

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

Original Application No. 54 of 2002
Cuttack, this the 17th day of December, 2004

Nimai Charan Barik Applicant

Vs.

Union of India & Others Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? 75
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? 45


(M.R.MOHANTY)
MEMBER (JUDICIAL)


(B.N.SAHU)
VICE-CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

Original Application No. 54 of 2002
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CORAM :

HON'BLE SHRI B.N.SQM, VICE-CHAIRMAN
AND
HON'BLE SHRI M.R.MOHANTY, MEMBER (J)

.....

Shri Nimai Charan Barik, Ex-Painter, Kharagpur Workshop No.31
S.E.Railways, Now residing at village-Jantilo, P.O.Badagaon,
Via/Dist. Kendrapara.

..... Applicant

By the Advocates

- M/s. B.B.Patnaik, B.Bhera,
T.K.Khuntia, C.R.Nandy.

Vs.

1. Union of India represented through Chairman, Railway Board, New Delhi.
2. Carriage Works Manager, S.E.Railway, At/P.O. Kharagpur, Dist. Medinipur.
3. Deputy Financial Accounts of chief Accounts Officer, Workshop S.E.Railways, At/P.O. Kharagpur, Dist. Medinipur.
4. Personnel Officer (Mech) S.E.Railways, Kharagpur Railway Workshop, Dist. Medinipur.

..... Respondents

By the Advocates

- M/s. D.N.Mishra, S.K.Panda,
S.S.Swain (For R-2 and
R-4)

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ORDER

SHRI B.N. SQM, VICE-CHAIRMAN

Shri Nimai Charan Barik has filed this O.A. seeking the following reliefs :

- (i) To admit and issue notice to the Respondents.
- (ii) To quash the termination/discharged order if any passed by the Respondents against the applicant.
- (iii) To hold/declare that the termination/discharged order is illegal, arbitrary, unconstitutional and the applicant is deemed to be continuing in service till his date of superannuation in absence of valid and legal termination/discharged order.
- (iv) To pass an order directing the Respondents to treat the applicant to be continuing in his service and grant the Pension as per his eligibility as per law and release the arrear amount within a stipulated period with @ 18% interest per annum from the date of due till payment.
- (v) To pass an order directing the Respondents to release the Gratuity amount taking into consideration of his qualifying service admissible and necessary for grant of Gratuity as per payment of Gratuity Act and Rules made thereunder with the Rules framed by the Railway Administration with 18% compound interest as admissible by law within a stipulated period from the date due till payment.
In addition to this the Provident Fund money be released with @ 18% interest within stipulated time from the date of due till payment.
- (vi) To direct the Respondents to make payments of arrear of monthly salary till the actual date of superannuation as because the termination/discharged order of the applicant is illegal, arbitrary, unconstitutional and honest in the eye of law for which the applicant is deemed to be continuing his service till superannuation and is entitled to monthly arrear salary.

2.1 The case of the applicant is as follows :

2.2 The applicant, who is 68 years of old now, was working as Painter in South Eastern Railways. He had entered

the service on 10.10.47. After having worked for 22 years, he fell seriously ill and could not remain in active service. He had submitted leave application (a leave application with medical certificate) in support of his ill health and had sought extension of grant of leave from time to time. It was, however, in the year 1994, he had approached the Personnel Officer (Mech.), Kharagpur the Railway Workshop with a prayer for grant of Pension and other retiral benefits (Annexure-1). He, thereafter, had sent a reminder on 19.3.2000 (Annexure-2) to the said authority. The Respondents by their letter dated 10.10.2000 refused him any pension or gratuity and informed him that he was only entitled to payment of Rs. 3153/- towards Provident Fund accumulation. Being aggrieved by the said letter of the Respondents, he has filed this O.A.

3. The Respondents have stoutly rebutted this application both in facts and in law. They have submitted that the O.A. is hopelessly barred by limitation because the cause of action, if any, had arisen in the year 1968 and the applicant could not have approached the Tribunal after lapse of 34 years. On the facts of the case, they have submitted that the applicant had remained absent without authority for which his service was terminated by the competent authority in the year 1968 after observing the formalities laid down in this regard in the Railway Service (D & A) Rules, 1968. Their plea is that although, the applicant was aware of this fact but he had preferred to remain silent and never cared to submit either any appeal or revision or mercy petition before the authority and it was

only in 1994, long after his termination, the applicant submitted a representation requesting for grant of pension. After carefully considering the representation of the applicant, they apprised him of his entitlement by their letter dated 10.10.2000. They have also disputed his story of having fallen ill on account of the fact that he never got himself treated in the Railway hospital at Kharagpur although, he was occupying one of the quarters in the staff colony. Referring to the provision of Rule 538 of Indian Railway Medical Manual Vol.I they pointed out that if a non-gazetted employee falls sick, he is supposed to intimate the Railway administration about his sickness within 48 hours of his absence and that he should also keep the administration apprised of his condition from time to time. Their case is that the applicant had not followed that rule. They have also disputed his contention that he came to know about his termination of service only in the year 2000. According to them this is evidently an attempt on the part of the applicant to mislead the Tribunal.

4. We have heard the Ld. Counsel for both the parties and have perused the records placed before us.

5. The O.A., as has been contested by the Respondents, has been filed after 34 years of cause of action, and, therefore, the question of limitation needs to be determined in the first instance. At the stage of admission of the matter on 4.2.02, the Tribunal had occasion to consider the question of limitation and decided that the notice in the case may issue keeping the question of limitation open. However, we find that since then

the applicant had taken no action to explain the delay nor has he filed any formal application for condonation of delay. It was only on 4.4.03 an M.A. No. 309/03 was filed by the applicant seeking condonation of delay in filing the application without whispering any reason for his silence for all these years.

6. The Ld. Counsel for the applicant stoutly resisted the contention of the Respondents that this application was hopelessly barred by limitation by submitting host of case laws. He also resisted that the O.A. could be turned down on the ground of delay and laches. We have carefully gone through the various case laws brought to our notice by the learned counsel. We are, however, not impressed. Mere citing of case laws will be of no avail until and unless the applicant has been able to state clearly how did it take him 34 years to come up with his claim for retiral benefit. With the M.A. he has filed a medical certificate obtained from one Dr. Kulamani Baral of District Headquarters Hospital, Kendrapara who certified that he was sick between the period of 12.7.01 to 28.1.02 on account of arthritis with hypertension. Clearly, this certificate is of no avail either to the cause of the applicant or for our benefit as his problem of arthritis and hypertension occurred long after he was found missing at his workplace in the year 1968. By referring to the case of Dilbagray Jerry vs U.O.I and other cases, he has sought to bring to our notice that the state should not be allowed to take the plea of limitation which is a technical But plea to defeat the just claim of the poor employee. the question to be answered by the applicant in this case is why he remained

silent for all these years and to provide it a reasonable explanation for delay. The plea of unreasonable delay is not merely a technical objection raised by the Respondents, because, if, a claim is to be settled, 34 years after the claim has arisen ^{also} host of impediments crop up. The question/arises, whether the Respondents are obliged under law to keep the records in custody to be able to attend to his case. The Respondents by submitting an affidavit dated 17.12.04 have clearly stated that the record in respect of a non-gazetted staff regarding his service is preserved for a period of 10 years after his resignation, discharge, removal or dismissal from service. The allegation here is that the applicant was dismissed/removed from service in 1968. So it is clear that after 1978 the service record pertaining to him will not be available, so the ground of limitation becomes a formidable stumbling block standing in the way of taking a view contrary to the submission made by the Respondents. In view of these facts of the case, whereas, it is not necessary to go and discuss all the case laws referred to by him, some of which we find are not relevant to the issue at all, we would like to refer here to some of the judgement/s of the Apex Court regarding determination of delay and laches.

7. The foremost point to be noted here is that the Courts have always frowned at any case of undue delay or unexplained delay. In the case of Y.Ramanjaneyulu vs State of Andhra Pradesh, their Lordships held that "in the instant case the appellant sought relief after a very long unexplained delay. It would create chaos in the service and many promotions and

reversions will have to be effected."

In the case of ex-Captain Harish Uppal vs U.C.I, their Lordships held as follows :

"It is a well settled policy of law that the parties should pursue their rights and remedies promptly and not sleep over their rights. That is the whole policy behind the Limitation Act and other rules of limitation. If they choose to sleep over their rights and remedies for an inordinately long time, the Court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitutional law."

In this case, the applicant had slept over for 34 years. No explanation has been adduced either in the O.A. or during oral argument to explain, in spite of our repeated anxious queries, as to what he has been doing all these years. The Ld. Counsel could not help us to appreciate the problem afflicting the applicant in leaving his duty position or for keeping mum for over three decades. It is also not his case that he was hospitalised or any other calamity had afflicted him. Here we would also like to refer to the decision of the Apex Court in Roshan Lal vs International Airport Authority of India (AIR 1981 SC 597) where their Lordships declined to entertain the petition under Article 32 with regard to appointment of certain Airport officers, two years after their appointment on the ground that it was not justified to reopen the question of appointment several years after the appointment. In the case of Gain Singh Mann vs High Court of Punjab and Haryana (AIR 1980 SC 1894) petition filed was dismissed on account of delay of about 11 years from the date on which the promotion was claimed.

8. His case has two spectrums, one, his challenge to

the termination of his service due to absence. The Respondents have said that they have removed him from service on account of unauthorised absence. Therefore, he is not entitled to any pension unless he is able to get relief on that score. The other side of the spectrum is that he should be paid retiral benefits. But that question will arise only if his punishment of removal from service is quashed. The Respondents had offered him the money lying in his Provident Fund Account. We had also called for production of Provident Fund record. The Respondents have placed before us the ledger card containing his provident fund contributory account, from which it appears that he was contributing to the Contributory Provident Fund (CPF in short); in which case he remains outside the pension scheme. In the other words, his case has got more than one angle which would require meticulous study of the records to determine validity of his claim. But as we have been told by the Respondents by filing an affidavit that no service records relating to the applicant are available a service records in respect of the employees dismissed/removed are not maintained beyond ten years after such an eventuality.

9. Having regard to these facts of the case, we have no option but to observe that the applicant, for reasons best known to him, having remained silent for such a long period after the cause of action arose, his case suffers from undue delay and lache and, therefore, the same is dismissed being not maintainable. No costs.

(M.R.MOHANTY)
MEMBER (JUDICIAL)

(B.N.SOM)
VICE-CHAIRMAN