

10

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 944 OF 1996
Cuttack, this the 22nd day of Sept. 2000

Sri Ganesh Chandra Mohapatra Applicant

Vrs.

Assistant Engineer, S.E.Railway 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.
(SOMNATH SOM)
VICE-CHAIRMAN
22.9.2000

11

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 944 OF 1996
Cuttack, this the 2nd day of Sept' 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sri Ganesh Chandra Mohapatra, aged 76 years, son of late
Kalicharan Mohapatra,
Ward No.7, At-Deulasahi, PO/PS-Baripada, Dist.Mayurbhanj

..... Applicant

Advocates for applicant - M/s N.Sahoo
B.Sahoo
S.Sahoo

Vrs.

1. Assistant Engineer, S.E.Railway, Cuttack,
PO/PS/Munsifi-Cuttack, District-Cuttack.
2. Divisional Manager, S.E.Railway, Khurda Road,
PO/PS/Munsifi-Khurda, Dist.Khurda.
3. Chief Personnel Officer, S.E.Railway, Calcutta,
PO/PS/Munsifi-Calcutta.
4. Divisional Accounts Officer, Khurda road

.... Respondents

Advocate for respondents - Mr.R.Ch.Rath

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of
Administrative Tribunals Act, 1985, the petitioner has
prayed for arrear revised pay along with increments from
5.7.1965 to 14.4.1976 together with bonus and interest. He
has also asked for retirement benefits like pension,
gratuity, Railway Pass and other benefits with effect from
14.4.1976.

2. The applicant's case is that he joined
S.E.Railway as Painter on 28.12.1944 and was confirmed on
28.12.1945. During his service career he was transferred

from place to place and because of heavy pressure of work, his eye-sight started failing and his health deteriorated. He expressed a desire to take voluntary retirement, but no consideration was shown to him. Out of disgust he tendered his resignation on 5.7.1965. His resignation was not accepted and the applicant was made to work till 14.4.1976 and his resignation submitted on 5.7.1965 lost all force. While he was in service he got a letter from Senior Divisional Personnel Officer on 14.4.1976 (Annexure-1) that resignation tendered by the applicant on 5.7.1965 has been accepted with effect from that date. The applicant has stated that he was in regular service till 14.4.1976 but he was not paid any salary from 5.7.1965 till 14.4.1976. The applicant has stated that when he approached the authorities for his salary for this period he was told that as papers are not available, it would be difficult to disburse his regular salary. Even when his resignation was accepted, his arrear salary from 5.7.1965 till 14.4.1976 was not paid to him. The applicant has stated that he has worked from 24.12.1944 to 14.4.1976 continuously for more than 31 years but he has not received any pension. He has written to his authorities about his arrear dues, pension and Railway Pass but without any result. He had also approached the Pension Adalat in 1994-95 but without any effect. That is why he has come up in this petition with the prayers referred to earlier.

S. J. M.

3. In this matter the respondents have not filed counter in spite of notice. On 15.12.1997 on behalf of the learned counsel for the respondents four weeks time was asked for filing counter as a last chance and the matter was posted to 22.1.1998. On that date the counter was not filed. On behalf of the learned counsel for the respondents it was submitted that the question of maintainability and limitation

should be decided first. It was ordered that this will be taken up on 13.2.1998. On that day it was ordered that the question of maintainability and limitation would be taken up at the time of final adjudication and the respondents were allowed six weeks time to file counter as this was an old pension case. On the date of hearing the counter was not filed. In view of this, we had heard the learned counsel for both sides and perused the records.

4. The first prayer of the applicant is for arrear pay as revised from time to time with increments from 5.7.1965 to 14.4.1976 together with bonus and interest. From Annexure-1 filed by the applicant himself it is seen that in this letter dated 14.4.1976 his resignation dated 5.7.1965 was accepted with effect from that date. The applicant has stated that he has worked from 5.7.1965 to 14.4.1976. Beyond this bland assertion the applicant has not mentioned in which office he had worked for these 11 years. He has also stated that he was not paid monthly salary for these eleven years. As he had received his salary at least till end of June 1965 according to his own averment, it is difficult to accept his contention that he worked in July 1965 and thereafter and his salary was withheld because old papers are not available. In any case with regard to payment of his monthly salary, cause of action had arisen in 1965 and thereafter, and as his claim for arrear salary is for the period from 5.7.1965 to 14.4.1976 cause of action at the latest had arisen in April 1976. The applicant has approached the Tribunal twenty years thereafter. The Tribunal also cannot entertain grievances where cause of action has arisen prior to three years of commencement of functioning of the Tribunal. In view of this, the claim for payment of arrear salary is held to be not maintainable.

SJMM

before the Tribunal and is also barred by limitation. His claim for interest on this amount and bonus for this period is also not entierainable by us on the same ground.

5. His next prayer is for pension, gratuity and railway pass and other benefits. The applicant himself has stated that his case was taken up by Pension Adalat in 1994. He has enclosed copy of a letter dated 28.7.1995 from Senior Divisional Personnel Officer, Khurda Road to Chief Personnel Officer (Settlement), S.E.Railway, Garden Reach, in which it has been mentioned that the applicant was working as Painter originally at Belpore and then at Balasore and thereafter in different other places in Khurda Road Division. He applied for his transfer to Balasore or Belpore due to sickness of his family. As his request was not considered he resigned in 1965. He was paid Provident Fund dues of Rs.2906.00 vide cheque No. 558709 dated 12.7.76. In his representation which is dated 23.6.1996 he has mentioned that he is yet to get another Rs.830/- . In this representation dated 23.6.1996 he has indicated the various dues which he is yet to receive from the Railways. But it is interesting to note that he has not mentioned about arrear salary from 5.7.1965 to 14.4.1976. On the contrary he has asked for pension with effect from 6.7.1965. In other words it is clear that he had accepted that he had resigned from Railway service with effect from 5.7.1965. From another representation dated 13.7.1976 enclosed by him at Annexure-4 he has himself mentioned that he was covered under C.P.F.Rules. From this it is clear that he was not entitled to pension. Moreover, under Pension Rules, resignation from service forfeits all

S. J. J. M.

previous service. The applicant has averred in his OA that he had resigned from service. In view of this it is clear that he is not entitled to pension. It is, however, noted that the Senior Divisional Personnel Officer in his letter dated 28.7.1995 has written to Chief Personnel Officer (Settlement), S.E.Railway, Garden Reach, stating that according to the applicant some amounts are yet to be paid to him. In his representation dated 23.6.1996 the applicant has mentioned about balance of provident fund dues amounting to Rs.838/- As the respondents have not filed counter in this case in spite of more than adequate opportunities to them, while we reject the other prayers of the applicant, we direct the respondents to determine the amount of provident fund dues which are yet to be paid to the applicant and the amount if any due should be paid to the applicant within a period of 120 days from the date of receipt of copy of this order.

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

(G.NARASIMHAM)

MEMBER (JUDICIAL)

Somnath Som.
(SOMNATH SOM)

22.9.2003
VICE-CHAIRMAN

22/9/2000

AN/B