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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO : 193 OF 1992.

Date of decision : 24.2. 1993

Adikanda Malik Applicant

Versus

Union of India and others... ... Respondents

For the Applicant ... Mr. A. Routray, Advocate

For the Respondents ... Mr. Ashok Misra, Sr.
St. Counsel (Central).

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CORAM :

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 wish 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 Petitioner prays to direct the Opposite Parties to pay gratuity and Pension to the Petitioner with effect from the date of his retirement and while calculating the pension and gratuity, the services of the petitioner for the period from 1942 to 1946 and 1949 to 1972 should be taken into consideration.

2. Shortly stated the case of the petitioner is that he was working as a labourer in the Indian Ordnance Factory in the year 1942 and worked as such till 1946. In the year 1946, the Petitioner was retrenched from his services as a labourer. The Petitioner was re-employed on 12th April, 1949 as a Machineman and the petitioner continued in the said post till 26th April, 1972 when he retired from his service on superannuation. The Petitioner got the benefit under the contributory provident fund scheme. The Union of India decided that the services rendered by an employee prior to 1.8.1949 shall be counted for the purpose of granting pension under the liberalised pension Rules, provided that an option is given to this effect by the concerned employee. It was further stipulated that those who had previously opted for contributory provident fund benefits and were in service on 1st March, 1969 should be given another chance to opt for the liberalised pension Rules including the family pension scheme for Central Government employees, 1964. The Petitioner being ~~in~~ⁱⁿ active service under the Opposite Party No.1 on 1st March, 1969, he

was asked by Opposite Party No.2 vide his letter No. 940/1/2/LB dated 26.9.1972 to submit his option afresh to switch over to the pensionary benefits. In reply thereto, the petitioner had submitted his option to come to the liberalised pensionary and gratuity scheme, on 23rd November, 1972. Since no reply was received by the Petitioner, an appeal was made to the General Manager (Opposite Party No.2) on 1st November, 1974. Several representations were made one after the other but atlast the request of the petitioner was turned down vide letter dated 21st April, 1975 contained in Annexure 3. In the years 1976, 1978 and 1991 representations were made by the Petitioner which did not yield any fruitful result and therefore, this application has been filed with the aforesaid prayer.

3. In their counter, the Opposite Parties maintained that no option was ever received from the Petitioner to switch over to the liberalised pension scheme and therefore, the Opposite Parties could not entertain the request of the petitionet at a very late stage when the stipulated period contained under the scheme had spent its force. Apart from the above, the case being barred by limitation is liable to be dismissed both in question of facts and law.

4. I have heard Mr. A. Routray learned counsel for the petitioner and Mr. Ashok Misra learned Senior St. Counsel (Central) appearing for the Opposite Parties. Onus lies upon the petitioner to prove with satisfactory evidence that he had given his option ^{within} _{to} the stipulated

period. It is not expected from the Opposite Parties, to prove the negative. It was incumbent upon the petitioner to submit a copy of the representation made by him within the stipulated period giving an option to switch over to the liberalised pension scheme. The petitioner had not filed a copy of ~~the~~ option submitted by him. Only a bold assertion to this effect will not suffice. Onus of proof will shift to the Opposite Parties only when the Petitioner is successful in discharging ^{the} ~~his~~ onus of proof that lies on him. The Petitioner having miserably failed to prove his own case, I am of opinion that the case of the petitioner is not acceptable.

5. Law is well settled and was rightly and fairly not disputed at the bar, that the Tribunal cannot take cognizance of any cause of action said to have accrued in favour of the person aggrieved prior to 1.11.1982. According to the petitioner his representation was turned down as intimated to him vide letter dated 21st April, 1975 contained in Annexure 3. It was incumbent on the part of the petitioner to seek protection of a court of law soon after 21st April, 1975. Subsequent representations ^{do} ~~did~~ not save limitation which has already run against the petitioner. Therefore, I am of opinion ^{that} ~~the~~ the case is barred by limitation.

6. In view of the aforesaid discussion, I find no merit in this application which stands dismissed leaving the parties to bear their own costs.

MP
24.2.93.
VICE CHAIRMAN

