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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.159 of 1989.

Date of decision : December 1, 1989.

Sri K.Satyam, Retired S.Crain Driver,
Loco Department Khurda Road, Residing at
Loco Colony, near R.P.F.Barrack, P.O./P.S.Jatni,
PIN 752050, District-Puri.

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Applicant.

Versus

Union of India represented by the Divisional
Railways Manager, South Eastern Railways, Khurda
Road Division, Khurda Road, P.O.Jatni-752050.
District-Puri.

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Respondent.

For the applicant : M/s.V.Pirthivi Raj,
J.N.Jethi,
R.V.Ramana, Advocates.

For the respondent : M/s.D.N.Misra,
S.C.Samantray, Advocates.

C O R A M :

THE HON'BLR MR.N.SENGUPTA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No.
3. Whether His Lordship wishes to see the fair copy of the judgment ? Yes.

JUDGMENT

N.SENGUPTA, MEMBER (J), This case concerns coming over to the pension scheme by a railway servant who was governed by the Central Provident Fund Scheme.

2. There is no dispute that originally all the Railway servants were governed by the Central Provident Fund scheme but in the year 1957, the Railway servants were given an option either to be governed by the Central Provident Fund scheme or to come over to Pension and Family Pension scheme. There is also no dispute that even though this option was invited in 1957, there was not much of response to that changed scheme. So, in the year 1972 another notification was made asking the railway servants still in service or those who have retired to exercise their option by a fixed date in October, 1972 i.e.

21.10.1972 ~~for exercising option~~. The applicant who was working as a Crane Driver in the Loco Department at Khurda Road under the South Eastern Railway retired on 21.11.1971. The applicant withdrew the Provident fund amount. Subsequently, that is in December, 1978 he made a representation to the Railway authorities for allowing him to come over to the Pension and family pension scheme. The receipt of this representation has been denied by the Respondents. The applicant has further averred that this Tribunal passed a judgment in T.A.289 of 1986 on 23.1.1987 allowing the persons who had retired much earlier to come over to the Pension scheme on deposit of the Administration's special contribution to the Provident Fund and this judgment, as may be found from the averments in the application, has been made ^{the} foundation of the present application coupled with

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the allegation that he (the applicant) being an illiterate person, could not be aware of the right to exercise option for coming over to the pension and family pension scheme and therefore, being unaware could not apply and thought that he was to be governed by the Central Provident Fund Scheme, accepted the provident fund amount after his retirement.

3. The Railway Administration have taken the plea that infact all the Railway employees were made aware of the right to exercise an option to come over to the pension and family pension scheme by wide publicity in different medias and the Railway establishments published such notices at almost all Railway stations and in different units.

4. Mr. V. Prithivi Raj, learned counsel for the applicant has sought reliance on the decision of this Tribunal in the above said Transferred Application No. 289 of 1986, copy of which has been made Annexure-2 and also on a decision of the Bombay Bench of the Central Administrative Tribunal. In the case of Smt. Laxmi Vishnu Patwardhan v. Secretary, Railway Board and another reported in ATR 1988(2) CAT 49, the Bombay Bench of this Tribunal held that it was incumbent on the part of the Railway Administration that every retired employee be individually informed of the Scheme for exercising option. This observation was made in the context of the fact that the Railway servant concerned retired on 9.6.1957 i.e. before the notification of the Pension scheme was made in October, 1957. There the applicant was a widow of the deceased Railway servant who died on 13.3.1972. Since by the date of introduction of the pension scheme the concerned Railway employee had retired, there can be no doubt that in order to debar either the Railway servant or after his

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death, his family members, from opting to come over to the Pension scheme, individual notice was necessary. Therefore, in my opinion, this case does not in terms apply to the facts of the one in hand but however, the observation made lends some support to the contention of Mr.V.Prithivi Raj in that it should be the duty of the Railway Administration to make the concerned Railway employee aware of his right of exercising option to come over to the Pension scheme. Learned counsel for the applicant has also drawn my attention to a decision of the Orissa High Court in O.J.C.No.1383 of 1980, a judgment delivered by the Hon'ble R.N.Misra C.J.(as His Lordship then was) in support of the contention about giving individual notice. That was also a case of a widow of a deceased Railway employee but in paragraph 3 of the judgment His Lordship observed that the Railway Administration had the obligation to bring the scheme to the notice of every employee. Mr.D.N.Misra, learned Standing Counsel for the Railway Administration, has contended that he would assume that the decision lays down the law correctly but the decision has to be applied having regard to the facts of each individual case. His contention is that the two decisions just referred to above say that the attention of the Railway servant concerned must have been drawn to the circular entitling him to exercise the option to come over to the Pension scheme. These decisions understandably have not purported to lay down the mode in which the contents of the circular and the other letters on that subject were to be brought to the notice of the Railway employees. He has urged that it is really next to impossible to know the correct addresses or the whereabouts of all the retired employees, therefore, the only way in which the persons concerned could be made aware was by

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publishing in newspapers, and affixing copies of the circulars at different places, such as Railway stations, establishments of the Railway or other units. He has further urged that such publications were made. Therefore, it cannot now be said that the applicant was not aware of the contents of the circular. May be there were publications of the circular as stated by Mr. D. N. Misra but there cannot be any dispute that the applicant is an illiterate person. It is well-known that a bulk of the population of India is illiterate and the purpose of the Government is for advancing the cause of the down-trodden and the weaker sections. That an illiterate person belongs to the weaker section of the society cannot be doubted. In these circumstances, I am of the view that the applicant should be given an opportunity to come over to the pension scheme on his refunding the special contribution amount received by him within two months hence.

5. This application is accordingly disposed of but however without costs.



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Member (Judicial)

Central Administrative Tribunal,
Cuttack Bench, Cuttack.
December 1, 1989/Sarangi.