CR/7

Lead

Commissioner's File: CP/16656/1996

SOCIAL SECURITY ADMINISTRATION ACT 1992

SOCIAL SECURITY CONTRIBUTIONS AND BENEFITS ACT 1992

APPEAL FROM DECISION OF SOCIAL SECURITY APPEAL TRIBUNAL ON A
QUESTION OF LAW

DECISION OF THE SOCIAL SECURITY COMMISSIONER

1. My decision is that the decision of the Southampton Social Security Appeal Tribunal held on 29 January 1996 is not erroneous in law. Accordingly I dismiss this appeal by the claimant.

2. This is an appeal by the claimant, brought by my leave, against the unanimous decision of the tribunal upholding a decision of an adjudication officer that the claimant was not entitled to retirement pension from 31 December 1982 to 16 August 1988 because of the time limit for claiming retirement pension.

3. The history of this matter does not appear to be in dispute and I accept that history as helpfully set out by the adjudication officer now concerned, who at paragraphs 3-7 inclusive of her submission dated 18 March 1997, says as follows:-

"3. A claim form (BR1) for the purposes of claiming Retirement Pension (RP) was received from Mr Singh in November 1982. This form was returned to him as it was incomplete. A reminder for the return of the [sic] was issued on 17.12.82. It was thought that Mr Singh may be having difficulty in completing the claim form and so on 25.1.83 a visiting officer (VO) from the DSS called at the claimant's address and saw his daughter in law. She spoke very little English but advised that both her husband and father in law were out. The VO left a written request for Mr Singh to contact the local office or return the completed form.

4. A further visit was made on 22.2.83 and Mr Singh's daughter in law advised that Mr Singh went away about 6 weeks before and she did not know when he would return. On 28.2.83 a request for the claimant to call at the office was issued. On 20.4.83, as there had been no contact with the claimant and the claim form had not been correctly completed and returned, it was decided to take no further action until such time as the claimant made further contact.

5. On 13.1.86 a request was received for a claim form for RP to be issued for Mr Singh at the address on the letter.

A claim form was issued on 13.1.86. On 17.3.86 a further request was received and a duplicate form BR1 was issued on 18.3.86. The completed claim form was received on 17.8.89 and the Department was notified that the claimant was living in India. As the claimant was living abroad his claim was dealt with by the Overseas Benefits Directorate (OBD) in Newcastle.

6. On 12.2.91 the claimant was notified that although the Adjudication Officer (AO) had accepted that the claimant was born in 1917 he had been unable to establish the exact day or month and so the earliest date from which Mr Singh could claim RP is 31.12.92 (the last day of the year in which he attained age 65). In the same letter the claimant was asked from which date he wished to claim RP.

7. The claimant appears to have requested RP from 31.12.82. The AO decided that the claimant was not entitled to RP from 31.12.82 to 16.8.88 because the claim was not made within the 12 month time limit. Mr Singh, now back in the UK, made a late appeal and at the hearing on 29.1.96 the tribunal decided that the claimant is not entitled to RP from 31.12.92 to 10.8.99 because the claim made for that period on 17.8.89 was not made within the time limit for claiming. The claimant applied to the Commissioner, who granted leave to appeal on 2.10.95."

4. From the decision of the tribunal the claimant appeals, maintaining that there are errors in the tribunal's decision in that he went to India in 1982, not 1980 as is recorded by the tribunal, that the original claim form was not produced to the tribunal, that the dates referred to by the tribunal were incorrect and that there is a typing error in the legislative provision referred to by the tribunal.

5. The adjudication officer now concerned does not support the appeal. She submits, correctly in my view, that the date when the claimant went to India, whether this was in 1980 or in 1982, is immaterial for the purposes of this appeal. I

agree, the appeal not being dependent upon any of the dates of visits by the claimant to India but upon the legislative provisions concerning the manner in which claims should be made and the date from which retirement pension could be awarded. The adjudication officer also submits, effectively, that it is immaterial that the tribunal, in box 3 of their decision, referred to incorrect dates. It is unfortunate, and downright misleading, that the chairman should have signed the decision of the tribunal when it obviously referred to wrong dates. It is, however, to my mind clear from the way in which the tribunal framed their decision as a whole that they accepted the dates set out in the original decision of the adjudication officer, given their finding of fact as to the date of claim and the second paragraph of their reasons. By reasonable implication, then, it is clear that the tribunal upheld the original adjudication officer's decision, incorporating the dates referred to in box 1 of form AT2, before the tribunal.

6. It has also been said on behalf of the claimant that the tribunal should have seen the claim form which led to pension being awarded. There was, however, no issue before the tribunal as to that form nor was there any suggestion that any earlier claim had been properly and timeously made. It did not form part of the claimant's case that regulation 4(7) of the Social Security (Claims and Payments) Regulations 1987 applied. That part of regulation 4 provides a potential remedy for defective claims or those made on forms not approved, provided only that any approved form "... is received properly completed within one month, or such longer period as the Secretary of State may consider reasonable ...". It was at no time suggested that the first claim form, sent to the claimant in November 1982, was correctly completed. Nor has it been suggested that there was any other properly completed claim form before that received on 17 August 1989. In due course a fresh claim form was sent to the claimant, on 18 March 1996, considerably more than one month before the relevant claim form was received. There is no indication that the Secretary of State has considered a period greater than the one month laid down in regulation 4(7) of the Claims and Payments Regulations as reasonable. Regulation 4(7) refers to actions that may be taken by the Secretary of State. I am not empowered to interfere with any exercise or refusal to exercise discretion on the part of the Secretary of State. In the circumstances it was no error of law for the tribunal not to enquire into the terms of regulation 4(7) of the Claims and Payments Regulations and, indeed, had they done so then, on the evidence before them, they could have reached no different conclusion.

7. The time limits referred to in the submissions of the original adjudication officer and the adjudication officer now concerned are clear and permit of no alteration. The tribunal were, in my judgment, left with no alternative but to hold

that (as in substance they did) retirement pension could not be awarded for more than one year before the date of claim, and, viewing their decision as a whole, I consider that the tribunal have provided an adequate factual basis and given sufficient reasons, albeit short in both respects, to support their decision. It is, again, unfortunate that their decision referred to section 12B of the Social Security Administration Act, 1992, but that error is venial as they clearly had in mind the correct provision, section 1(2)(b) of that Act.

8. The decision of the tribunal is not, for the reasons set out above, erroneous in law. Had I found it to be so I should, on the undisputed evidence before the tribunal and myself, have reached the same conclusion. Accordingly I dismiss the claimant's appeal.

(Signed) S J Facey
Commissioner

(Date) 10 July 1998