

Central Administrative Tribunal
Principal Bench
New Delhi

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O.A. No. 2447/95

Decided on 1.9.1999

Sukha Singh

... Applicant

(By Advocate: Shri V.P.Sharma)

Versus

Union of India & Ors. ... Respondents

(By Advocate: Shri O.P.Kshatriya)

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HON'BLE MR. JUSTICE R.G. VAIDYANATHA, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI, MEMBER (A)

1. To be referred to the Reporter or Not? Yes ✓
2. Whether to be circulated to other outlying Benches of the Tribunal or not? No


(R.G. VAIDYANATHA)
VICE CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2447/95

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New Delhi, this the 1st day of September, 1999.

HON'BLE MR. JUSTICE R.G.VAIDYANATHA, VICE CHAIRMAN (J)
HON'BLE MR. J.L.NEGI, MEMBER (A)

Sukha Singh s/o Sh. Gurbachan Singh, R/O
Railway Quarter No. 236-A, Railway
Hospital, Chelmsford Road, New Delhi. -----Applicant.

(By Advocate :Mr.V.P.Sharma)

VERSUS

1. Union of India: Through, the
General Manager, Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Moradabad.
3. The Divisional Medical Officer,
Northern Railway Hospital Delhi,
Chelmsford Road, Delhi. -----Respondents.

(By Advocate :Mr.O.P.Kshatriya)

O R D E R (ORAL)

By Hon'ble Mr. Justice R.G.Vaidyanatha, VC (J):

This is an application filed by the applicant seeking directions to respondents to pay compassionate allowance and for other reliefs. Though, the respondents stated that they had filed reply but after we checked it up, no reply is on record. Today, counsel for respondents was permitted to file a copy of the reply and it is taken on record. Counsel for applicant fairly submitted that he has no objection to take the copy of the counter.

We have heard Mr. V.P.Sharma, counsel for applicant and Mr. O.P.Kshatriya, counsel for respondents.

for

2. To decide the point at issue necessary facts are as follows.

That the applicant was a Railway employee. Due to certain misconduct, the applicant was proceeded with a departmental enquiry. After the enquiry, the disciplinary authority passed an order of removal from service. The applicant challenged the same by filing the appeal before the respective authority which came to be dismissed. Then, he approached this Tribunal and the application came to be dismissed by this Tribunal. Then, the applicant approached the Hon'ble Supreme Court but with no success. It appears that the applicant made a representation to the Administration to pay him compassionate allowance under rules 65 of the Railway Servant (Pension) Rules, 1993. The Administration has not passed any order; therefore, the applicant has approached this Tribunal with the present application. His case is that Rule 40 of the Pension Rules which provides that past service is forfeited is ultra vires. Alternatively, it is pleaded that under Rule 65, the applicant is entitled to compassionate allowance unless it is specifically ordered by the competent authority that it should not be granted. Therefore, the applicant has approached this Tribunal for two reliefs, namely, to declare the Rule 40 as ultra vires of the Constitution and for a direction to the respondents to pay him compassionate allowance.

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3. The respondents, in the reply, have mentioned the facts of the case which led to initiation of disciplinary action against the applicant and have also mentioned the process of litigation in which the applicant challenged the order of removal from service. As far as the applicants representation for payment of compassionate allowance, it is pleaded that it was considered by the competent authority and came to be rejected. That in view of the statutory rules, framed by the Govt., the applicant is not entitled to claim either pension or compassionate allowance in view of the penalty order of removal from service. Hence, it is stated that the applicant is not entitled to any other relief.

4. At the time of argument, counsel for applicant did not press the plea of constitutional validity of Rule 40 of the pensions rules. But, however, he maintained that pension is a deferred payment and it is not a bounty or charity to be granted by the Govt. It is, therefore, maintained that notwithstanding the order of removal from service, the applicant's right to pension cannot be taken away and, therefore, the applicant is entitled to either pension or alternatively compassionate allowance as provided under Rules 65 unless the competent authority passes the order denying the payment either for pension or for compassionate allowance. On the other hand, counsel for respondents submitted that in view of Rules 40 and 65, the applicant's right to pension has been forfeitted. The

question of grant compassionate allowance is in the discretion of the competent authority, who has already rejected it.

5. Learned counsel for applicant invited our attention to the decision of the Hon'ble Supreme Court in Major Sodhi's case and the decision of Delhi High Court in Brig. Malhotra's case and some other decision by the Hon'ble Supreme Court pertaining to Army Officers. The decision of the Delhi High Court reported as 1997 L.A.B. I.C. 2005 (Brig. A.K. Malhotra (Retd.) Vs. Union of India & Others) relied upon the judgement of the Hon'ble Supreme Court in Major Sodhi's case

In the case of Major G.S. Sodhi Vs. Union of India reported as JT 1992 (4) S.C. 337, the Supreme Court has held that in case of commissioned officer, the officer is entitled to pension unless there is a specific order of forfeiture of service / pension passed by the President of India.

In our view, it is not necessary to refer to Major Sodhi's case or other decisions relied upon by the applicant regarding Army Officer's since the matter is covered by a recent judgement of the Apex Court in the case of Union of India & Others Vs. Subedar Ram Narain & Others reported as (1998) 8 SCC 52. Hon'ble Supreme Court, in this case, referred the decision of Major Sodhi's case and other earlier decisions where it has been held that the Army Officer

is entitled to pension inspite of removal from service unless contrary order is passed, stating that the officer is not entitled to pensionary benefits. After considering the earlier decisions, the Hon'ble Supreme Court pointed out that there is a difference between rules applicable to a commissioned officer and to a junior commissioned officer. The Hon'ble Supreme Court pointed out that as far as commissioned officers are concerned, even if there is removal or dismissal from service, pension can be withheld only if an order is passed by the President of India either forfeiting or granting pension. As far as junior commissioned officers, the relevant rule 113 which clearly provides that an official who is dismissed under the provisions of the Army Act, is not entitled for pension or gratuity in respect of previous service. But in exceptional cases, the rule provides, that the President of India has discretion to grant pension or gratuity at a particular rate.

Similarly, in Railway Pensions Rules, 1993, Rule 40 clearly says that dismissal or removal of a Railway Servant from service or post, shall lead to forfeiture of his past service.

Rule 65 provides that a Railway Servant who is dismissed or removed from service, shall forfeite his pension and gratuity.

Therefore, by reading Rules 40 and 65, there is no difficulty to hold that the the Railway Servant

on dismissal or removal, is not entitled to pension and gratuity.

6. The same argument which was now urged by us, that forfeiture of pension amounts to double punishment and it takes away legal right of an official for pension, was proved before the Hon'ble Supreme Court. It was argued before the Supreme Court that Rule 113 (a) is discriminatory and pension is a property of a Govt. servant and it cannot be taken away. Same argument as now convassed by the ld. counsel for applicant that a pension which is earned becomes the property of an official and right to take pension cannot be taken away was prayer before Hon'ble Supreme Court. The answer to the submission is found in para 14 of the reported judgement of Hon'ble Supreme Court in Subedar Ram Narain's case, which reads as follows:-

"14. It was also submitted by Sh. Malhotra that Regulation 113 (a) was discriminatory and, further, pension which is earned becomes the property of the person concerned and the same cannot be taken away. But no such contention was raised before the High Court. In any case, we see no merit in the said contention. Firstly, junior commissioned officers and commissioned officers belong to different classes. They are not similarly situated. Moreover, pension is granted by the rules and regulations which can and do provide for the circumstances which would make a person ineligible to receive the same. Dismissal makes a junior commissioned officer disentitled to receive pension or gratuity. Regulation 113 (a) is not in any way invalid."

The Hon'ble Supreme Court rejected the argument about discrimination or about taking away the right of pension. Hon'ble Supreme Court has pointed out that the pension is granted under the Pension Rules and, therefore, rules can provide as to under what circumstances, a person is ineligible for pension. Hon'ble Supreme Court pointed out that there is difference between the commissioned officers and junior commissioned officers and, therefore, held that in view of the rules, junior commissioned officer is not entitled to pension or pensionary benefits.

In view of the law declared by the Apex Court in an identical situation and views are pari-materia between the rules of a Railway Servant and junior commissioned officer, there cannot be any difficulty to hold that the applicant's right of pension cannot be claimed in view of Rules 40 and 65 of the Railway Pension Rules.

7. Now, the question is whether the applicant is entitled to compassionate allowance as of right or not? Rule 65 clearly states that there is no right conferred on a Railway Servant. Here, the discretion is given to the competent authority to grant compassionate allowance in deserving cases of special consideration. The applicant cannot claim this amount as of right. If the applicant wants the same, then he should make request by mentioning special facts and circumstances in his favour. Here, the applicant made no such representation, except for the first time in 1994 after his removal from service in 1984. A matter

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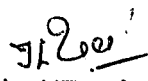
like this, cannot be hanging over for years together. Here, the applicant has no legal right to claim, the amount but he could have sought the mercy of the competent authority seeking compassionate allowance on special consideration. As soon as he was removed from service, the applicant could have made a representation to the disciplinary authority to grant him compassionate allowance. The applicant was engaged through out in his first round of litigation which ended up to Hon'ble the Supreme Court and having lost in all Courts and Forums, for the first time, he made a request in 1994 for compassionate allowance.

8. Ld. counsel for the applicant contended that right to pension is a continuing cause of action and, therefore, the applicant can approach the Court or Tribunal at any time. Reliance was placed on two authorities reported in 1992 (6) SLR 683 (Sardara Singh Vs. Union of India) and 1992 (3) SLR 663 (Roshan Lal Vs. Union of India) wherein the High Court has observed that a pension is a continuing cause of action and delay should not come in the way of granting the relief. There is absolutely no dispute about the preposition of law. But here the applicant is not entitled to pension. His right to pension stood forfeitted and came to an end by statutory provision, on the date, the order of removal from service was passed in 1984. Therefore, the question of continuing cause of action after 1984, does not arise because the right to pension has come

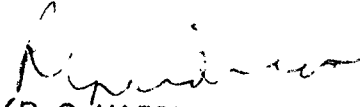
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to an end once the order of removal of service was passed. Therefore, above decisions about right to pension, does not apply to this case. Further, law and limitation does not apply to Writ Petitions. As far as Tribunal is concerned, we are governed by the statute and section 21 of the A.T. Act as specifically provides one year's period of limitation from the date of cause of action. Therefore, in the facts and circumstances of the present case, the application suffers from delay and latches besides, being hit by the law of limitation as provided in Section 21 of the Administrative Tribunal Act. Now, that the respondents have also stated that they have rejected the request of the applicant, then nothing more need to be done. Even otherwise, the applicant has no legal right to claim for compassionate allowance under rules 65, it is only discretion granted to the competent authority to pass appropriate order either at the time of passing final order or immediately thereafter granting compassionate allowance in special circumstances. But in this case such circumstances do not appear as pointed by the respondents since misconduct alleged and proved against the applicant. Therefore, in the facts and circumstance of the present case, we are not inclined to grant any relief to the applicant.

9. In the result, the application fails and is hereby dismissed. No orders as to costs.


(J.L. NEGI)
MEMBER (A)

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(R.G. VAIDYANATHA)
VICE CHAIRMAN (J)