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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.1060 of 1986.

Heera Ram Singh ... Plaintiff

Vs.

Union of India and
another ... Defendants.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

(By Hon. G.S.Sharma, JM)

This suit has been received by transfer
from the Court of Munsif City Kanpur under Section
29 of the Administrative Tribunals Act XIII of
1985.

2. The plaintiff who was serving the defendants
as Air Craft Mechanic retired from service on 31st
Dec. 1983 on attaining the age of superannuation.
It is alleged that he had exercised his option in
triplicate for pensionary benefits including family
pension while in service. The defendants had given
such benefits to other employees, namely, Basudev
and Margon but as the defendants did not take a
final decision in respect of the option exercised
by the plaintiff, he was compelled to withdraw the
Provident Fund amount, thus, treating him different-
ly in contravention of the provisions of Art.14 of
the Constitution of India. The plaintiff is
} prepared to refund the Provident Fund amount receiv-
ed by him according to rules for getting the
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for a declaration that he is entitled to all pensionary benefits including the family pension.

3. The defendants have contested the suit and in the written statement filed on their behalf, it has been stated by them that under the A.M.No.3(2)-PU/79 dated 19.8.1979, the plaintiff was required to opt for pensionary benefits within the stipulated period of 6 months but as he did not exercise his option in time and he continued to contribute to the I.O.F.W.P.Fund and exercised the option much late on 20.10.1982, he is not entitled to the pensionary benefits. The readiness of the plaintiff to refund the portion of the Provident Fund for getting the pensionary benefits is meaningless as the plaintiff had retired on 31.12.1983 and received all retiral dues without any reservation. His suit is barred by estoppel and acquiescence. Some other technical pleas were also taken in the written statement.

4. In his replication, it was stated by the plaintiff that in terms of the decision of the Ministry of Defence vide letter no.MFCP (P)/2406(PC-1)/691 (Civ-1) dated 11.2.1982, the plaintiff had exercised his option within the stipulated time. Since there was a provision for relaxation and the relaxation was made in similar other cases, the plaintiff was entitled to be considered for pensionary benefits and the rejection of the claim of the

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plaintiff alone on this ground amounts to discrimination against him. He reiterated the case taken up by him in his plaint and denied the allegations made in their written statement by the defendants.

5. On the transfer of the suit to this Tribunal, the plaintiff appeared before us on one date and he was afforded an opportunity to produce the copies of all necessary documents but thereafter, he neither appeared on the adjourned dates nor produced any documents. Instead of dismissing the suit in default, we heard the learned Senior Presenting Officer on behalf of the defendants and now propose to decide the case on merits.

6. In paragraph 3 of the plaint, it has been stated by the plaintiff that he had exercised option for pensionary benefits in terms of A.M. No.3(2)-PU/79 dated 19.8.1979 and O.M.No.17/79/D-Est-1/GP-11 dated 11.9.1979. He deliberately kept the date of his exercising the option concealed. In their written statement, the defendants admitted that the plaintiff was entitled to exercise his option under the O.M. dated 19(9).8.79 by the end of Feb.1980 but as he had exercised the option after considerable delay on 20.10.1982, it was not found within time and was not accepted on this ground. In his replication, the plaintiff

did not dispute the date of his exercising the option as alleged in the written statement but came forward with another allegation that in view of letter dated 11.2.1982 containing the decision of the Ministry of Defence, it is wrong to say that he had not exercised his option in time. He further stated that since there was a provision for relaxation and in terms of the said circular the relaxation was accepted in similar other cases, the claim of the plaintiff deserves to be considered for pensionary benefits. The relevant circular letters and the Memorandum relied upon by the plaintiff in his replication are not before us and as such, we are unable to appreciate the contention of the plaintiff. Further, the right of relaxation vests in the competent authority and it cannot be claimed as of right by the person for whose benefit the same is to be exercised. We are, therefore, not convinced with the allegation of the plaintiff that the option exercised by him after a considerable delay should have been considered after relaxing the rules regarding the time within which it was to be exercised.

7. Furthermore, it is apparent from the own pleading of the plaintiff that the ~~right of exercising the~~ option was to be exercised upto Feb. 1980. The plaintiff however, gave his option after a long period on 20.10.1982. He thereafter continued in service upto 31.12.1983 and in the

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meantime, he must have known about the factual position of his aforesaid option. On his retirement, he preferred to take all retiral benefits including the Provident Fund and did not insist for pensionary benefits. There is nothing before us to show that the plaintiff was really compelled by anybody to do so. Thus, having received all the benefits of his retirement, he is now estopped from claiming pensionary benefits. We, therefore, find force in the plea of the defendant-respondent that the suit is barred by estoppel and acquiescence. In the result, the suit deserves dismissal

8- The suit is accordingly dismissed but we direct the parties to bear their own costs.

Bhme
19.3.1987
MEMBER (A)

Subbarao
19.3.1987
MEMBER (J)

Dated 19.3.1987
kkb

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RESERVED
CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD.

Registration Restoration Application No.41-B/T/1987 AND
Review Application No.48-B/T/1987

Heera Ram Singh Applicant

Vs.

Union of India and another Respondents.

Hon.D.S.Misra,AM
Hon.G.S.Sharma,JM

(By Hon.G.S.Sharma,JM)

are {
These two applications for restoration and review
of our order dated 19.3.1987 passed in T.A.No.1060 of 1986.

2. The relevant facts of this case are that the applicant-plaintiff had filed a suit in the Court of Munsif at Kanpur for pensionary benefits. The suit stood transferred to this Tribunal under Section 29 of the Administrative Tribunals Act XIII of 1985 and on a notice being issued to the applicant, he appeared before us on 11.11.1986 and was allowed to file the copies of his documents within a month and the case was ordered to be listed on 28.1.1987. On 28.1.1987, there was no sitting of the Bench and the case was adjourned to 6.3.1987. On 6.3.1987, the applicant did not appear and after hearing the arguments of the defendants- respondents, the judgment was reserved. The judgment was pronounced on 19.3.1987 dismissing the suit of the applicant. He thereafter filed an application for restoration on 31.3.1987 stating that on 28.1.1987 there was a sitting of the Bench and the applicant with his counsel had appeared before us and the case was adjourned to 23.3.1987. On 23.3.1987 when he appeared and made inquiries, he found the case decided ex-parte on 19.3.1987 and he had no knowledge of the date 6.3.1987 fixed in his case. In the affidavit filed in support of the application it

was alleged that there was no sitting of the Bench after lunch interval and the Reader was directed to adjourn all the cases and he had given 23.3.1987 as the next date and the applicant did not commit any default in appearance. On 20.4.1987, the applicant filed another application for the review of our order dated 19.3.1987 almost with the same allegations. It was also alleged in the review petition that on the ground of parity with Basdeo and Margon, co-employees, the applicant was entitled to pensionary benefits under Art.14 of the Constitution and A.M.dated 19.8.1979 and CM dated 11.9.1979 and he has been prejudiced by not affording an opportunity of hearing to him. Both the applications have been opposed on behalf of the respondents and their contention is that the application for restoration is not maintainable under the rules and there is no good ground for review.

3. We have heard the learned counsel for both the parties on the two applications before us. It is apparent from the record that the applicant was not present ~~now~~ 6.3.87 but we did not dismiss the suit in his default and after hearing the other party and considering the pleadings and ~~other~~ evidence of both the parties available on the record, we had decided the suit on merits on 19.3.1987. Thus, in view of the specific provisions of rule 15 of the Central Administrative Tribunals (Procedure)Rules,1987, the restoration application is not maintainable and the decision dated 19.3.1987 can be reopened only by way of review.

D.M

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4. Regarding the review, we find no additional material on the record to show that the view taken by us earlier is not correct. The record shows that on 11.11.1986 when the applicant had appeared before us, he was allowed a month's time to file his documentary evidence in this case. Since then no documentary evidence has been produced by him till today. The order sought to be reviewed states that the two circular letters on which the plaintiff was placing his reliance were not available on the record and we were unable to appreciate his contention. There was also no material on record to show as to how there was a discrimination against him. Regarding the relaxation of rules in his favour, we had observed that it cannot be claimed as of right. There is nothing further on record to call for a change in our view. It is not shown as to why the applicant did not furnish the required documents in support of his case within time allowed by us. It is also not shown as to why the additional evidence, if any, which can prove his case, was not produced with the review petition. We, therefore, find no good ground even for review.

5. Both the restoration and review applications are accordingly dismissed without any orders as to costs.

MEMBER (A)

Shm
26.8.87

MEMBER (J)

Shm
26/8/87

DATED : Aug, 26, 1987
kkb