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O.A. No.440/07

ORDER DATED 15th MAY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

Hon'ble Mr. C. R. Mohapatra, Member (A)


Heard Ms. Saswati Mohapatra, Ld. Counsel for the applicant and Mr. O.N. Ghosh, Ld. Counsel for the Respondents.

2. Aggrieved by Annexure A/1 order dated 28.07.1994 the applicant has filed this O.A. with the following prayer:-

“ (i) quash the Annexure-1 by holding the same as bad, illegal and cannot be sustainable in the eye of law;

(ii) hold/declares the applicant is entitled for the money which is illegally recovered from his retirement benefit as stated in Annexure-1.

(iii) direct/order the Respondents to produce the relevant documents basing upon which annexure-1 is passed and thereby inspecting the same, the Hon'ble Tribunal may be pleased to allow the applicant's claim with 18% interest;



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3. The case of the applicant is that he had retired from service on 30.06.1981 and thereafter when he had received the pensionary benefits, it was found that Rs.3000/- and Rs.4616/- had been wrongly deducted from his P.F. and DCRG respectively. Hence, the applicant had filed representation during 1993. As the said representation was not considered by the Respondents, the applicant had filed O.A.88/94 before this Tribunal. However, at the stage of admission itself, the Tribunal, by order dated 03.03.94, directed the DRM, S.E. Railway CKP, to dispose of the applicant's representation dated 08.01.93 within a specified period. In compliance with the above order, the representation received from the applicant has been disposed of and the present impugned order has been passed by the concerned authority. The present O.A. has been filed by the applicant to set aside the same.

4. This O.A. has already been admitted and counter has also been filed for and on behalf of the Respondents. In the counter the stand taken is that the P.F Account and other records relating to calculation of DCRG accounts, leave salary, etc., of the applicant show that the applicant has no claim as he put forward in the representation. Further, in the counter it is stated that the applicant used to take temporary P.F. withdrawal and final P.F. withdrawal, and for unauthorized retention of Railway Quarters from 14.10.68 to

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1976, a sum of Rs. 4,616/- was recovered from the account of the applicant from the DCRG towards penal rent. It is also stated in the counter that the claim of the applicant being belated is a stale claim. The applicant had retired from service w.e.f. 30.06.1981 and remained silent without representing anything to the Department till 1993.

5. The main case put forward by the applicant is that while he was working at Bondamunda, there were not sufficient quarters for occupation by the applicant and that the amounts which the applicant is stated to have withdrawn from P.F. either temporarily or finally, are not correct. Further, the Counsel submits that if at all any penal rent was to be recovered from the applicant, the authorities should have taken steps for recovering the same at the appropriate time without waiting till his retirement.

6. To the above contentions of the Ld. Counsel for the applicant, the Ld. Counsel for the Respondents submits that the P.F. Account of the applicant shows that the applicant has already taken advances and that apart the applicant had over-stayed in the quarters for a certain period. That apart, the application is a belated one. The applicant had retired from service on 30.06.81, but he remained in the quarters till 03.01.93. If so, all the papers now available with the Respondents do not clearly show as to whether the stands now taken by the applicant are correct or not. However, the papers



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available with the applicant show that he has already taken advances from P.F.

7. On considering the contentions of the Ld. Counsel for the parties, the question to be answered in this O.A is: Whether Annexure-A/1 is justifiable or not. Admittedly, the applicant retired on 30.06.1981 and remained silent and did not approach any authority or the Department till 03.01.93. That apart, the applicant had not made any claim to any authority prior to the said date. Even though this Tribunal held in O.A. 88/94 that the representation of the applicant might be considered by the authorities but the order was not passed on merits of the case of the applicant. Be that as it may, the applicant's representation has already been considered by the Respondents. We also find that once the applicant retired from service on 30.06.1981 and remained silent up to 1993, even if any claim is there it is a belated one. In AIR 2009 SC 264, C. Jacob Vrs. Director of Geology & Mining & Anr., the Hon'ble Apex Court held that "Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or barred by limitation, can be rejected on that ground alone, without examining the merits of the claim." In view of the above principle laid down by the Hon'ble Supreme Court, we are of the view that the law is not for a sleeping man, but for a vigilant man. The applicant retired from service in June, 1981 and kept quiet till 1993. This Tribunal, without considering the question of delay, directed

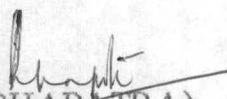


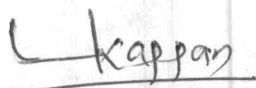
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the Respondents to consider the claim of the applicant. As per Annexure-A/1 order, the applicant's representation has been fully considered and it has been found that the claims of the applicant are not sustainable as per the records. We do not find any infirmity in the Annexure -A/1 order.

8. In the above circumstances, the O.A. being devoid of any merit, is dismissed. No order as to costs.


(C.R. MOHAPATRA)
ADMINISTRATIVE MEMBER


(K. THANKAPPAN)
JUDICIAL MEMBER