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Open Court.
~~13th~~

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 13th day of January 2005.

QUORUM : HON. MR. D. R. TIWARI, A.M.

O.A. NO. 154 OF 2003

Jagan Lal, aged about 58 years, Son of, Late Chandan,
R/O Village Biharman, Tehsil Nagla, Izzatnagar,
Bareilly.

..... . Applicant.

Counsel for applicant : Sri T. S. Pandey.

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Izzatnagar, Bareilly.
3. Senior Divisional Personnel Officer, North Eastern Railway, Izzatnagar, Bareilly.

..... . Respondents.

Counsel for respondents : Sri K. P. Singh.

O R D E R

BY HON. MR. D.R. TIWARI, A.M.

By this O.A. filed under Section 19 of the A.T. Act, 1985, the applicant has prayed for issuance of a direction to the Respondents to pay and fix the applicant's pension since 27th July, 2002, arrears of pension as well pay for the month of May, 1967 and Feb., 1968 along with Provident Fund.

2. Briefly stated, the applicant, after being interviewed and found fit in the medical examination, was posted as Carriage Khalasi on probation for a

period of one year. His appointment was made by the Appointment Order dated 30th Dec., 1963 (Annexure-1) and posting order dated 16th Jan., 1964 (Annexure-2). He joined the service on 20th Jan., 1964 in the pay scale of Rs.70-85 on the post of Carriage Khalasi in Izzat Nagar Division of N.E. Railway. He was allowed to continue beyond the probation period of one year without any break in service for a period of more than three years and, as submitted by the applicant, he was presumably regularized. He was issued and allotted GPF A/C No.239497 indicating the amount of Provident Fund to be a sum of Rs.149/- for the year ending 30th March, 1967. GPF A/C No.239497 Ledger Folio No.65 may be seen at Annexure-3. His date of birth, as per school leaving certificate, is 20th July, 1944.

3. In view of the above facts, his date of superannuation would be 27th July, 2002. Copy of the school leaving certificate is at Annexure-4. He has submitted that after his appointment on 20th Jan., 1964, he was allowed to continue to carry out his duties on the post of Carriage Khalasi till 20th Feb., 1968 which is beyond the period mentioned in the posting order dated 16th Jan., 1964. He has further submitted that he has been getting regular salary except the period between May, 1967 and Feb., 1968. It has been submitted that on 20th Feb., 1968, the Assistant Mechanical Engineer verbally disallowed the applicant to continue his services and since then he has been approaching various authorities to retain him in service but the same has yielded no result. However, by his representation dated Jan., 2002, he made a request to Respondent No.1 to fix his pension and pay salary from the month of May, 1967 to Feb., 1968 (Annexure A-5). The Finance Department of the Respondents, vide their letter dated 7th Nov., 2001 required the Respondent No.2 to furnish the requisite documents of the applicant (Annexure-6). The Respondent No.1 vide his letter dated 4th Feb., 2002



again requested the Respondent No.2 to furnish the entire relevant records (Annexure-7).

4. Inaction on the part of Respondents have been challenged on various grounds mentioned in Para 5 of the O.A. The main ground is that the applicant has not been discharged/removed from service and he will be deemed to be in service till the date of superannuation on 27th Feb., 2002 and as such, he is entitled for retiral benefits. His ground for claiming pension is that he will be deemed to be in service for more than 20 years and that entitles him for pension in terms of Railway Pension Rules, 1963.

5. The respondents, on the other hand, have resisted the O.A. by filing a detailed counter. They have pleaded that the applicant, which he claims to be in service, has never represented and only after the date of superannuation, he has made claims for retiral benefits and pay for the period between May, 1967 and Feb., 1968. They have further argued that his O.A. is wholly misconceived, baseless, imaginary and misleading. Claim of the applicant is more than 35 years old and the Respondents are unable to search out the records in order to verify his claim. They have submitted that the list of employees, who retired on 31.7.2002 on superannuation in the Mechanical Department of Izzat Nagar Division, is at Annexure-1 to the Counter Affidavit. From the perusal of the list, it would be evident that there was no employee named Jagan Lal S/O Chandan on roll. They have accepted the contention that he appears to have been continued in service at least up to 28.2.1967 as the Provident Fund balance of the Financial Year ending 31.3.1967, which is at Annexure-3 of the O.A., is a proof of this. They have further that the applicant was asked vide respondent's letter dated 22.10.2001 to make available the copies of the order, letter regarding appointment, quieting service and Provident Fund slip (Annexure-2 of the C.A.). However, the

applicant has not submitted any papers. They have also submitted that the GPF balance amounting to Rs.178/- has been paid to him on 30.3.1968 and no amount of PF is due (Annexure-6 to the C.A.). They have also submitted that his claim for salary between May, 1967 and Feb., 1968 has been made after 35 years, which is a time barred claim which is not verifiable as the records of salary bills has been destroyed after expiry of the prescribed period of preservation (10 years of all records). As such, it has been argued that the O.A. is misconceived and may be dismissed.

6. I have heard counsel for the parties at length and given a careful thought to the rival submissions. I have also carefully perused the records.

7. During the course of the hearing, learned counsel for applicant Sri T.S. Pandey very forcefully argued that since the applicant has not been dismissed or removed from service, he is deemed to be in service till the date of his superannuation. He has also contested the claim of the Respondents that all the records have been weeded out after certain period of time and submitted that there are time schedules for retention of records. He has also produced in the court, a copy of the time schedule for retention of various kinds of records issued by Comptroller General of Defence Accounts. This document gives various time schedules for retention/destruction of different types of records by the Govt. He has also contested the plea of the Respondents that claim of the applicant for Feb., 1967 to May, 1968 is time barred. He has relied in the case of M.R. Gupta Vs. Union of India - 1995 SCC (L&S) 1273 wherein it has been held that pay fixation and payment of salary is never a time barred case and it is a continuing wrong giving rise to recurring cause of action every month on the occasion of payment of salary.

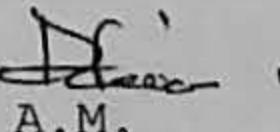
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8. Learned counsel for the Respondents argued that the applicant was never a regular employee. He was appointed as leave reserve Khalasi. He submitted that the records would have been there in case he had been a regular employee. He has reiterated the facts and the legal position stated in Paras 6, 11 and Annexure-6 of the C.A. He pointed out very clearly that the applicant has been asked to give proof that he was in service. He has also submitted that records were not available and the Respondents were unable to substantiate his claim. Hence, he finished his argument by saying that the O.A. deserves to be dismissed.

9. In view of the rival submissions of the parties, the only question which survives for consideration whether any direction would be issued in this case for payment of salary between May, 1967 to Feb., 1968 and payment of pension including other retiral benefits. In so far as the question of payment of salary is concerned, I am of the view that the applicant's claim can be accepted. The contention of the respondents that this claim cannot be accepted because it has been made after 35 years, is contrary to decision of the Supreme Court in the case of M.R. Gupta (Supra). As regards the question of the pension and other retiral benefits is concerned, I am of the view that the applicant is also to be blamed in this case as he is also suppose to be in possession of records and he could have given it to the Respondents when it was demanded from him. As such, the question of payment of pension and other retiral benefits cannot be accepted.

10. The O.A. is disposed of in terms of the above direction.

11. No costs.


A.M.