

CENTRAL ADMINISTRATIVE TRIBUNAL ALIAHABAD BENCH  
ALIAHABAD.

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Allahabad this the 27<sup>th</sup> day of September 1996.

Original application No. 416 of 1988.

Hon'ble Mr. D.S. Baweja, AM

Panchoo, Father's name Sri Swroop  
a/a 62 years, H.S. Gr.I Carp./T.N.O.E./  
312T.L. Shop, GKP, R/o Mohalla Basaratpur  
Gareria Tola, P.O. - Basaratpur,  
Distt. - GKP

..... Applicant.

C/A Sri Bashist Tewari

Versus

1. Sr. Accounts Officer Workshop,  
NER, GKP.
2. DEE Workshop NER, GKP.
3. Bri Raj Dealing Clerk, Settlement  
section DW Office Personal Branch,  
Workshop NER, GKP.

..... Respondents.

C/R Sri A.K. Gaur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This application has been filed praying for the following reliefs:-

(a) To issue direction to the respondents to pay pension, gratuity, insurance, rest of the amount of PF, commutation of pension with interest of 12% for the delayed payment.

(b) Direct the respondents to pay Rs. one lakh to the applicant by way of compensation for mental and physical torture.

(c) Respondent Nos. 1 & 2 be directed to take penal action against the respondent No. 3.

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2. The applicant retired on 30.6.84 while working as Carpenter Highly Skilled grade I from T.L. Shop, Gorakhpur Workshop, North Eastern Railway. The applicant states that he had opted for the pension and he had also filled up the forms for pension at the time of retirement. The applicant received <sup>only</sup> the amount of leave encashment and part of Provident Fund (PF) of Rs. 12892/- at the time of retirement but no payment of DCRG, Life Insurance, balance amount of PF, Pension and commutation of the pension had <sup>been</sup> made. The applicant made a representation dated 29.9.87 to Railway Board but no action had been taken for making the due payments. Being aggrieved, he has filed this application on 30.3.88.

3. The applicant submits that he contacted the dealing clerk Sh. Brij Raj, Senior Accounts Officer and Assistant Accounts Officer (W), but of no avail. He alleges that Sh. Brij Raj (Respondent No.3) demanded Rs. 5000/- if the applicant wanted pensionary benefits otherwise he will not prepare the pension papers of the applicant. This is the only reason for non payment of the pensionary benefits for which the applicant is entitled as per the rules.

4. The respondents have filed the counter reply vehemently refuting the averments of the applicant. The respondents have submitted that the applicant was a non pensionable employee as he never opted for the <sup>pension</sup> same when such opportunity was allowed vide letter dated 2.6.83 (Annexure-A of the counter) <sup>and</sup> when the applicant was in service. There were several opportunities before this also and wide publicity had been given to the Railway Board circulars on the subject. The applicant's <sup>he</sup> assertion that <sup>help</sup> he submitted his option at the time of retirement also does not keep him

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as the last date had expired on 31.8.1983. Respondents also submit that payment of his own contribution of PF was done on 19.7.86 and that of special Government contribution to PF on 2.11.85. Leave encashment was paid on 2.1.86 and Group Insurance on 11.3.1986. Copies of the paid vouchers for these payments with the receipt of the payment by the applicant are brought on record at annexures II, III, IV and V. Since the petitioner had received all these dues, there was no need of his meeting the dealing clerk Sh. Brij Raj or other officers. Since he had not opted for pension, he was not entitled for the same and there was therefore no occasion to meet Sh. Brij Raj for imaginary pension. The allegation of demanding money by Sh. Brij Raj has been introduced to lend colour to the present case. The representation dated 29.9.87 said to have been sent to Railway Board is wrongly addressed and has been introduced as a cover for the time limit. The applicant<sup>ion</sup> deserves to be dismissed on this account alone. Further the applicant is himself responsible for not getting pension as he failed to exercise option before the due date. In view of these facts, all the admissible dues have been <sup>paid</sup> made to the applicant and there is no infringement of any service rules or any provisions of the Constitution of India. Therefore the application has no merit and deserves to be rejected.

5. The applicant has not filed any rejoinder. The learned counsel of the applicant made a statement at bar that there is no requirement of filing rejoinder affidavit in view of the order to the respondents to produce the original service records. (2)



6. Heard the learned counsel of the parties. We have carefully evaluated the arguments made during the hearing and also considered the material placed on the record.

7. The main issue as emerges from the averments made is with regard to the payment of the pension. The respondents have stated that the applicant had not opted for the pension as per the extant rules. Respondent also submit that the serving staff were required to opt for the pension upto a particular date and it was last extended upto 31.8.83 vide Railway Board's letter dated 2.6.83 before the retirement of the applicant and therefore his averment that he submitted his option at the time of the retirement is not valid. The respondents also highlight that the applicant received the payment of special government contribution to the provident fund during December 1985 without any objection. The applicant has not filed any rejoinder reply to controvert these submissions of the respondents. During the hearing also, the learned counsel of the applicant also was non committal about these submissions and only plea put forward was that the applicant was illiterate. The applicant has based his claim for pension only on the plea that some pension forms were got filled up from him by the dealing clerk Sh. Brij Raj. The applicant alleges that since he refused to meet with the demand of Rs. 5000/- from Sh. Brij Raj his pension papers have not been processed further. Sh. Brij Raj has been impleaded as a respondent. No affidavit has been filed by him. However from the facts brought on the record, we find that these allegations are wild and without substance. If this was fact, the applicant has not averred <sup>as to</sup> ~~that~~ why he did not bring this fact to the notice of the



higher authorities and also made representation as the dealing clerk was not competent to decide the pension issue. The only representation made is dated 29.9.87 at annexure-A. This is addressed to Railway Board with wrong address. In this application he alleges mala fides without naming Sh. Brij Raj. The applicant has received the payment of the special contribution to the Provident Fund in in 1985 and even after this he kept quiet. Silence on the part of the applicant itself signifies that these allegations are a cover up to make his case for pension. It is easy to allege malafides but the burden of establishing malafides lies on the person who alleges. In the absence of any material on record, we are unable to accept this contention.

8. As ordered, the respondents have produced the service record of the applicant. I have gone through the same and do not find any option exercised by the applicant for coming over to the pension scheme. Further the papers of settlement dues have been processed with the remark "Not opted for the pension". In the absence of any rejoinder affidavit to controvert the version of the respondents and any material having been brought on record that he opted for pension before the due date, I am unable to persuade myself to see any merit in the prayer for the relief of payment of the pension.

9. As regards to the reliefs of payment of gratuity, insurance, balance provident fund, the respondents have averred that the applicant has received all the settlement dues. The respondents have also brought on record the documentary evidence of the paid vouchres at annexure II, III, IV and V of the counter indicating the receipt of the payment by the applicant. In the absence of any rejoinder



filed by the applicant and specific denial of the receipt of these payments during the hearing by the applicant's counsel, I accept the contention of the respondents. In view of this, there is no merit in this relief also.

10. In view of what is stated above, I do not find any merit in the application and the same is dismissed with no order to costs.

*Arvind*  
Member - A

Arvind.