

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 15th of November 2011)

Hon'ble Mr. Justice B.N Shukla, Member (J)

Original Application No. 1497 of 2002.

(U/S 19, Administrative Tribunal Act, 1985)

Nirhu Prasad S/o Jagarnath Prasad R/o Uttari P.O.
Samodhpur, District Chandauli.

Advocate for Applicant : Shri S.K. Dey
Shri S.K. Mishra

..... *Applicant*

Versus

1. Union of India through the General Manager, East Central Railway, Hajipur.
2. The Divisional Rly. Manager, East Central Railway, Danapur, District Patna.
3. The Divisional Railway Manager, East Central Railway, Mughalsarai.

..... *Respondents*

Advocate for respondents; Shri K.P. Singh

O R D E R

This O.A. has been filed by the applicant- Nirhu Prasad for quashing the impugned order dated 10.12.2001 and also directs the respondents to make payment of his due P.F. amount and D.C.R.G. pension and leave salary of 180 days with interest.

2. It is case of the applicant that he joined Railway services as Washerman on 16.6.1956 and worked at Howrah

upto September 1965, thereafter had been transferred at Mughalsarai in the Danapur Division U/CF/MGS in January 1965 as Labourer and he was medically decategorised and posted as Chowkidar U/B. S.I./ER/MGS in 1967, that because of illness and poor health, applicant submitted application for voluntary retirement w.e.f. 31.12.1976 but the settlement dues consisting of P.F. D.C.R.G, leave salary, pension was not paid.

3. In the counter affidavit filed on behalf of respondents, it is pleaded that applicant had never applied for voluntary retirement to this office and his P.F. dues have been paid in March 1968 and since the applicant deemed to be deserted from service, he is not entitled for pension and other retirement benefits.

4. Rejoinder and Supplementary Counter Affidavits have also been filed and exchanged.

5. There is no denial from the side of the respondents that applicant was not in Railway Service. Even in the counter affidavit, it is admitted that applicant was appointed as Washerman on 16.5.1956 at Howrah and he worked there up to September 1965 and thereafter he was promoted as Labourer and posted at Danapur Division in the month of October 1968. It is also admitted that applicant was medically decategorised and was posted as Chowkidar under BSI, Mughalsarai. Applicant has claimed that due to illness and

poor health, he submitted application for voluntary retirement w.e.f. 31.12.1976 and in support of his plea, he has filed Annexure A-1 with compilation No.2 but it is case of the respondents that the applicant after being posted as Chowkidar at Mughalsarai was transferred to Danapur and did not report at Danapur for duty and even did not give any information to the Administration about his whereabouts and thus the applicant deemed to be deserted from service as such and he is not entitled for pension and other retiral benefits.

6. Annexure A-1 shows that applicant has moved an application for his voluntary retirement on 16.08.1976 and it is endorsed to the Divisional Superintendent, Eastern Railway, Danapur and thus belies the claim of the applicant that applicant had deserted or deemed to be deserted from service. It is also clear from supplementary counter affidavit that service record of the applicant is not available in the Mughalsarai Division, hence respondents was not able to supply detail regarding voluntary retirement of the applicant from service on 31.12.1976. It is case of the respondents that at the material time, the establishment of staff working at Mughalsarai were under the administrative control of Divisional Railway Manager, Danapur and after bifurcation of Danapur Division, Mughalsarai Division came into existence w.e.f. 1.4.1978 and payment of settlement dues of applicant should have been worked out at Divisional Railway Manager, Danapur Division and Mughalsarai Division is not at all involved in the present controversy.

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7. Annexure A-2 is the letter dated 4.4.1997 whereby the applicant was directed to appear in Mughalsarai Division Office to furnish full information and thereafter matter was referred to D.R.M Danapur for disposal of claim of applicant and it is clear from Annexure A-3.

8. In this case there is further development, while in service P.F. Account No. 404263 was allotted to the applicant. It appears from Annexure A-4- letter sent by D.R.M Danapur on 24.06.1998 to Divisional Accounts Officer, Eastern Railway, Danapur shows that the deduction towards subscription to P.F. was made upto the month of January 1968 on this account but it is surprising that in February 1968, the P.F. account number of the applicant was changed to 704673 and balance amount on PF Account No. 404263 was transferred to new PF Account No. 704673. The P.F. Account No. 704673 belonged to Sri Nirhoo Ram MCM/MGS, who retired from service w.e.f. 31.3.1997. It shows that after January 1968 P.F. deduction was deposited in account No. 704673, which relates to another person, whose name was Nirhu Ram and who retired on 31.3.1997. Instead of looking into grievance of the applicant, he was directed to run from one place to another place and even his P.F Account No. was changed, which relates to other person i.e. Nirhoo Ram. From Annexure A-1, it is clear that applicant has applied for voluntary retirement from service on 16.8.1976. Instead of admitting this fact, the respondents have taken unique plea

that the applicant was transferred from Mughalsarai to Danapur but he did not join duty and it is thus deemed that he had deserted his service at his own and he is not entitled for retiral benefits. This shows attitude of the respondents. How grievance of poor employee of the Railway Department was ignored and ultimately he was paid partly sum of Rs. 178/-. The applicant served in the department from the year 1956 to 1976 but due to non-availability of record in the respondent's department, effort has been made to hush up the matter simply by paying partly a sum of Rs. 178/- to the applicant showing it as G.P.F. amount. The applicant was made to run from pillar to post with lot of harassment to him even he made representation to the department but no attention was paid. He was forced to file O.A. NO. 1501 of 2000, which was decided on 13.3.2001 and thereafter impugned order was passed on 11.12.2001. From the record, it does not transpire that the applicant had deserted his service or deemed to have deserted the service. He has applied for voluntary retirement and prior to his retirement, G.P.F. amount was deducted from his salary. Annexure A-6 is the G.P.F. Account slip, which shows that in the year 1962 Rs. 266/- was shown deposited and subscribed by the applicant, had it certainly been so amount of G.P.F. would not have been Rs. 178/- and subscription of the applicant would be more. What is the exact amount?. Is to be calculated by the respondents, which is to be paid to the applicant besides other dues.

9. It is case of the respondents that O.A. is barred by limitation and no application for condoning delay has been moved but this plea is not tenable. The impugned order has been passed on 11.12.2001 and O.A. has been filed on 5.10.2002. The case of applicant comes under Rule 'recurring cause of action' because demand of pension, G.P.F. fund is fundamental right of the employee.

10. Keeping of the service record of the applicant is the duty of the respondents but from the counter affidavit it appears that record is not available. It is case of the applicant that from the year 1956 to 1976, the applicant had subscribed one month pay to his P.F. Account No. 404263 in every year and there is no reason to disbelieve it. Even P.F. statement (Annexure A-2) shows that up to March 1962, the balance amount of P.F. was Rs. 266/-. It is also clear that due to fault of the respondents, new number was allotted, which relates to another Nirhu Ram, MCM/MGS, hence O.A. is liable to be allowed with costs.

11. O.A. is allowed with costs. The impugned order dated 10.2.2001 is quashed and respondents are directed to make payment of P.F. dues, D.C.R.G., Pension and leave salary of 180 days to the applicant within 2 months with interest at the actual amount @ 8% per annum till the date of actual realization. It is also made clear that in case record is not available then as claimed by the applicant, P.F. dues may be calculated with this assessment that from the year 1956 to

1976, the applicant had subscribed one month pay against his P.F. account in every year till his seeking V.R.S. Change in the account number would be immaterial.

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Member (J)

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