

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH,  
ALLAHABAD

Dated : Allahabad 17th November, 1995.

CIVIL MISC. CONTEMPT PETITION NO. 205 of 1992.

in  
ORIGINAL APPLICATION NO. 66 of 1992

Lala Ram son of Sri Halku Ram,

Retired T.T.E., 107, Khusipura,

Jhansi. .... Petitioner.

(By Advocate Sri Bashistha Tewari)

Versus

1. Manoj Kumar Pandey, D.R.M.(P),

Central Railway, Jhansi.

2. Binod Agarwal, D.R.M. Central Railway,

Jhansi.

(By Advocate Sri G.P. Agarwal)... Respondents.

QUORUM : Hon'ble Mr. S. Das Gupta, Member-A.  
Hon'ble Mr. T. L. Verma, Member-J.

ORDER(Oral)

(By Hon'ble Mr. S. Das Gupta, A.M)

Shri Bashistha Tewari for the applicant. Sri  
G. P. Agarwal for the respondents. This application  
was filed alleging non-compliance with a direction  
contained in the judgment and order dated 14.8.1992  
passed by a bench of this Tribunal disposing of  
Original Application No. 66 of 1992.

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2. For proper appraisal of the controversy it is necessary to briefly state the facts in Original Application. The applicant claims that he opted for pension scheme within the specified period but despite that he was retired under the Provident Fund Scheme and was paid accordingly. The Tribunal noticed that in a letter dated 5.12.1991 issued by the F.A. & C.A.O. (Pension) Central Railway, Bombay V.T. addressed to the Divisional Railway Manager, (P), Jhansi ~~and~~ specifically mentions that the applicant was deemed to have retired under Provident Fund Rules, though while in service, he had given his option to come over to the Pension Rule and the option to this effect had been received and acknowledged by CTI(D) Jhansi under whom he was then working. The Tribunal observed that this letter clearly indicated that the applicant had given his option for pensionary benefits. The Tribunal had gave a direction to the respondents to scrutinize the ~~matter~~<sup>records</sup> after requiring the applicant to produce the documents available with him to prove that he opted for the pensionary scheme, and in case they come to a conclusion after taking into account the documents that no option was exercised by the applicant, the case shall stand dismissed otherwise the benefit of his option shall be given to the applicant in accordance with the rules.

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3. The respondents have filed a counter-affidavit enclosing the copy of the order dated 17.11.1992 which indicates the action taken by the respondents in compliance with the Tribunal's direction. It has been stated therein that after considering the various records available with the employee and with the Department, the respondents have come to a conclusion that there is no sufficient proof of any kind that the applicant had exercised option to come under the pension scheme.

4. The learned counsel for the applicant contends that this is in contravention of the Tribunal's direction as the applicant had sufficient proof to show that he had opted for Pension Scheme. By a Miscellaneous Application subsequently filed, the applicant had filed a copy of the letter dated 29.10.1986, in support of his contention that he had opted for pension scheme. This purported to be a D.O. Letter from Sri Atul Mohan A.D.O. Jhansi addressed to Sri Hubli, A.O. Bombay V.T. It has been stated therein that copies of applicant's representation for being pension optee alongwith the copy of option acknowledgement from C.T.I.(D) Jhansi are being submitted to the Principal Branch Jhansi for needful. When we had noticed this letter, we had directed the respondents to produce the original copy of this letter. The learned counsel for the respondents, submitted that this letter is not traceable on the record.


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5- After going through the pleadings on record and various documents furnished to us, we are of the view that the <sup>preponderance</sup> ~~preponderance~~ of evidence would support the applicant's case that he had opted for the pension scheme, and for whatever reason, the same was not considered and he was deemed to have ~~re~~ retired under Provident Fund Scheme. Such view ~~is~~ fortified by specific statement of the F.A. & C.A.O. in the letter dated 5.12.1991, original of which is available on the record of the respondents and also copy of the letter dated 29.10.1986, the original of which is stated to be not available on the respondents' record.

6. In view of the fore-going, we have no manner of doubt that the applicant was entitled to be given the benefit of pension scheme and by not being allowed the same benefit, there is prima-facie dis-obedience <sup>to</sup> ~~with~~ the direction of the Tribunal. We, however, grant three months time to the respondents to re-trace the <sup>steps</sup> ~~papers~~ and file a supplementary-affidavit indicating compliance of the orders of the Tribunal, failing which appropriate action ~~should~~ be taken.

  
Member- (J)

  
Member- (A)

PANDEY/-