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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO.474 OF 1998  
Cuttack, this the 5th October, 1999

Sri Mamayya

....

Applicant

Vrs.

The Union of India and others ....

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)  
VICE-CHAIRMAN  
5.10.99

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH , CUTTACK.

ORIGINAL APPLICATION NO.474 OF 1998

Cuttack, this the 5th day of October, 1999

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

AND

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

....

Sri Mamayya, C/o Surpanch, At/PO-Guddipadra Village,  
Via-Jayanthipur, District-Ganjam (Orissa) ..... Applicant

Advocate for applicant - Mr.B.P.Yadav.

Vrs.

1. The Union of India, represented by the  
Secretary for the Defence Ministry, New Delhi.
2. The Commandant, Ammunition depot,  
Panagarh, Post-Muraripur, Dist.Burdwan, West Bengal.
3. The Controller of Defence Accounts (P),  
Draupadi Ghat, Allahabad (UP).
4. The Directorate General for Ordnance Services,  
8-C(1) Sena Bhawan, New Delhi.

..... Respondents

Advocate for respondents - Mr.A.Ku.Bose,  
Sr.C.G.S.C.

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

*S Som* In this Application under Section 19 of Administrative  
Tribunals Act, 1985, the petitioner has prayed for retirement  
benefits as also compassionate appointment to his grandson.  
At the time of hearing it was submitted by the learned  
counsel for the petitioner that in this application he is  
confining his prayer only with regard to payment of pension,  
and for compassionate appointment to one of his family  
members, he proposes to file another OA. In view of this

the averments and submissions are considered only in respect of the prayer for payment of pension.

2. The applicant's case is that he was a Mazdoor under Commandant, Ammunition Depot, Panagarh (respondent no.2) and held Ticket No.PND/814. He served from 6.6.1949 to 16.5.1978 for about 29 years. The respondents declared on 16.5.1978 that the applicant is completely and permanently incapacitated for further service. During his service career the applicant subscribed to Provident Fund with Account No.33035 of the Indian Ordnance Factories Workmen Provident Fund. One of the annual statement of accounts of Provident Fund for the year 1974-75 is at Annexure-A/4. The applicant had opted for pensionary benefit which was acknowledged and the acknowledgement is at Annexure-A/5. The applicant has stated that at the time when he was medically invalidated from service he had put in required years of service for getting pension and after his retirement he submitted all relevant papers for getting pension and Death-cum-Retirement Gratuity, but no pension was sanctioned. He made several representations and in response to one he was informed in letter dated 19.3.1998 at Annexure-A/1 that he had opted in December 1968 for Contributory Provident Fund and had also taken all benefits as per Contributory Provident Fund Scheme without any objection. Therefore he was informed that his plea for pension cannot be entertained. In the context of the above facts, the applicant has come up in this petition with the prayer referred to earlier.

3. The respondents in paragraph 5 of their counter have made the following averments:

"5. That in response to the averments made in para 4.3 of the O.A., it is humbly submitted that initially the applicant

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had exercised his option for CPF and later on although the applicant had exercised his option for pensional benefits on 2.3.64 but the same was not accepted by the competent authority. Therefore, the applicant was asked to exercise his option in the month of December, 1968 once again to be covered under Pensional rules but the applicant vide his option dt. 24.12.68 agreed to continue under contributory Provident Fund benefits vide his option letter dated 24.12.68. A copy of the said letter of option submitted by the applicant is filed herewith as Annexure-R/1."

The respondents have further stated that in view of the option exercised on 24.12.1968 the applicant was paid all his dues including C.P.F. dues after he was medically invalidated on 16.5.1978 and the applicant accepted all the dues without any objection. On the above grounds, the respondents have opposed the prayer of the applicant.

4. The applicant in his rejoinder has denied that he got the CPF benefits. He has stated that after his retirement he got back his contribution to the Provident Fund and not the employer's contribution. He has further stated that several other co-workers of his also got back only subscriber's payment to the Provident Fund and not the employer's contribution. On the above grounds, the applicant has reiterated his prayer in the rejoinder.

5. We have heard Shri B.P. Yadav, the learned counsel for the petitioner and Shri A.K. Bose, the learned Senior Standing Counsel for the respondents and have also perused the records.

6. From the averments of the parties it appears that the applicant was originally covered under Contributory Provident Fund Scheme. The respondents have admitted that

in 1964 the applicant had opted to come over to the Pension Scheme. The respondents have stated that his option given in 1964 was not accepted and he was asked to exercise his option once again. The respondents have not indicated the reason why the option given by the applicant to come over to the Pension Scheme was not accepted. They have also not enclosed copy of any order which might have been issued to the applicant rejecting his option to come over to the Pension Scheme. Under the Contributory Provident Fund Scheme once an establishment comes over to pensionable establishment, then the employees are required to give an option either to come over to Pension Scheme or continue to be governed under the Contributory Provident Fund Scheme and such option once given is final. The employer has no right either to accept or reject the option given by the employee. In this case the respondents have admitted that the petitioner opted to come over to the Pension Scheme. They have indicated that on 2.3.1964 such option was exercised by the applicant. The applicant has enclosed at Annexure-A/5 the receipt given by Shri K.L.Narula, Personnel Officer, Ammunition Depot, Panagarh, indicating his option for pensionary benefits. Prima facie therefore the respondents could not have in law rejected his option to come over to the Pension Scheme. But as a matter of fact this was done and the applicant was asked to exercise his option once again. Such action on the part of the respondents was clearly illegal. The applicant is an illiterate Mazdoor. From the

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contemporaneous documents it appears that he is even unable to write his name and has given his thumb impression in all the documents. The respondents have stated that on 24.12.1968 the applicant has given his option to continue to remain under the Contributory Provident Fund Scheme. The learned counsel for the petitioner states that this document is not genuine. There is no record in the pleadings to show that this document has not been authenticated by the applicant with his thumb impression. But even if this document is in existence this has no validity in the eye of law because admittedly the applicant had opted for the Pension Scheme and his option was received by the respondents and the respondents had arbitrarily not accepted the option even though they had no authority to reject such an option. The respondents have also not filed any order in which the option given by the applicant to come over to the pension scheme was rejected. In view of this, it must be held that the subsequent option which was taken from the applicant on 24.12.1968 has no validity and the applicant's original option given on 2.3.1964 is valid and must be worked out. Accordingly, the applicant would be entitled to pensionary benefits and we decide accordingly.

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7. The respondents have pointed out that the applicant has already received the Contributory Provident Fund amount without any objection. The applicant has stated in his rejoinder that he has got only his contribution to the Provident Fund and not the employer's share. It is not possible for us to take a view on this in the absence

of any material in the pleadings. It is possible for the departmental authorities to ascertain if actually employer's share of the Contributory Provident Fund was paid to the applicant. If that has been paid, then the applicant would be required to return the employer's share of the Provident Fund amount received by him.

8. In consideration of the above, the Original Application is disposed of by holding that the applicant is entitled to pension from the date of his retirement. The respondents are directed to sanction pension to him within a period of 120 (one hundred twenty) days from the date of receipt of copy of this order. While sanctioning pension the amount of employer's share of the Provident Fund paid to the applicant should be determined and deducted by the respondents from the arrear pension amount payable to the applicant. We are not asking the applicant to pay interest on the employer's share of the Contributory Provident Fund amount because we <sup>also</sup> are not allowing interest on the arrear pension payable to the applicant.

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

(G. NARASIMHAM)  
MEMBER (JUDICIAL)

(SOMNATH SOM)  
VICE-CHAIRMAN