

(111)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH

ORIGINAL APPLICATION No. 27 OF 1988.

Date of decision .. April 15, 1988.

Lachaiah, son of Late Changaiah,
C/o- Sri Appana Behera, Retired Guard, S.E. Railway,
O.R.T. Colony Road, Gate Bazar, P.O. Berhampur, Dist-Ganjam.
... Applicant.

Versus

1. Union of India, represented by the Divisional
Railway Manager, South Eastern Railway, Khurda Road,
P.O. Jatni, Dist- Puri.
 2. Divisional Personnel Officer, S.E. Railway,
Khurda Road, P.O. Jatni, Dist- Puri.
 3. Asst. Engineer, S.E. Railway, Berhampur, Dist-Ganjam.
- ... Respondents.

M/s P.V. Ramdas & B.K. Panda,
Advocates .. For Petitioner.

Mr. Ashok Mohanty, Standing
Counsel (Railways) .. For Respondents.

C O R A M :

THE HON'BLE MR. B.R. PATEL, VICE CHAIRMAN

A N D

THE HON'BLE MR. K.P. ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers have been
permitted to see the judgment ? Yes .
 2. To be referred to the Reporters or not ? No.
 3. Whether Their Lordships wish to see the fair
copy of the judgment ? Yes .
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J U D G M E N T

K.P.ACHARYA, MEMBER (J), In this application under section 19 of the Administrative Tribunals Act, 1985, the petitioner challenges the order passed by the competent authority compulsorily retiring the petitioner under Annexure-1 and for payment of salary from 4.7.1976 to 4.7.1979 and also payment of pension from 10.7.75 upto date and gratuity.

2. Shortly stated, the case of the petitioner is that he was appointed as a Keyman by the Bengal-Nagpur Railways and in 1947 the petitioner was promoted as a Gangman in the Engineering Department of Bengal-Nagpur Railway. The petitioner was prematurely retired with effect from 10.7.1975 when he attained the age of 55 years. The petitioner has now come with the aforesaid prayers.

3. In their counter, the Opposite Parties maintained that the petitioner having opted for contributory Provident Fund, it is no longer open to him now to claim pensionary benefits and further more it is maintained in the counter that action taken by the competent authority compulsorily retiring the petitioner was according to law and therefore, such order should not be interfered with.

4. At the outset, we may mention that when this case ^{came} for admission on 29.1.1986, Mr. Ramdas, learned counsel for the petitioner very fairly and rightly submitted that he would not press the prayer to quash the order of compulsory retirement and consequently benefits i.e, payment of salary from 4.7.76 to 4.7.1979. Hence this Bench is now confined ^{to} with the single prayer

to command the Opposite Parties to give pensionary benefits of the petitioner.

5. We have heard Mr. P.V.Ramdas, learned counsel for the petitioner and Mr. Ashok Mohanty, learned Standing Counsel for the Railway Administration at some length. Admittedly the pension claim was introduced with effect from 1.4.1974 and thereafter option was sought from the petitioner as to whether he would choose the pension claim or in the alternative contributory Provident Fund scheme. Admittedly the petitioner chose the latter and now he comes up with a prayer to give him pensionary benefits. The petitioner cannot choose plum and cake at a time. It was submitted by Mr. Ramdas that the petitioner would return the Provident Fund amount already taken by him and he would avail the benefit under the Pension Scheme. It is too late in the day for the petitioner to now exercise his option for the pension scheme because that matter has been closed since 1975, and if now agitated section 21 of the Administrative Tribunals Act prescribing the period of limitation of three years would stand against the petitioner. In such circumstances, we find no merit in the application which stands dismissed leaving the parties to bear their own costs.

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Member (Judicial)

B.R. PATEL, VICE CHAIRMAN, 9 agree.

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Vice Chairman.

Central Administrative Tribunal,
Cuttack Bench.

April 15, 1988/Roy, SPA.