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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 350 OF 1998  
Cuttack, this the 13th day of October, 1999

Sri Bahadur

....

Applicant

Vrs.

Union of India and another ....

.... Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to the Reporters or not? Yes.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No.

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
13.10.99

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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.350 OF 1998  
Cuttack, this the 13th day of October, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND

HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDL.)

....

Sri Bahadur, aged about 84 years, son of Barjo,  
At-Malgodownpara, PO-Titilagarh, District-Bolangir

.....Applicant

Advocates for applicant - M/s P.K.Padhi  
G.P.Patnaik  
D.K.Naik

Vrs.

1. Union of India, represented by Secretary,  
Railway Board, Railway Bhawan, New Delhi-110 001.
2. General Manager, South Eastern Railway, Calcutta

.....Respondents

Advocate for respondents - Mr.D.N.Mishra,  
Standing Counsel (Railways)

ORDER

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of  
Administrative Tribunals Act, 1985, the petitioner has  
prayed for grant of pensionary benefits to him within a  
period to be stipulated by the Tribunal along with exemplary  
cost.

2. The applicant's case is that he was  
appointed as a Trolley Man on 12.2.1946. At the time of his  
superannuation on 25.5.1969 he was stationed at Titilagarh  
Railway Station which was then under Waltair Division of

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Southern Railway and is now under Sambalpur Division. At the time of his retirement the post held by the applicant was treated as non-pensionable post which is borne out by the service details issued by A.E.N., Rayagada, which are at Annexure-A/1. The applicant has stated that subsequently Hon'ble Supreme Court while deciding the matter relating to grant of pensionary benefits to those who retired during the period from 1.4.1969 to 14.7.1972 in many writ petitions and SLPs, directed the Railway Board to grant ex gratia pension to State Railway Provident Fund retirees and to call for options from them to make payment of pension to these retirees. The applicant came across such decision of the Hon'ble Supreme Court as well as the decision of the Central Administrative Tribunal, New Bombay Bench, in T.A.No.77 of 1987, dated 11.11.1987 and submitted option on 20.9.1988 to Secretary, Railway Board (respondent no.1), copy of which is at Annexure-A/2. According to the applicant, in the decision dated 11.11.1987 of the Tribunal, New Bombay Bench in TA No.77 of 1987, one of the basic criteria for grant of pension to Railway Provident Fund retirees was that the claimant should indicate his option in favour of the pension scheme either during his tenure of service or after retirement but in no case later than 31.12.1972. The cut-off date fixed by the Railway Board was approved by the New Bombay Bench of the Tribunal. The applicant's case is that this cut-off date 31.12.1972 is neither realistic nor bona fide moreso when this was not brought to the notice of an illiterate retiree to submit his option. This decision was also rendered eighteen years after the date of retirement of the applicant and fifteen years from the cut-off date 31.12.1987.

The applicant submitted his option only on 20.9.1988 after coming to know of the same from some retirees similarly situated. Thereafter he sent several representations and reminders but without any result. The applicant has further stated that the law is well settled that no retiree from pensionable or non-pensionable establishment can be denied pensionary benefit. In case of the applicant such denial cannot be made on the ground that he could not submit his opinion within the cut-off date 31.12.1972. It is also stated that several persons similarly situated as the applicant have been granted pensionary benefits and therefore the applicant has come up with the prayers referred to earlier.

3. Respondents in their counter have stated that the applicant retired on 25.5.1969 according to his statement and after passage of many years the relevant records are not available with the respondents to know the genuineness of Annexure-1. It is stated that the applicant has admitted that he retired prior to 1.1.1973 as a non-pensionable Railway servant. It is stated that on the recommendation of the Fifth Pay Commission, President of India has granted ex gratia payment to C.P.F. beneficiaries who retired between 1.4.1957 and 1.11.1985 at the rate of Rs.600/- per month with effect from 1.11.1997 subject to the condition that such persons should have rendered at least 20 years of continuous service prior to their superannuation. They would also be entitled to 5% Dearness Relief. This circular is at Annexure-R/1. According to this circular, which is Establishment Serial No.41/98 the applicant is to submit application in prescribed proforma to the concerned Head of Office under whom he had served before retirement for verification and for arranging

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payment. It is stated that such payment will be made by the concerned Division and the Railway Board is not concerned with the matter. The applicant has submitted a petition to the Secretary, Railway Board, who has nothing to do with this matter. The respondents have stated that in case the petitioner applies, after verification he would be paid ex gratia payment of Rs.600/- per month from 1.11.1997. The respondents have stated that the applicant is not eligible for payment of pension and is only eligible to ex gratia payment. On the above grounds, the respondents have opposed the prayer of the applicant.

4. We have heard Shri P.K.Padhi, the learned counsel for the petitioner and Shri D.N.Mishra, the learned Standing Counsel (Railways) for the respondents and have also perused the records. We have also looked into the provisions of the Contributory Provident Fund Rules(India) 1962, from Swamy's Compilation of Contributory Provident Fund Rules, corrected upto 1.6.1986. Rule 38 of these Rules deals with procedure on transfer to pensionable service. This provides that when a non-pensionable establishment is transferred to pensionable service, the subscriber to the Contributory Provident Fund shall communicate his option by a letter to the Accounts Officer within three months of the date of the order transferring him permanently to pensionable service. But if no communication is received the subscriber shall be deemed to have exercised his option in favour of pension. On a careful reading of this provision it appears that this provision relates to persons who are in service when the establishment is brought over from a non-pensionable to a pensionable establishment and the

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applicant's case is not covered under this Rule. The learned counsel for the petitioner has relied on two decisions of the Tribunal in T.A.No.289 of 1986 (M.Upadhyaya v. Union of India), decided on 23.1.1987, and O.A.No.159 of 1989 (Sri K.Satyam v. Union of India), decided on 1.12.1989. We have also looked into these records. The learned Standing Counsel for the respondents has relied on the decision of the Hon'ble Supreme Court in the case of Krishna Kumar v. Union of India, AIR 1990 SC 1782, which has also been taken note of.

5. In TA No.289 of 1986 the petitioner retired on 14.9.1972 as a Railway employee governed by Contributory Provident Fund. He was paid all retirement dues including CPF. On 24.2.1982 he made a representation to bring him over to the pension scheme. In order to be governed by the pension scheme option was to have been exercised within 31.3.1969. The applicant did not exercise any option by that date and as he made the representation only on 24.2.1982, about ten years after his retirement, his representation was turned down. The Tribunal took note of the letter dated 21.7.1972 of the Railway Board circulated as Establishment Serial No.213/72 in which it was indicated that the Railway servants who have retained the State Railway Provident Fund (Contributory) benefits and who are in service and who quit service on or after the date of issue of this letter, may be allowed another opportunity to opt for the liberalised Railway Pension Rules including the benefit of the Family Pension Scheme for Railway Employees, 1964. This option had to be exercised by 21.10.1972. The Tribunal noted that this letter of the Railway Board is dated 21.7.1972 and the applicant retired on 14.9.72

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after issue of the letter. In view of this the Tribunal held that the petitioner could claim the benefit and directed that he should be brought over to the pension scheme on refund of the CPF amount. In OA No.159 of 1989, decided on 1.12.1989, the applicant retired on 21.11.1971 and got the retirement benefits under the CPF Scheme. In December 1978 he made representation to the Railway authorities to allow him to come over <sup>to</sup> the pension scheme and family pension scheme. This was rejected by the departmental authorities prompting the applicant to approach the Tribunal. The applicant relied on the decision of the Tribunal in TA No.289 of 1986 decided on 23.1.1987 and took the stand that in that case the person who had retired much earlier has been allowed to come over to the pension scheme. In their order dated 1.12.1989 in OA No.159/89 the Tribunal also took note of the decision of the Bombay Bench of the Tribunal in the case of Smt. Laxmi Vishnu Patwardhan v. Secretary, Railway Board and another reported in ATR 1988(2) CAT 49. We have also looked into this case. In OA No.159/89 the Railways took the stand that the pension scheme introduced in 1957 was given very wide publicity and persons who have not exercised their option even after extension of the period of time cannot be allowed to be covered by the pension scheme. The Tribunal noted that as a bulk of the people in the country are illiterate and the purpose of the Government is for advancing the cause of the downtrodden and the weaker sections, the applicant before the Tribunal should be given an opportunity to come over to the pension scheme on his refunding the special contribution amount received by him after his retirement.

Against this decision in OA No.159/89 the Railways went to the Hon'ble Supreme Court in SLP (C) No.5045 of 1990 which was disposed of in order dated 4.1.1996. Their Lordships of the Hon'ble Supreme Court noted that the applicant had in the meantime died and his Legal Heirs are not on record. Keeping in view the facts and circumstances of the case, the Hon'ble Supreme Court indicated that they were not inclined to extend their jurisdiction under Article 136 of the Constitution to the case and accordingly the SLP was dismissed and the interim order of stay was vacated.

6. In the case of Smt.Laxmi Vishnu Patwardhan v. Secretary, Railway Board, decided by Bombay Bench of the Tribunal and reported in ATR 1988 (2) CAT 49, the husband of the applicant retired on superannuation on 9.6.1957. The Railways introduced a pension scheme for which decision was taken on 16.11.1957. Under the Scheme an employee who was in service on 1.4.1957 had to exercise an option to get the benefit of the pension scheme. The applicant's husband having retired on 9.6.1957 was in service on 1.4.1957. The Rule also provided that arrangement should be made to write to every retired individual asking for his option. But it was proved on the basis of record that no such intimation was sent to the applicant's husband through oversight. The petitioner's husband claimed for pension, but before it could be decided he died on 13.3.1972. His claim was rejected on the ground that he had ample opportunity to come over to Pension Scheme while in service or even thereafter. As in this case the Railways did not inform the applicant's husband about the pension scheme, the claim for pension was allowed.

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7. In the instant case, applicant Bahadur has stated that he has submitted an option to the Secretary, Railway Board and copy of the option is at Annexure-2. From this Annexure-2 it is clear that what he has asked for is ex gratia pension. The subject of the letter is ex gratia pension and also at the end of the first page it is mentioned that he claims payment of ex gratia pension. In page 2, under clause 2(b) it is also mentioned that he seeks permission to opt for pension and is prepared to refund Government contribution of provident fund paid to him at the time of retirement.

8. So far as ex-gratia payment to ex-Provident Fund retiree is concerned, the respondents have stated that he would be entitled to the same at the rate of Rs.600/- per month plus 5% Dearness Relief from 1.11.1997. The sole point of controversy in this case is whether instead of this ex gratia payment the applicant is entitled to pension from the date of his superannuation from 25.5.1969. The learned Standing Counsel (Railways) for the respondents has drawn our attention to the decision of the Hon'ble Supreme Court in Krishna Kumar's case (supra) where giving of option from time to time by the Railways to persons who were covered under the Contributory Provident Fund Scheme has been discussed in great detail. Their Lordships of the Hon'ble supreme Court have taken detailed note of options given to persons covered under Contributory Provident Fund Scheme twelve times in notifications ranging from 17.9.1960 to 8.5.1987. The applicant, according to his statement, has given option on 20.9.1988. In the two cases relied upon by the learned counsel for the petitioner, the applicants retired on 14.9.1972 and 21.11.1971. They filed

option to come over to pension scheme on 24.2.1982 and December 1978 respectively. In the instant case the applicant has given his option nineteen years after the date of retirement. Even though a large number of options have been given he had not availed of the same. The Hon'ble Supreme Court in **Krishna Kumar's case (supra)** have brought out the essential distinction between persons covered under the pension scheme and those who are covered under Contributory Provident Fund Scheme. The essential distinction between the two groups is that whereas in case of persons covered under the pension scheme the employer's, in this case Railways', obligation begins on the date of retirement for payment of pensionary benefit, in case of persons covered under Contributory Provident Fund Scheme on the retirement of such employee and on payment of Contributory Provident Fund the employer ceases to have anything further to do with the employee and its obligation ceases. In spite of that, a large number of options have been allowed but the applicant has not availed of these options. In view of this, we hold that the applicant is not entitled to be covered under the Pension Scheme.

9. So far as ex gratia payment is concerned, the respondents have admitted that the applicant is entitled for the same from 1.11.1997 as he has put in more than twenty years of service. The respondents have stated that for getting this the applicant has to apply to the Head of Office under whom he has last worked and thereafter his application has to be verified and then only he will be entitled to the amount. As the applicant is a very old person aged about 75 years it is not possible for him to undertake the process of documentation and run to the concerned office for getting his dues. In view of this, we

direct the respondents that they should depute a Welfare Inspector to the address of the petitioner and get the necessary application and documentation by him and sanction the ex gratia payment with effect from 1.11.1997. This process should be completed within a period of 90 (ninety) days from the date of receipt of copy of this order.

10. In the result, the Original Application is disposed of in terms of the observation and direction given above but without any order as to costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

*Somnath Som*  
(SOMNATH SOM)  
13.10.99  
VICE-CHAIRMAN

A.N./P.S.