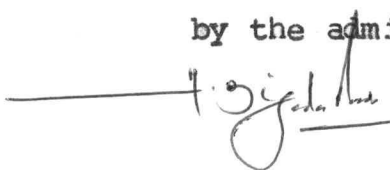


1965, which was the month of his retirement from service.

2. Shri Kangali Charan Nayak joined the Railway service in 1935, the South Eastern Railway on 1st August 1955, suffered a paralytic stroke and remained under medical care during 1964-65, was declared incapacitated for further service on medical grounds, and retired from service on 18th May, 1965. On retirement he was awarded the due benefits according to him under the Contributory Provident Fund Scheme, although, according to him a Railway Pension Scheme had been in operation for nearly eight years prior to his retirement.

3. In 1957, the Railway Administration announced the launching of a new Railway Pension Scheme, effective from 1st April of that year. Accordingly all employees who were in service on the date of announcement of the new scheme, viz., 16th November, 1957, were called upon to exercise an option as to whether they wished to be covered by the said scheme or preferred to continue to remain under the then prevalent Railway Contributory Provident Scheme. According to the applicant, it was also made clear that if an employee failed to furnish the required option, or furnished an incomplete, ambiguous or conditional option, or gave an option in an unprescribed form, he will be deemed to have opted for the new scheme and automatically brought under its option. The provisions of the new scheme were reiterated and circulated by the administration successively in September, 1960,



October, 1962 and January, 1964, and the concession of exercising options was kept upon throughout this extended period.

4. It is the applicant's case that none brought the provisions of the new pension scheme to his knowledge and that he was totally unaware of its operation, applicability or its requirements right upto and beyond his retirement. He did not therefore, exercise any option and, on retirement accepted payment of the Contributory Provident Fund in a state of utter ignorance of the existence of any alternate scheme.

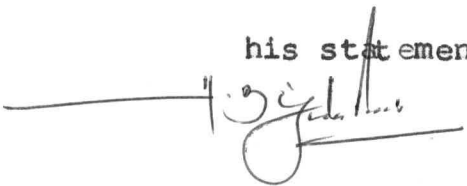
5. Subsequently, the IV Pay Commission recommended to the Government that the a one-time ex-gratia be given to CPF-retirees, whereupon the applicant filed a case before this Tribunal (O.A. No.420 of 1990) claiming the benefit of this recommendation. The application was disallowed.

6. The Respondents state in reply to the application that the Pension Scheme launched in 1957 was optional and not automatic and that it was extended only to those who had exercised a clear option in its favour and not to others. They say that many employees opted to remain under the Contributory Provident Scheme, apparently because it enabled them to receive substantial sums in a lump and that the applicant was among those who opted so.

7. It is also clarified by the Respondents that the details of the pension scheme were repeatedly and widely publicised-also in local vernaculars and regional languages-and that the facility of exercising options

was extended, time and again, right upto 1972. They assert that they were not required to inform each and every employee, whether serving or retired, individually nor would it have indeed been possible to do so. But even without individual intimations, no employee could have possibly remained ignorant of such a widely popular and well publicised scheme for decades on end. In fact a very large number of serving or retired employees did exercise belated options even 15 years after the inauguration of the scheme, and all such options were duly accepted and acted upon.

8. The Respondents aver that on an earlier occasion also the applicant made an unsuccessful bid to extract an undue benefit by invoking the Tribunal's intervention by claiming an ex-gratia which had been recommended by the IV Pay Commission only to the widows of ex-CRF retirees and not to the retirees themselves. The Tribunal did not rightly allow the application. In the present instance the applicant is making another bid to reopen, on incorrect or misleading pleadings, a claim thirty-six years after the pension scheme was launched and twenty-eight years after his retirement. It is their suspicion that he is merely trying to take advantage of the fact that no records relating to such old events would be available to effectively refute his statements.

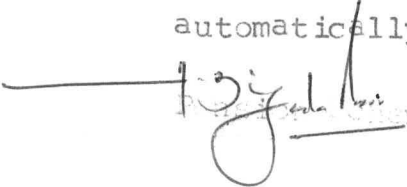


The learned Standing Counsel for the Respondents Shri D.N.Mishra strongly urged that, in view of the aforesaid facts, the application should be dis-allowed.

9. In a rejoinder to the Respondents' counter, the applicant asserts once again that he did not exercise any option and should, therefore, have been brought under the new pension scheme automatically. He asserts that this action should in fact have been taken automatically as the scheme itself is automatic in its application. He says finally that the order of his retirement does not specifically say that the applicant preferred to retire under CPF scheme, but states instead that he was "allowed" to retire under its terms. I have carefully considered the facts of the case.

10. The applicant, K.C.Nayak, retired in 1965. And the Railway Pension Scheme was launched in 1957, i.e. eight years before his retirement. He did not, according to his own admission, opt for the said scheme during the eight intervening years between the commencement of the Pension Scheme and his retirement.

11. The applicant claims that the Railway Pension Scheme was "an automatic scheme", meaning thereby that the employees who did not exercise a clear option to remain under the Contributory Provident Scheme were to be automatically brought under the purview of the said

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Pension Scheme. He has not produced any document or proof in support of this assertion. The respondents, on the other hand, have averred that the scheme was not automatic as claimed by the applicant. By way of corroboration they have stated that: the facility of exercising options was repeatedly extended right upto 1972; only those employees who had exercised a clear option to go over to the pension scheme were taken under it, and those who preferred to remain under the then existing CPF scheme,--as well as those who did not exercise any option in this regard,--were not placed under the new scheme (as stated by the applicant) but actually allowed to continue to be governed by the old rules; that as a matter of fact, a large number exercised options even upto 1972 and the options were accepted even at that belated stage. In the circumstances of the present case, - and in the absence of any proof or indication to the contrary, - it is clear that the applicant advisedly and consciously chose to remain under the CPF scheme in preference to the new Pension Scheme. This entirely plausible conclusion is reinforced by the fact that, in an earlier application before this Tribunal (O.A.No.420/90) the main plank of his arguments was that he was indeed fully a CPF-retiree and therefore entitled to the benefits under that scheme in the light of certain recommendations made by IV Pay Commission.

12. I hold, therefore, that the applicant, of his own volition, had opted to remain under the earlier CPF scheme, and is also not entitled to any automatic

— J. Singh

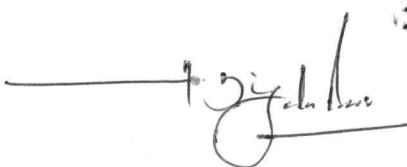
protection of the new pension scheme.

13. There has also been an unduly long inaction on the part of the applicant in putting forth this latest claim for pension, etc. The delay is weakly attributed to his ignorance of the provisions of the new pension scheme. This self-professed, and wholly incredible, ignorance continued for 8 years from the date of commencement of the pension scheme to his retirement, ^{for} 28 years after his retirement, and ^{for} 34 years from the launching of the pension scheme to the date of filing this application.

13. In ~~my~~ view, anyone who can thus remain unaware of a widely-publicised scheme of beneficial import to himself for such a long period eventually forfeits the right to invoke its protection.

14. During this long interval of nearly four decades, the Respondents have weeded-out and destroyed the records relating to the relevant period(s) as per the periodicity laid down in the rules for the destruction of old, non-permanent records. To that extent the ability of the respondents to put up a proper or fuller defence has been seriously impaired. **T**his unreasonable, inadequately-explained and unconscionable delay on the part of the applicant, together with this neglect or omission to assert his right during this long interregnum, has contributed to a situation which has caused prejudice to the respondents, weakened their responses and embarrassed their defence. This fact cannot be over-stressed while considering the totality of the facts of this case.

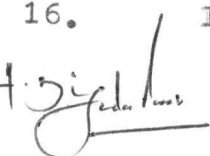
I hold that in neglecting or omitting to



project his claim in time by exercising ordinary diligence the applicant has virtually abandoned or relinquished the said claim. Such neglect, taken together with the long lapse of time, and the feebleness of the claim itself, constitute a bar in the eyes of equity which, according to a well-established maxim, aids only the vigilant and not those who slumber on their rights. Even according to estoppel by laches, the applicant, by his unexplained inaction to do something which he should have done at least two decades prior to this application - viz., filing a properly - supported claim - has lost the privilege of invoking this Tribunal's intervention. This belated application, based as it is on slender, largely negative and eliminative evidence, does not establish any credible right beyond reasonable doubt.

15. The applicant states further that he was merely "allowed" to retire under the CPF scheme and that the order of his retirement does not specifically state that he 'preferred' to retire under that scheme. I am unable to comprehend the import or relevance of this argument. To my mind, it matters little whether he 'preferred' to retire under a scheme or was 'allowed' to do so. In fact it is entirely possible to argue with greater validity that he was 'allowed' to retire under a particular scheme because he had 'preferred' to remain under it by not opting to go out of it. This is a mere play on two innocuous words and does not strengthen his cause.

16. In view of the preceding discussion, I have no

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hesitation, nor option, in holding that Shri Kangali Charan Nayak is not entitled to the reliefs claimed by him. The application is, therefore, disallowed.

17. The application is disposed of accordingly.
No costs.

VICED MAN


MEMBER (ADMINISTRATIVE)
19 NOV 93

Central Administrative Tribunal
Cuttack Bench Cuttack
dated the 19, 11 / B.K. Sahoo