

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

DATED: THIS THE 15<sup>th</sup> DAY OF <sup>May</sup> ~~APRIL~~ 1998

Coram : Hon'ble Mr. S. Dayal AM

ORIGINAL APPLICATION NO. 1713/94

Pheku Ram son of Late Kashi, Ex- Store Tindal,  
Bridge Workshop, North Eastern Railway, Gorakhpur  
resident of Mohalla Bishanpurwa, Kuraghat,  
Gorakhpur City, Distt: Gorakhpur. - - - - - APPLICANT

C/A Sri G.D. Mukerji

Versus

1. Union of India through the General Manager,  
North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,  
North Eastern Railway, Gorakhpur.
3. The Executive Engineer,  
Bridge Workshop, North Eastern Railway,  
Gorakhpur Cantt. Distt: Gorakhpur.  
- - - - - RESPONDENTS

C/R Sri Govind Saran.

ORDER

By Hon'ble Mr. S. Dayal A.M.

This is an application under section 19 of  
the Administrative Tribunals Act 1985.

2. That applicant has prayed for a direction  
to the respondents to pay the applicant his retiral  
benefits by way of pension, gratuity, Provident Fund and  
Insurance etc. with 18% interest on the amount so due.

3. The applicant has claimed that he joined North Eastern Railway as Khalasi on 10.9.1954 and was retired from the railway service on 30.6.1980. At the time of his retirement he was working as Store Tindal in the office of the Executive Engineer, Bridge Workshop, North Eastern Railway, Gorakhpur. The applicant received the order of retirement dated 19.12.1979 showing his date of retirement as 30.6.1980 and he, thereafter, moved an application numbered 937/91 in the Tribunal challenging his date of birth which was shown 17.6.1932. The O.A. filed by him in the Tribunal was, however, dismissed in default on 7.7.1992.

4. The respondents have filed their counter reply. They mentioned in the counter reply that the applicant did not opt for pension rules and he has been correctly settled under SRPF rules, considering him <sup>to be</sup> a non-pensionable staff under SRPF rules. He has been paid Provident Fund, Bonus, SC to PF and Railway employees Insurance scheme as a non pensionable staff. Therefore, he was not entitled to any payment of pension and DCRG. The question of limitation has also been raised. The respondents have also raised the the <sup>of res judicata</sup> issue ~~that~~ since his first application was dismissed in default, the second application on the same cause of action is not maintainable.

5. Arguments of Sri Satyajeet Mukerjee who appeared as brief holder of Sri G.D. Mukherji for the applicant and Sri Govind Saran who appeared for the respondents have been heard. Pleadings on record have been considered.

6. Of the 3 points raised by the respondents, the second point is not tenable. The application of limitation would not apply to a claim of pension and other terminal benefits if they are due to the applicant because right to get pension and other terminal benefits is a continuing

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right and is not barred by limitation since the applicant has a right to receive pension and other terminal benefits if due throughout his life.

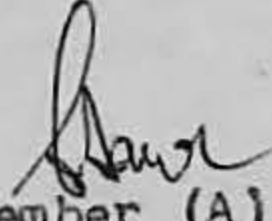
7. The third issue of resjudica is, however, valid because the applicant did claim pension and pensionary benefits alongwith correction of his date of birth in his O.A. 937/91 which was dismissed in default. Thus he had sought the relief of pension ~~and~~ albeit after correction of his date of birth ~~and~~ he had failed to prosecute his claim in the Tribunal in O.A. 937/91. Therefore, he is barred from raising the claim second time.

8. It also remains an admitted position that the applicant received payments admissible to him under SRPF rules and failed to exercise any option to switch over to pensionable service and to the family pension scheme 1964. There was a time limit fixed for exercising option for such a switch over. The applicant, however, failed to exercise the option within the time limit. On this account also his claim for relief is not tenable.

In view of the above facts, the case cited by the learned counsel for the applicant in Union of Indian & others V/s D.R.R. Shastri JT (1996) 10 SC 637 is of no avail to him.

9. In effect the application fails and is dismissed as having no merits.

10. There shall be no order as to costs.

  
Member (A)