

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL—ALLAHABAD BENCH
ALLAHABAD.

T.A. No. 1350 of 1986.

Allahdiya..... Applicant.

Versus

The Union of India & others..... Opp. Parties.

Hon'ble Mr. Justice U.C. Srivastava-V.C.

(By Hon'ble Mr. Justice U.C. Srivastava-V.C.).

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1985. The applicant filed a suit in the court of Munsif City for declaration and mandatory injunction praying that the order dated 31.6.82 which was to operate from 30.11.82 passed by the Colonel Commandant Remount Training School & Dept, Saharanpur by which the applicant was being as retired on superannuation ~~on 30.11.82; that he may be declared as~~ ^{unselected for} ultravires and the defendants be directed to ~~pay~~ ^{pay} all the arrears of gratuity, pensions emoluments etc. The applicant came forward ^{with} ~~in~~ the case ^{that} ~~as~~ he was employed in the Civil side of Defence Department in 1946 as Helper and was regularized in the year 1958 as permanent employee ~~as~~ ^{as the} Black-smith and his date of birth was recorded as 15.11.1922 and ~~he~~ was due to retire on 30.11.82. He was relieved from duty on 30.11.82. But instead of retiring him from service he was given "Discharge from service", meaning thereby that he ~~had~~ forfeited gratuity and pension. This was done without affording any opportunity to the applicant and according to the respondent the applicant gave a notice under Section 80 C.P.C. Thereafter he he filed the suit.

The respondents ~~had~~ filed ^a written statement in which they refuted the claim of the applicant and denied that the applicant was appointed for the first time in the year 1946 as helper and was regularised in service in the year 1958 as permanent employee as Black-smith. As a ^{according to them} matter of fact the applicant ~~had~~ was employed as temporary

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black-smith (non pensionable post) on 16th October, 1952 and his date of birth was recorded as 15th November, 1920 at the time of employment. There is no mention in the service book of the applicant that he was ever employed in the year 1946 as Helper and the applicant was never regularized as permanent employee. He was employed purely on non-pensionable post and was paid on Muster Roll on monthly incremental rates of pay and as per CPRD, 1982/83 he was entitled to the relief, leave Pay and allowances and I.O.F.W.P- fund subscription etc ~~and of~~ ~~the~~ ~~applicant~~ ~~and~~ Infact the applicant was subscriber to the said funds. He reached the maximum of his pay scale of Rs. 110/- per month on 1.7.1968 and his pay was stopped and was granted personal pay of Rs. 3/- per month w.e.f. 1st July 1970, thereby raising his pay to Rs. 130/- per month. The pay of the applicant was further fixed at the rate of Rs. 265/- per month w.e.f. 1st Jan. 1973 in the pay scale of Rs. 210/- 4/ 226 E.B. -4-250- E.B. -5- 290/- and on 1st January, 1976 the applicant ~~has~~ reached ~~to~~ the maximum of his grade ~~as~~ ^{up} Rs. 290/- per month after getting his last increments on 1st Jan. 1976. The applicant from the very begining was fully aware that his post is not pensionable and after superannuation ~~as~~ he cannot claim the same. From the facts indicated above, it is obvious that the applicant was never given an appointment against ~~the~~ pensionable post. The applicant may ~~be~~ ^{have been} under the impression that he was serving on pensionable post, which ~~an~~ normal course, ~~should~~ have been done. It appears that the respondent did not give an appointment letter in this behalf referred that the applicant remained in dark. But in absence of any appointment letter showing that the applicant was regular employee or he was taken pensionary post, the applicant cannot claim pension and other benefits. It may be that he was illiterate person ~~has not this not known~~ ^{and was not aware of the nature of} ~~appointment~~ ^{appointment}, but there is no documentary evidence to indicate that he was ever appointed as a helper. ~~Whether the record he was employed as~~

~~recessants~~ The applicant has failed to prove the averments
~~as may be because of~~ ~~as contended~~
~~of his~~ misfortune or ~~his~~ illiteracy. But no decree in his
favour can be granted. As such the suit has got to be dismissed
and the same is dismissed. However this made it clear that in
case the applicant gets any document ^{in his favour} or ~~xxxix~~ ultimately it is
found that in fact the applicant was ~~found~~ ^{will be} ~~only~~ regular staff ~~and~~
on pensionable post, it ~~is~~ open for the applicant to ~~take~~ ^{raise her mather}
~~before authorities~~ ^{drifted as} ~~proceedings~~. No order as to the costs.

Dt: 27th April, 1992.

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Vice Chairman.

(DPS)