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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No 1057 of 1993

Allahabad this the 31st day of May 1995

Hon'ble Dr. R.K. Saxena, Member(Jud.)

Laloo Singh S/o Late Kalloo Singh, R/o Village
and Post Jasra, Tehsil Bara, District Allahabad

APPLICANT

By Advocate Shri Satish Dwivedi

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Allahabad.
3. The Divisional Personnel Officer, Northern Railway, Allahabad.

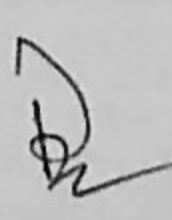
RESPONDENTS

By Advocate Shri A.K. Gaur.

O R D E R

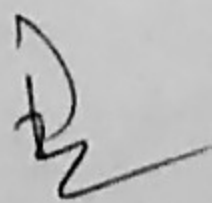
By Hon'ble Dr. R.K. Saxena, Member(Jud.)

The applicant, Laloo Singh, has come up with the prayer that the respondents be directed to grant pension and fix the amount thereof. The payment of the amount of pension with 18% of interest is also sought.



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2. The facts of the case are that the applicant was initially appointed as Assitant Goods Clerk in the year 1944 and was promoted to the post of Head Goods Clerk . On 28.2.1979, he retired on reaching the age of superannuation from the post of Head Goods Clerk, C.O.D., Cheeki, Naini. The contention of the applicant is that he had submitted his option for availing pension and necessary forms were also filled in. He had also submitted pension papers on 11.10.1977 and 26.11.1978 after his retirement. Thus, papers were received in the office of Divisional Railway Manager, Allahabad and remined in process because Divisional Personnel Officer, Allahabad had asked Settlement Form and information regarding pension of applicant from the office of C.G.S. C.O.D., CheokiMily Siding. The matter remain^es pending in the office of the respondents. Since the wife of the applicant was ill and he was ⁱⁿ ^h need of money, therefore, he rece-
ived ^{the} amount of Provident Fund under protest from the respondents. It is also averred that the applicant was a matter of fact, was entitled to get gratuity, pension and provident fund amounts at reaching the age of superannuation. The applicant had approached the respondents by sending application and reminders but, with no result. A notice under Section 80 C.P.C. was also served on the respondents but no order was passed and hence, this O.A. with the relief as pointed out earlier.



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3. The respondents contested the case and filed reply alleging inter-alia, that the applicant had not submitted any pension option. He was governed by S.R.P.F.(C) Rules and accordingly the payment was made to him on his retirement. The applicant approached the Tribunal after 12 years and thus, the application is barred by limitation. The representation made by the applicant was replied, intimating that he (applicant) was not entitled to pension because no option of pension was exercised by him. It is, therefore, urged that the application of the applicant be rejected.

4. The applicant filed rejoinder reiterating the facts already disclosed in the O.A. besides annexure R.A.-1 to 4, have been filed in support of his contention that the pension papers were sent by him and were received in the office of D.R.M. He also reiterated the ground of entitlement of pension.

5. I have heard the learned counsel to the parties and perused the record.

6. In this case two points have arisen for consideration. First is whether the applicant had actually filed the pension papers in exercise of option thereof within the stipulated period or thereafter ; and the second is whether the applicant becomes entitled for pension benefits. So far as the first question is

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concerned, it has been contended on behalf of the applicant that the papers in exercise of the option for pension were submitted by him long back. By filing rejoinder, the photostat copies of the entries made in the office about the receipt of the pension papers have also been produced. These copies are annexure RA-1 to R.A.-3. It is true that the respondents have been denying the receipt of the pension papers and it is also contended that he was not entitled for pension because no option was exercised, ^{but} Nothing has been said about the photostat copies of documents annexure R.A.-1 to R.A.-3. It means that whatever has been stated by the applicant goes uncontroverted. The assertion of certain facts being made in rejoinder affidavit was taken conclusive proof by their Lordships of Supreme Court and no further inquiry was needed in the case 'Karmi Devi Vs. Union of India and Others (1994) 27 A.T.C. 568! Since the assertion was made about the exercise of ^{an} option for pension, the Hon'ble Supreme Court accepted the contention and rejected the ground of contest taken up by the respondents. The same situation is arising in this case also. I am, therefore, of the view that the assertion of the applicant about having submitted pension papers, is complete and conclusive and the denial by the respondents made in the reply carries no weight.

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7. So far as the entitlement of the pension benefits to the applicant is concerned, it derives from the fact that pension scheme was opted within the stipulated period of time. It has been argued on behalf of the respondents that the matter was very much time-barred because this plea was not taken up by the applicant soon after the rejection of the pensionary benefits. Simultaneously, it it also contended that the applicant who was governed by the State Railway Provident Fund(S.R.P.F.) and had got the entire amount of provident fund, shall not be entitled to get the pensionary benefits. The learned counsel for the respondents placed reliance on the case 'V. Viswanath Iyer(Deceased) through L.R. Smt. V. Meenakshi Iyer Vs. Union of India and Others'(1994) 27 A.T.C. 209'. In this case, the Jabalpur Bench of this Tribunal discarded the plea of limitation and ^{allowed} ~~afford~~ the right of the employee to get the pension after exercising his option even after his retirement. It was further directed that the pension ^e ~~should~~ be payable to the employee from 16.8.1957 onwards less the amount which had been contributed by the government to his provident fund and as well as the special contribution made. In the light of this decision, there remains no difficulty to decide this issue. In the present case before me, there is ample evidence that the applicant had exercised the option for pension well within time. In case the papers are not traceable with the respondents, the applicant may be allowed

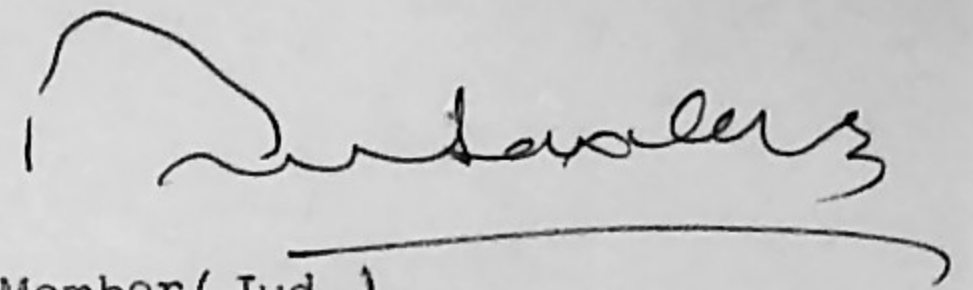
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to file those papers of option of pension now after retirement and the pensionary benefits be given to him but, the amount which had already been paid as S.R.P.F., shall be deducted. The application is disposed of accordingly. No order as to costs.



Member (Jud.)

/M.M./