

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

Original Application No.141 of 1992.

Date of decision: January 11, 1993.

Dibyaratna Panda ...

Applicant.

Versus

Union of India and others ...

Respondents.

For the applicant ...

M/s. S.K. Purohit,
B.K. Mall,
S.K. Behera, A

For the respondents ...

Mr. D. N. Misra,
Standing Counsel (Railways)

C O R A M:

THE HONOURABLE MR. K. P. ACHARYA, VICE-CHAIRMAN

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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.

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JUDGMENT

K.P.ACHARYA, V.C., In this application under section 19 of the Administrative Tribunals Act, 1985, the applicant prays for a direction to the respondents to pay to the applicant the pension amount which he would have ordinarily drawn after retirement on superannuation.

2. Shortly stated, the case of the applicant is that he joined the South Eastern Railway in the Engineering Department and after serving the Railway authorities in different capacities, the applicant retired on superannuation on 14.3.1972. The applicant had received Rs.5,000/- at the time of his retirement. Further case of the applicant is that though he had applied for the pension scheme and the rules relating to the Liberalised Pension Scheme, 1972 apply in full force to the applicant, pensionary benefit is not being given to the applicant. Hence this application with the aforesaid prayer.

3. In their counter, the respondents maintained that option should have been exercised by 31.12.1972. A limitation has run against the applicant because for the first time in his representation dated 10.4.1980 the applicant had offered to come over to the pension scheme. Own contribution of the applicant towards Provident Fund amounting to Rs.803/-, provident fund(bonus) amounting to Rs.3,591/- and special contribution to provident fund amounting to Rs.2,985/- has been paid to the applicant. In such circumstances, the application is devoid of merit and is liable to be dismissed.

4. I have heard Mr.S.K.Purohit, learned counsel for the applicant and Mr.D.N.Misra, learned Standing Counsel (Railways) for the respondents. Mr.D.N.Misra relied upon a judgment of

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the Supreme Court reported in AIR 1990 SC 1782 (Krishna Kumar vrs. Union of India and others) in which Their Lordships have been pleased to observe that the option must be given by the date fixed and those who have filed their option after the date fixed, it cannot be said that a discrimination hasbeen made in respect of those employees. I think that there is substantial force in the contention of Mr.D. N. Misra that the cut off date cannot be extended. The applicant is not able to produce any evidence regarding the fact that he had given an option prior to the fixed date to be governed under the Liberalised Pension Scheme. Mr.Purohit, learned counsel for the applicant submitted that onus should shift to the departmental authorities to produce the relevant records including option. Once the Railway Administration has taken the stand that no such option was received from the applicant, it is not expected of the railway authorities to prove the negative. It is an impossibility. The onus will shift only when some *prima facie* evidence is placed before the Court to substantiate the contention of the applicant that he had given any such option. In the absence of any *prima facie* evidence I do not feel persuaded to accept the contention of Mr.Purohit that the onus should shift to the Railway authorities. However, it is observed that in future if the applicant is successful in placing any evidence before the competent authority substantiating his case that he had given his option within time limit, then it should be entertained and the grievance of the applicant should be redressed according to

law.

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5. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

K. S. Chaturvedi
11-1-93

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VICE-CHAIRMAN.

Central Administrative Tribunal,
Cuttack Bench, Cuttack. I
January 11, 1993/Sarangi. O

