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CENTRAL ADMINISTRATIVE TRIBUNAL,

JODHPUR BENCH.

O.A.NO.191 OF 2003 &
M.A.No.100 OF 2005

December 6, 2006

**CORAM : HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN (JUDICIAL) &
HON'BLE MR. R.R.BHANDARI, ADMINISTRATIVE MEMBER.**

Ratna S/o Late Shri Hamji b/c Dholi, aged about 64 years, r/o VPO Mohabbat Nagar, District Sirohi (Raj), worked as and at Valveman (Beldar) under Section Engineer (Works), North-Western Railway, Marwar Junction, District Pali (Raj) through Smt. Mooli Bai W/o Late Shri Ratna aged about 65 years, legal representative of the deceased, resident at VPO Mohabbat Nagar, District Sirohi (Rajasthan).

Applicant

By : Mr. Girish Sankhla, Advocate.

Versus

1. The Union of India through the General Manager (Personnel), North Western Railway, Jaipur.
2. The Divisional Railway Manager, North Western Railway, Ajmer.

The Section Engineer (Works), North Western Railway, Marwar Junction, District Pali (Rajasthan).

Respondents

By : Mr. Salil Trivedi, Advocate.

ORDER (ORAL)

KULDIP SINGH, VC

The applicant has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985, seeking the following relief :

"(i) That the respondents may kindly be directed to give regular pension, amount of gratuity and provident fund to the applicant.

(ii) That the order dated 9.4.1992 (Annex.A/3) may kindly be quashed and the respondents may be directed that the applicant's date of birth be declared as 5.2.1939 and they may further be directed to give all consequential benefits accordingly.

(iii) That in the alternative the respondents be directed that the

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applicant's matter be reconsidered afresh according to the rules.

(iv) That any other relief, which this Hon'ble Court deems fit and proper in favour of the applicant in the facts and circumstances of the case, may also kindly be passed in the interest of justice".

2. The facts as alleged in the O.A. are that vide order dated 9.4.1992, the deceased was retired prematurely from service on the allegations that he and his real brother Shri Ratna, were born as twins. Mr. Rava has retired on 31.1.1985, whereas the deceased continued in employment even thereafter and as such he gave a wrong date of birth at the time of his recruitment.

3. Besides that, it is alleged that deceased has not been given proper retiral benefits, like regular pension, amount of gratuity, Provident Fund etc. So, the deceased had filed the present O.A. seeking the reliefs mentioned above.

4. It is alleged in the O.A. that the respondents did not hold any inquiry against the deceased nor had given any charge sheet regarding furnishing of false date of birth on a false complaint made against the deceased. At the time of recruitment of the deceased, his date of birth was mentioned in the service record as 5.2.1939 and his real brother Mr. Rava S/o Harji retired on 31.1.1985, from the post of Khalasi posted under the respondents. Mr. Rava made a false complaint to the respondents that he and deceased were born as twins and as such deceased should have also been retired w.e.f. 31.1.1985.

5. During the pendency of the O.A. the Mr. Ratna expired and his wife has been substituted as Legal heir.

6. During the course of hearing, learned counsel for the applicant has made a statement at bar that the legal heir does not insist upon the claim based on premature retirement of the deceased.

7. The applicant had also filed an M.A. No. 100/2005 for condonation of delay in filing the Original Application to which the respondents have filed a detailed reply contesting the same. Since the first relief based on premature retirement of the deceased has not been pressed, the only relief left in the O.A. is for release of retiral / pensionary benefits. By now it is well settled that fixation



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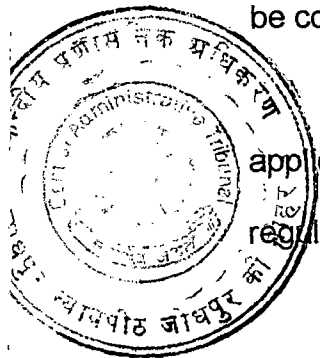
of pay or grant of pension etc. is a recurring cause of action and since the applicant has been denied pension there is recurring cause of action in his favour every month and as such we are inclined to use our discretion in favour of the applicant, who has since died, and condone the delay in filing the Original Application.

8. In so far as pension is concerned, we find that there is an order passed on 16.12.2003 by a Division Bench of this Tribunal holding that admittedly the applicant had completed more than 17 years of qualifying service even as per the version of the respondents and there is no doubt that he is entitled for the proportionate pension, since the minimum qualifying service for grant of pensionary benefits in case of employee retiring on superannuation is 10 years. Thus, a direction was issued to the respondents that applicant should be paid an amount of Rs.1275/- per month at least which is the minimum pension, payable to any of the Central Government servant forthwith and the same shall be continued till the final decision of this case.

9. During the course of arguments, we have been informed that the applicant has been paid pension after passing of the order by the court and regular pension is being paid to the applicant.

10. However, learned counsel for the applicant prays that even though the deceased retired on 9.4.1992, that too w.e.f. 1985, but his pension has not been released in time so the applicant is entitled to the interest on the late payment of pension. We put a specific query to the learned counsel for respondents, to the effect that even if the date of retirement of the applicant i.e. 9.4.1992, be taken as correct then why pension has not been released to the applicant within a reasonable i.e. at least from the date of the order of retirement i.e. 9.4.1992. The learned counsel was unable to satisfy us on this issue.

11. It is well settled that a retired government employee should get his pension within a reasonable time and the departmental authorities are under obligation to take action well in advance so that the pension is released to the retired person immediately on retirement so that he can lead his life peacefully. However, the Hon'ble Supreme Court has given the departmental authorities a period of three months from the date of retirement during which the pension is



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required to be released to an employee and if pension is not released with such reasonable, then the Hon'ble Supreme Court has held that such retiree is entitled to interest on delayed release of retiral benefits.

12. Considering the law on the subject in the conspectus of facts and circumstances of this case, we are of the view that applicant was retired on 9.4.1992 and as such he was entitled to be released pensionary benefits within a reasonable period of 3 months i.e on or before 8.7.1992. However, the deceased came to be released the retiral benefits only on 17.12.2003. Thus, the respondents have been in wrongful gain of the amount due to the applicant for a long period from 9.7.1992 to 17.12.2003 and have caused wrongful loss to her and as such the applicant is held entitled to interest on the amount withheld by the respondents @ 8% per annum from the date next to the date on which the amount became due i.e.9.7.1992 to the actual date of payment i.e. 17.12.2003. The respondents are directed to release the said interest to the legal heir within a period of three months from the date of receipt of copy of this order.

No costs.

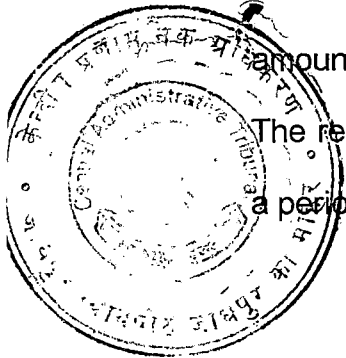

(R.R.BHANDARI)

ADMINISTRATIVE MEMBER


(KULDIP SINGH)

VICE CHAIRMAN (JUDICIAL)

HC*



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