

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/184/2016

Order reserved on 22.09.2020

DATE OF ORDER: 05.10.2020

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Angoori Devi w/o Late Sh. Jayanti Prasad aged about 66 years, presently residing at c/o Somraj Sharma Prast Bhawan, House No. 120/33, Topdara, Ajmer (Rajasthan).

....Applicant

Shri Sunil Samdaria, counsel for applicant (through Video Conference).

VERSUS

1. Union of India through its Secretary, Ministry of Railways, Rail Bhawan, New Delhi-01.
2. General Manager, North Western Railway, Near Gold Souk, Malviya Nagar, Jaipur.
3. Divisional Railway Manager, Bikaner Division (NWR), Bikaner.
4. Divisional Railway Manager, Allahabad Division, North Central Railways, Allahabad.

....Respondents

Shri Anupam Agarwal, counsel for respondents (through Video Conference).

ORDER**Per: Hina P. Shah, Judicial Member**

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking for the following reliefs:

- "(i) To issue an appropriate order/direction quashing and setting aside the letter dated 17.7.2015 and direct the Respondents to release all terminal benefits of Late Sh Jayanti Prasad and family pension to the applicant with interest @ 18% p.a.
- (ii) Any other order/direction which this Hon'ble Court deem fit and proper in facts and circumstances of the case may be passes in favor of the applicant.
- (iii) Award cost of the application."

2. The brief facts of the case, as stated by the applicant, are that late Shri Jayanti Prasad (husband of the applicant) was appointed as Coach Attendant on 23.07.1962 and Railway Pass was issued to him on 08.06.1981. He expired on 22.04.2012. The applicant states that her husband, during his life time, could not claim his retirement benefits due to ill-health. After demise of her husband, applicant made several representations to the respondents claiming for

retirement benefits of her husband. The applicant states that her husband was transferred from Allahabad Division to Bikaner Division in the year 1981. Thereafter, he was transferred from Bikaner Division to Allahabad Division vide order dated 27.04.1984 (Annexure A/8). The respondent No. 2 vide its letter dated 20.11.2014 (Annexure A/9) stated that case for grant of terminal benefits is to be decided by Allahabad Division. But Allahabad Division stated vide its letter dated 30.01.2015 that the matter pertaining to non-payment of settlement dues and family pension is required to be looked into by Bikaner Division. Thereafter, applicant made representations to several authorities and as per Annexure A/1, Allahabad Division submitted their reply to Dy. Secretary, Cabinet Secretariat vide letter dated 17.07.2015 whereby pension as well as settlement dues were denied to the applicant. Being aggrieved by the in-action of the respondents, the applicant has preferred the present Original Application for quashing and setting aside Annexure A/1 letter dated 17.07.2015.

3. After issue of notices, the respondent No. 2 & 3 filed their reply raising preliminary objection stating

that as per date of birth, late Shri Jayanti Prasad was to retire in 1998. He died in 2012 and no PPO was issued. During his lifetime, he never sought any relief for release of terminal benefits. Thus, in view of principles of waiver and principles of estoppels, applicant has no right to claim benefits. They further stated that Annexure A/1 in challenge is nothing but a response to the applicant's representation to Cabinet Secretariat and the same cannot be said to be impugned order. It is further stated that cause of action, if any, arose in 1998 when the husband of applicant was to retire. Also applicant represented only in 2014-2015 and, therefore, the present Original Application is grossly barred by limitation. As per judgment of the Hon'ble Apex Court in the case of M.K. Sarkar, payment of settlement dues is one time cause of action. Thus, the present Original Application is barred by limitation and deserves to be dismissed. Also on question of territorial jurisdiction, the respondents state that husband of the applicant lastly served with respondent No. 4, therefore, the present Original Application fails on the issue of jurisdiction also. Late Shri Jayanti Prasad lastly worked at Tundla Station for a few days. He thereafter absconded from

duty and looking to the fact that he was transferred back to Allahabad had replied to the applicant. On merits, the respondents stated that the documents so enclosed cannot make the applicant wife of late Shri Jayanti Prasad. As no PPO was issued during the life time of late Shri Jayanti Prasad, any claim for settlement dues or family pension is wholly misconceived. In absence of availability of any record, which has been weeded out as per rules, burden of proof lies with the applicant to substantiate her lawful right to the said claim. Therefore, the present Original Application deserves to be rejected on the ground of limitation itself.

4. The respondent No. 4 also filed reply and raised the issue of limitation. It is further stated that the husband of the applicant never represented during his life-time for settlement dues. As per Section 21 of the Administrative Tribunals Act, 1985, the limitation for filing the present Original Application is one year. Therefore, present Original Application deserves to be rejected on the ground of delay and laches. Also no application has been filed by the applicant for condonation of delay. It is further stated that the

Railway Board vide letter dated 13.08.2015 directed the respondents to write the Applicant asking for certain documents. Accordingly, vide letter dated 09.09.2015, the applicant was informed about the said aspect, which was duly acknowledged by her. Again vide letter dated 06.10.2015, a reminder was sent. The applicant furnished certain documents and on the basis of the same, order dated 09.11.2015 was passed. It is stated by the respondents that the applicant has failed to challenge the said letter dated 09.11.2015 instead she has preferred the present Original Application challenging the communication dated 17.07.2015, which cannot be said to be the impugned order. Therefore, it is made clear that any challenge for the relief is without any substance and the same is also not maintainable. Also respondents averred that no cause of action has arisen within the territorial jurisdiction of this Tribunal. The respondents further stated that no record relating to late Shri Jayanti Prasad is available in the office as it is an old matter. No PPO was ever issued in his favour. Hence, applicant has to prove beyond doubt as to her entitlement for the settlement dues of late Shri Jayanti Prasad. It is submitted that husband of the applicant has lastly

worked for a few days at Tundla from where he absconded from duty and, thereafter, his whereabouts were not known. It is further stated that late Shri Jayanti Prasad never asked for such benefits during his life time. The representation of the present applicant is also received only in 2014-15. Therefore, the present Original Application deserves to be rejected not only on the basis of limitation but also on the ground that the challenge has not been made by the present applicant to the letter dated 09.11.2015, which is the actual impugned order though the Original Application was filed by the applicant in the year 2016.

5. The applicant has not filed any rejoinder to rebut the submissions of the respondents.

6. The respondents had filed M.A. No. 291/42/2017 for deletion of respondent No. 1 i.e. Secretary, Ministry of Railways from the array of respondents, but since the present Original Application was left unattended by the applicant on several occasions, the present matter was dismissed for default on 15.03.2018 and, accordingly, the said Misc. Application became infructuous and got automatically disposed of.

Thereafter, applicant filed Misc. Application No. 291/162/2018 for restoration and on 25.04.2018, the said M.A. was allowed. Accordingly, Original Application was restored. Also a Misc. Application No. 291/448/2020 was filed by the applicant for early hearing and this Tribunal vide its order dated 10.09.2020 allowed the same and, accordingly, the matter was placed for final hearing.

7. Heard learned counsels for the parties through Video Conference and perused the material available on record.

8. The applicant, besides reiterating the facts, stated that ample documents have been provided to the respondents to prove that her husband late Shri Jayanti Prasad was working with them, but respondents have failed to consider the same and that she was made a scapegoat between several departments and till date she has not received the settlement dues of her husband nor pension. Therefore, she is justified in getting the same. The applicant has relied on several judgments to justify her claim, which are mentioned as under:-

- a). M. Subramaniyan v/s. Secretary to Government of Tamil Nadu & Ors. - 2010 SCC Online Mad 4268.
- b). Smt. Prema v/s. State of Rajasthan & Ors. - 2009 (2) CDR 941 (Raj.).
- c). Smt. Parmeshwari Devi Saini v/s. State of Rajasthan & Ors. - 2009 (2) CDR 947 (Raj.).

9. On the other hand, the respondent No. 4, pointed out that the applicant was required to submit several relevant documents to process the case, but neither she nor her son, Shri Manish Saraswat were able to provide the same. The applicant was asked to provide Monthly Pay Slip of Shri Jayanti Prasad, Provident Fund Deposit Slip, Convenience Pass, Medical Card, Service Certificate issued after retirement, P.P.O., Complimentary Pass, Medical Identity Card, etc., but the applicant was unable to provide the same. It was further reiterated that late Shri Jayanti Prasad, since 1998 till his death in 2012, never approached the respondents for his settlement dues and it is only after his death, present applicant made representation in 2014-15 for receipt of settlement dues and pension. As the applicant has approached belatedly without

relevant documents and also where no service record is maintained after prescribed period since they are weeded out as per rules, therefore, burden of proof to substantiate her claim lies with the applicant. Therefore, the respondents are justified in their action as the applicant has also failed to challenge the actual impugned order dated 09.11.2015, which was served to her before filing of the present Original Application. Therefore, the relief claimed by the present applicant is unjustified and the same cannot be granted.

10. The main question which requires to be considered in the present case is whether the present case can be entertained belatedly. It is clear from the facts that as per the date of birth of late Shri Jayanti Prasad, which is 15.01.1940, he would have retired in 1998. Since his retirement till he expired i.e. on 22.04.2012, he did not approach the respondents for seeking his settlement dues. It is difficult to believe that a person will keep quiet or will not approach the respondents if he does not receive payment for such a long period. Then after the death of late Shri Jayanti Prasad, the present applicant approaches different authorities by making representations only in 2014-

2015 for claiming settlement dues of late Shri Jayanti Prasad and filed present Original Application in the year 2016. As per Section 21 of the Administrative Tribunals Act, 1985, the applicant has to approach within one year of actual cause of action. Also no application for condonation of delay has been filed by the applicant. In the present case, the actual cause of action arose at the time of retirement of late Shri Jayanti Prasad. As per several judgments of the Hon'ble Apex Court belated claim cannot be entertained. Therefore, the present Original Application deserves to be dismissed on this ground alone.

11. Apart from delay and laches, even on merits, after going through the pleadings as well as documents annexed with the Original Application by the present applicant, it is clear that the present applicant is unable to provide vital and relevant documents required to substantiate the claim that she is entitled for the settlement dues / pension. It is clear that the applicant was unable to show the last drawn monthly pay slip of late Shri Jayanti Prasad, which will show the place where he was lastly working and till which date. Also PPO of late Shri Jayanti Prasad has not been

provided by the applicant. Similarly, none of the relevant documents mentioned by the respondents had been provided by the applicant to enable the respondents to proceed further in the matter. Though the applicant has filed the present Original Application challenging the impugned letter dated 17.07.2015 (Annexure A/1) for quashing and setting aside the same, it is clear that the same has not been addressed to her, therefore, the same cannot be considered as the impugned order / letter in challenge. On the other hand, respondents state that the applicant failed to challenge communication dated 09.11.2015 (Annexure R/1). Be it so, but in absence of PPO and other relevant documents required by the respondents, the applicant has not been able to substantiate her claim. Therefore, when late Shri Jayanti Prasad had not approached the respondents during his life time for receipt of settlement dues, then question of release of terminal benefits as well as family pension to the applicant does not arise and also claim has been raised by the applicant for the same after around 14-15 years in absence of required authentic documents and record, therefore, the action of the respondents cannot be faulted. Also the facts and circumstances of the

cases relied by the applicant are not applicable to the present case. Therefore, in view of the principle of waiver and principle of estoppel, the applicant has no right to claim the said benefits.

12. Thus, as discussed above in detail, the impugned letter dated 17.07.2015, in challenge, requires no interference and the applicant is neither entitled for any terminal benefits of late Shri Jayanti Prasad nor for family pension. Therefore, the present Original Application deserves no interference and the same is, accordingly, dismissed with no order as to costs.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat