

## NOTES OF THE REGISTRY

## ORDERS OF THE TRIBUNAL

Order dated 17.12.2003

Heard Shri N.J.Singh, learned counsel for the applicant and Ms.S.L.Patnaik, learned Addl.Standing Counsel appearing on behalf of the Respondents-Railways and perused the materials available on record.

This Original Application, under Section 19 of the A.T.Act, 1985, has been filed by the applicant (Shri Hazari Jena) who is stated to have been mentally incapacitated (being represented by his wife Smt.Gunduri Jena, seeking the following reliefs:-

"... a direction be made to the Respondents especially, the Respondent No.2 and 3 to act upon the representation dated 31.1.2001 of the Representative Wife of the applicant(at Annexure-A/5) to provide service benefits by granting retiral benefits, i.e., Pension, Service Gratuity, Retirement Gratuity, Provident Fund and other benefits which are applicable and due to a Railway servant serving as a Gate-Keeper in Group-D category of Post retired on superannuation, in favour of the applicant and to disburse the said dues in favour of the representative wife of the applicant, who is also nominee of the applicant Railway servant(Hazari Jena)..."

The admitted facts of the case are that Shri Hazari Jena (applicant) who entered the Railway Service as a Gate-Keeper on 15.7.54 under Respondent No.4, while working as such till 25.1.1967 did not return to duty on 26.1.1967. It is the case of the applicant's wife that her husband did not return home on 26.1.1967 due to mental abnormality. It is in this background, applicant's wife preferred several representations to the Respondents Railways seeking pensionary benefits as well as

compassionate appointment in favour of her son, but as the same did not yield any fruitful result, she has approached this Tribunal with the prayers referred to above. It is the case of the applicant's wife that she had brought the fact of her husband's abscondance to the notice of the Railway authorities. While the matter stood thus, on her husband being traceable on 31.1.1001, she also informed the authorities accordingly, but all her efforts went in vain.

The Respondents-Railways, by filing a counter have opposed the prayer of the applicant, on very many grounds, inter alia urging the plea of limitation. They have, in so far as limitation is concerned, stated in their counter that this Original Application having been filed after 33 years, <sup>when</sup> the cause of action arose in the year 1967, is ~~bit~~ by laches and limitation. In addition to this, they have urged that ~~the~~ Shri Hazri Jena was a member of C.P.F. and as such he is not entitled to any pension. It is also the case of the Respondents that in the absence of any documents, like, FIR, Medical Certificate in support of mental abnormality and/or abscondance of Hazari Jena, the Respondents cannot rely on the statement of his wife that Shri Jena being mentally imbalanced had absconded. It is the last submission the Respondents that since this matter relates to the year 1967, they have destroyed the records of ~~Shri~~ Hazari Jena and on the basis of available records, they have been able to prepare ~~the~~ to reply to this O.A.

In the note of argument on behalf of the Respondents filed by the learned counsel for the Respondents, they have added some more facts with regard to some allegation of negligence in duty by Shri Hazari Jena for which Shri Jena had been issued with Office Memorandum. On these grounds the Respondents have prayed that this O.A. being devoid of merit is liable to be rejected.

In support of the plea of limitation, the learned counsel for the applicant submitted that the cause of action, against which this O.A. has been filed, is a continuous one inasmuch as on each day the applicant is being deprived of her legitimate dues from the Respondents and therefore, this being a technicality in law cannot stand in the way of the applicant, who has got protection under the Constitution of India giving guarantee to 'Right to Life'. As regards the other grounds, it has been submitted by the learned counsel for the applicant that no action having been taken by the Respondents either to proceed against Shri Hazari Jena on the allegation stated to have been levelled against him or for unauthorised absence, they are, at this stage, ~~restopped~~ to raise any objection whatsoever, in this regard. As far as the applicant's husband was a member of C.P.F. subscriber, the learned counsel for the applicant drew my attention to a decision rendered by the Central Administrative Tribunal, Hyderabad Bench in the case of N.S. Padukone vs. Union of India & ors. reported in A.T.R. 1988 (1) C.A.T. 492, wherein the Tribunal held as under : -

"...Under the Rule those Railway Servants who retired prior to 1957 and those who retired after 1957 are treated differently in as much as those who retired after 1957 are entitled to pension, while those who retired prior to 1957 are entitled to Provident Fund. "

"...The fact that earlier he was governed by the Provident Fund Rules would not have stood in the way of a railway servant being granted pension, if he were to opt for the pension rules. In such an event the service rendered by him while he was governed by the Provident Fund rules would have been counted for the purpose of determining the pension due to him. The only condition for granting him pension was that he should refund the gratuity if any received by him".

Basing on this decision, the learned counsel for the applicant urged that no gratuity money and provident fund dues having been disbursed in favour of the applicant, by no stretch of imagination, she can be deprived of her legitimate dues, viz., pension and pensionary benefits.

I have given my anxious consideration to the arguments advanced at the Bar. So far as limitation is concerned, I am content to accept that the cause of action being a continuous one, this O.A. does not suffer from laches or limitation. Hence, this plea of the Respondents is overruled. As regards the plea of the Respondents that Shri Hazari Jena being a member of C.P.F. subscriber cannot be entitled to pension, in the face of the judgment as quoted above, I am of the opinion that no gratuity and/or provident fund amount having been disbursed in favour of the applicant, it is too bald a statement that the applicant is not entitled to pension. As regards the absconcence of the applicant's

husband due to mental abnormality, the Tribunal cannot lost sight of the fact that contributory negligence is writ large. In other words, both the wife of railway employee as well as the Respondents - Department are quite callous in this regard. In any case, when the wife of the railway employee brought to the notice of the Respondents with regard to mental abnormality and absconcence of her husband on 26.1.1967, the Respondents were duty bound to take follow up action as required under the rules. The case of the Respondents that due to certain allegation husband of the applicant was issued with Memorandum is not enough testimony to say that he was not in service, whereas no action in this respect has been taken by the Respondents.

For the reasons discussed above, I am of the opinion that let Hazari Jena be granted leave of the kind due to him (on production of medical certificate, if any,) to cope up with the period till he actually was due to retire on superannuation. And if no such leave is at his credit, the said period of absence, i.e. from 26.1.1967 till the date of retirement) be treated as 'No Work No Pay'. While doing so, the Respondents should also simultaneously calculate his qualifying service as Group-D(Gate Keeper) w.e.f. 15.7.1954 till the date of retirement (for the purpose of notional calculation of pension) in lieu of provident fund amount(which was due to him and has not been disbursed), keeping in mind the ratio of decision as quoted above and pay to the applicant - representation through her husband(Shri Hazari Jena) arrears of pension that was due to be received w.e.f. the date of retirement.

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of Shri Hazari Jena, and the current pension from month to month shall also be paid. This exercise shall be completed within a period of 90 days from the date of receipt of copies of this order.

In the result, this O.A. is allowed to the extent indicated above, leaving the parties to bear their own costs.

*Manoranj*  
17/12/2003  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

Copy of order  
dt. 17/12/03 issued  
to the counsel for  
both sides.

*Dab*  
S.O.

*MR*  
17/12/03