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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.907 of 2012

Cuttack this the 23rd day of April, 2016

Parsuram Jena...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? *No*
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? *No*

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM

*HON'BLE SHRI A.K.PATNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)*

Parsuram Jena
Aged about 66 years
S/o-Late Nakula Jena
Ex-Jr. Trackman,
S.E. Railway,
Balasore
At/PO-Barunsing,
Via-Sergarh
Dist-Balasore

...Applicant

By the Advocate(s)-M/s.D.R.Pattnaik
N.Biswal
N.S.Panda

-VERSUS-

1. Union of India represented through:
General Manager,
South Eastern Railway
Garden Reach,
Kolkata
West Bengal
2. Divisional Railway Manager
South Eastern Railway,
Kharagpur
At/PO/Dist-Kharagpur
West Bengal
3. Senior Divisional Engineer
South Eastern Railway
Kharagpur
At/PO/Dist-Kharagpur
West Bengal
4. Assistant Divisional Engineer
South Eastern Railway,


N. Biswal

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Balasore,
At-Station Road,
PO-Balasore
Dist-Balasore

5. Chief Medical Superintendent
South Eastern Railway
Kharagpur
At/PO/Dist-Kharagpur
State-West Bengal

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

R.C.MISRA, MEMBER(A):

In this Original Application under Section 19 of the A.T.Act, 1985, applicant has sought for the following relief.

- i) To quash the impugned order of rejection of appeal dated 20.01.2004 passed by the Appellate Authority vide Annexure-9.
- ii) To quash the impugned order of punishment dated 05.11.2003 vide Annexure-7.
- iii) To quash the order under Annexure-13 & 14 passed by the Respondent No.4.
- iv) To direct the Respondents to disburse all pensionary benefits as well as consequential benefits, within a time frame by the Hon'ble Tribunal.
- iv) To direct the Respondents to pay interest @ 12% to the applicant since no pensionary benefit has been disbursed in favour of the applicant even though the applicant attained the age of superannuation.
- v) To pass such order/direction as deemed fit and proper.
- vi) To allow the Original Application.



2. Facts inputted in the O.A. are thus: On being selected, applicant had been appointed to the post of Junior Trackman in the Railways with effect from 30.4.1986. While working as such, he fell ill and remained absent from duty with effect from 6.3.1999. In view of this, applicant was issued with notice dated 22.8.2000(A/1) to report in person to his PWI or submit documentary evidence in support of absence within seven days of the date of receipt of notice, failing which, action as deemed fit would be taken against him. Thereafter, applicant was issued with Memorandum of charge vide A/2 dated 13.6.2002 under Rule-9 of Railway Servants (Discipline & Appeal) Rules, 1968 because of his unauthorized absence from duty. Subsequent to this, having been called upon to attend Medical Board, applicant was examined and the Medical Board vide A/3 dated 5.8.2002 found him not fit for his original post of G/Man. On a subsequent medical test also, applicant was found unfit due to his illness vide A/4 dated 6.10.2002. However, pursuant to Memorandum of Charge, inquiry was conducted in which applicant had participated. On conclusion of the disciplinary proceedings, the Disciplinary Authority vide order dated 5.11.2003(A/7) imposed punishment of compulsory retirement from railway service on the applicant by granting pensionary benefits with effect from 29.01.1998, i.e., the date from which he had remained unauthorized absent. Appeal preferred by the applicant against the punishment order was rejected by the

Appellate Authority vide order dated 20.1.2004(A/9). While the matter stood thus, applicant was called upon to attend Medical Board on 29.7.2004 and accordingly, he was recommended for light duty as per A/10 and A/11 respectively. Thereafter, applicant submitted a representation dated 14.9.2004(A/12) to res.no.2 to allow him to rejoin in service in view of recommendation made by the Medical Board for entrustment of light duties. Since no action was taken by the respondents on his representation, applicant has approached this Tribunal in the instant O.A. seeking relief, as quoted above.

3. It is the case of the applicant that as the order of punishment was passed on 5.11.2003, it cannot have retrospective application, i.e., 29.1.1998, the date from which applicant had remained absent.

4. Secondly, it has been urged that the Appellate Authority, while considering the matter did not take into account all the points raised by the applicant in his appeal and therefore, order confirming the punishment as imposed by the Disciplinary Authority, is not sustainable, being an outcome of non-application of mind.

5. The next point on which applicant has grounded ^Q upon his case is that in view of recommendations made by the Medical Board recommending light duty, the orders of the Disciplinary Authority and the Appellate Authority are *non est* in the eye of law. Therefore, applicant has pleaded that it was obligatory on

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the part of the respondents to consider his representation dated 14.9.2004(A/12) which had been made by him in pursuance of the recommendations made by the Medical Board, as aforesaid, and resultantly, allow him to join and discharge the light duty. Accordingly, applicant has asserted that the inaction of the respondents in allowing him to resume his duties, besides, their approach in not disbursing the pensionary benefits on attaining the age of superannuation, is arbitrary and unreasonable.

6. Contesting the claims of the applicant, respondent-railways have filed their counter-reply. In their counter-reply, respondents have submitted that applicant was in habit of remaining unauthorized absence from duty since the date of his appointment. To corroborate their statement that the applicant was remaining unauthorized absence from duty habitually, respondents have indicated various dates of the years 1989-90, 1992-1993 and from 29.1.1998 till the date of issuance of punishment notice on 5.11.2003.

7. The case made out by the respondents is that applicant was under Railway medical sick from 22.07.1997 to 28.01.1998 and though was discharged by Sr.DMO/BLS on 29.01.1998 declaring him as fit, yet, he did not join the duty. Several times, notices were issued to him by the administration asking him to join his duties, but he did not turn up nor did he intimate the reason of his non-joining. Subsequently, SF-5 was issued



against him by the Railway Administration on 20.02.2002/13.6.2002 for his long unauthorized absence which was acknowledged by him on 15.06.2002. Accordingly, the matter was enquired into by the I.O., in which applicant had participated. He also expressed his unwillingness to work further in the railways due to his illness. The Disciplinary Authority in consideration of the matter and after going through the entire case records, took a lenient view and imposed punishment of compulsory retirement with pensionary benefits with effect from 29.01.1998. Appeal preferred by the applicant against the punishment was considered and the Appellate Authority, considering the long period of absence vis-a-vis the punishment of compulsory retirement with pensionary benefits imposed by the Disciplinary Authority held that adequate consideration having been shown by the D.A., the punishment imposed is sustained. In the meantime, applicant submitted a representation dated 18.02.2005 to ADEN/BLS accepting the punishment as imposed, *inter alia*, with a prayer for payment of settlement dues. In the above backdrop, ADEN/BLS ordered to process for payment of settlement dues and accordingly, applicant was advised to attend SE(PW)BLS for preparation of settlement papers. However, it has been submitted that due to non-cooperation of the applicant and non-submission of relevant documents, the settlement of dues has been delayed.



8. In the end, respondents have urged that the O.A. as laid is grossly barred by limitation. Once the punishment has been confirmed by the Appellate Authority and in acknowledgement of the same, applicant has submitted a representation dated 18.02.2005 before the ADEN/BLS requesting him for settlement of his dues and pension, applicant's plea to overcome the point of limitation in the guise of non-disbursement of pensionary benefits with a view to assailing the orders passed by the Disciplinary Authority and the Appellate Authority, is a hope against the hope as the action in questioning the legality of those orders before the Tribunal suffers a considerable delay. In the circumstances, it has been argued that the O.A. being devoid of merit is liable to be dismissed.

9. Applicant has filed rejoinder to the counter. As regards the point of limitation, it has been submitted by the applicant that since retiral dues of the applicant have not been disbursed by the respondents, applicant has every right to claim the same. At the same time, it has been submitted that since the Medical Board has recommended for light duty vide A/10 and A/11, punishment of compulsory retirement cannot have any force to withstand his joining in the light duty.

10. We have perused the pleadings of the parties and heard the arguments as advanced by both the sides. We have also gone through the written notes of submission.



11. This O.A. came up for admission on 21.12.2012 and on that date, this Tribunal, keeping the point of limitation open, admitted the O.A. and directed notice to the respondent-railways. Therefore, at this stage, the point of limitation has to be considered while deciding the issue the instant O.A.

12. On a reference being made to relief sought by the applicant, it is quite clear that the main thrust of the O.A. is two-fold. Firstly, applicant has questioned the legality and validity of the orders issued by the Disciplinary Authority and the Appellate Authority that have been passed on conclusion of the disciplinary proceedings. Simultaneously, he has also questioned the justifiability of the Railway Administration in issuing orders at A/13 and A/14 for settlement of pensionary benefits in consonance with the orders of punishment of compulsory retirement.

13. From the above, it is of significance to note that applicant has not claimed his retiral dues in consequence of the order of punishment of compulsory retirement – rather, he has claimed the same benefits which he would have been entitled to had the punishment not been imposed on him. This being the position, the Tribunal is left with no other option than to decide and give a verdict at the very outset on the legality or otherwise of the orders issued by the railway authorities from time to time, on conclusion of the disciplinary proceedings against the applicant.



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14. Admittedly, applicant had remained unauthorized absent from duty without any prior intimation with effect from 29.1.1988. This gave rise to initiation of major penalty proceedings against him under Rule-9 of Railway Servants(Discipline & Appeal) Rules, 1968 and on conclusion of the same, the Disciplinary Authority imposed punishment of compulsory retirement from service with pensionary benefits with effect from 29.1.1988, i.e., from the date of absence vide order dated 5.11.2003. Appeal preferred by the applicant against the orders of the Disciplinary Authority was rejected by the Appellate Authority vide his order dated 12/20.01.2004. Applicant did not question the legality of these orders issued by the Disciplinary Authority and the Appellate Authority nor the very initiation of disciplinary proceedings against him. Therefore, it is impliedly clear that the punishment as imposed remained in force being made effective from 29.1.1998. ***In the circumstances, the point to be considered is whether after a lapse of about more than eight years, applicant could assail the orders of the Disciplinary Authority as well as the Appellate Authority.*** In this connection, applicant has grounded upon his case on the fact that subsequent to the orders of the Appellate Authority dated 12/20.1.2004, he having been examined, the Medical Board vide A/11 dated 29.7.2004 recommended for entrustment of light duty and based on this, he had submitted a representation dated



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14.9.2004(A/12) to the DRM, S.E. Railway, Kharagpur to allow him to join in the light duty which was not taken into consideration. Laying emphasis on this, applicant has made out a case that since the Medical Board has recommended for assignment of light duty after the punishment order was confirmed by the Appellate Authority, and that he has not been disbursed with pensionary benefits so far, there is no legal bar in challenging the orders of the Disciplinary Authority and the Appellate Authority at this point of time.

15. We have considered the above submissions in the light of the averments made in the O.A. and in keeping with the materials on record. It is to be borne in mind that the disciplinary proceedings had been initiated against the applicant owing to his unauthorized absence from duty. It is not as if the disciplinary proceedings had been initiated on account of applicant being prolonged sickness. Therefore, applicant's joining service and discharge of light duties based on the recommendations of the Medical Board at a later date under any circumstances could be probable only if the proceedings initiated against him under Rule-9 of RS(D&A) Rules, 1968 is held to be null and void and not by any other means, whatsoever. As indicated above, applicant at no point of time has ever challenged the very initiation of the disciplinary proceedings against him. In the instant O.A. although he has prayed for quashing the orders of the Disciplinary Authority

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and the Appellate Authority, he has not substantiated by adducing any conclusive proof as to what prevented him from approaching the Tribunal within the period of limitation as prescribed under Section 21 of the A.T.Act, 1985 nor has he explained the inordinate delay by filing any petition for condonation of delay. To the contrary, in Paragraph-2 of the O.A., he has stated that the application is within the limitation as prescribed under Section 21 of the A.T.Act, 1985, which does not appeal to us.

16. The next point to be considered is whether punishment of compulsory retirement could be made effective from 29.1.1998 in the face of the Disciplinary Authority's order being passed on 5.22.2003. In this regard, it is to be noted that indisputably, applicant had remained unauthorized absent from 29.1.1998 till the date of culmination of the disciplinary proceedings. In the time between he had neither reported for duty nor submitted any application to the concerned authorities for leave due to his ongoing medical treatment and this is the reason why the disciplinary proceeding was initiated and punishment of compulsory retirement with pensionary benefits with effect from 29.1.1998 was inflicted on him. Applicant has not cited any authority or instruction on the subject to appreciate his view point that the orders of the Disciplinary Authority should have been made effective from 5.11.2003 instead of 29.1.1998 thereby treating the *interregnum* period

reckonable for the purpose of pensionary benefits. Judged from this angle, the submission of the applicant that the punishment imposed on 5.11.2003 cannot have retrospective application does not hold any water inasmuch as the effective date of punishment from 29.1.1998 has a reasonable nexus as the applicant had remained unauthorized absent thence. In other words, the effective date of punishment in such an eventuality, in the absence of any specific provision in the rules to standardize the *interregnum* period, has only to be synchronized with the date on and from which applicant had remained absent unauthorizedly and therefore, there has been no artificiality in giving effect to the order of punishment which is rather by consequence.

17. The third point to be considered is whether appellate order is well-disposed one. In this connection, we have gone through the appeal dated 14.11.2003(A/8) preferred by the applicant against the orders of the Disciplinary Authority. Perusal of the appeal petition persuades ^{us} to come to a finding that nowhere applicant has ever pointed out any flaw or lacuna in the order of the Disciplinary Authority. Rather, he has made a mention therein that "***I am now interested to work but due to illness not in a position to perform my duties***". He has also indicated that "***as recorded in the report, I was not really absenting my duties unauthorized, actually, I have been rendered unfit by sickness by certificate of private medical***

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practitioner, State Govt. Doctor and railway medical authorities under whom I was treated and the railway authority is considering this period as unauthorized absence and on that ground I have been given compulsory retirement w.e.f. 29.1.1998".

18. The Appellate Authority, while considering the appeal, vide his order dated 12/20.01.2004, has held as under.

"Considering the long period of absence and that the punishment imposed in compulsory retirement with all pensionary benefits, it is felt that adequate consideration has been shown by the disciplinary authority, the punishment imposed by the disciplinary authority may be sustained".

19. Perusal of appeal petition and the appellate order does not impel us to conclude that any of the points raised by the applicant in his appeal which appears to be significant has apparently been left out of consideration to his prejudice, particularly when applicant's unauthorized absent from duty is loud and clear. ^{ce} & speaks volume for.

20. The last point to be considered is whether subsequent advice tendered by the Medical Board vide A/10 dated 29.7.2004 recommending light duty could nullify the disciplinary proceedings which have been over long since or alternatively, the Appellate Authority or the Disciplinary Authority, as the case may be, is bound by that. At the cost of repetition, we would say that order of compulsory retirement came to be issued on conclusion of disciplinary proceedings

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initiated against the applicant due to his unauthorized absence from duty, which ^{is} undoubtedly, as a measure of punishment. Therefore, in our considered view, A/10 and/or A/11 issued by the Medical Board recommending light duty can by no stretch of imagination stultify or abrogate the entire disciplinary proceedings.

21. In addition to what has been discussed above, we also hold that O.A. as laid by the applicant is hopelessly barred by limitation on all counts. In the result, apart from being devoid of merit, the O.A. suffers laches and limitation and accordingly, the same is dismissed, with no order as to costs.


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

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