

## CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

OA NO.600/2006

Monday this the 5th day of February, 2007.

CORAM:HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

S.Santhosh  
(Senior Clerk-Compulsorily Retired),  
Sreevilas, Changankulangara,  
Vavakkavu P.O.,Kollam. ... Applicant

By Advocate Mr.B.Harish Kumar

V/s.

1. The Chief Personal Officer,  
Rail Wheel Factory,  
Ministry of Railways, Yelahanka,  
Bangalore.
2. The General Manager,  
Rail Wheel Factory,  
Ministry of Railways,  
Office of the General Manager,  
Personal Department,  
Yelahanka, Bangalore.
3. Finance Advisor and Chief Accounts Officer,  
Office of the FA & CAO (Penskion),  
Southern Railway Head Quarters,  
Park Town, Chennai.
4. Union of India, represented by  
The General Manager,  
Southern Railway, Chennai. ... Respondents

By Advocate Mr.Sunil Jose ACGSC

The application having been heard on 5.2.2007 the Tribunal delivered the following on the same day.

Hon'ble Mr.George Paracken, Judicial Member

(ORDER)

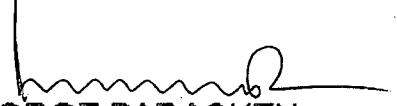
In this case notice was issued to the respondents way back on 25/8/2006. This case was filed by Mr.B.Harish Kumar Advocate. While admitting the case on 25/8/2006, the case was ordered to be listed before

the Registrar for completion of pleadings. The case was listed before Registrar on 12/10/2006, 16/11/2006, 21/12/2006 and 1.2.2007. None of the parties were appearing before the Court of Registrar on any of the above mentioned dates. As the Registrar was not assisted by both the parties in completion of pleadings, the case was again sent back to this Court for further directions.

2 It has been observed by this Court in many earlier cases also when the cases are sent to the Court of Registrar, none of the parties are appearing before it. This is a very disturbing situation. In this case also it is seen that neither the applicant nor his counsel on his behalf have taken any steps to assist in the completion of pleadings. The only inference I can draw is that neither the applicant nor his counsel is interested in pursuing with this case. In view of this, the OA is dismissed for want of prosecution.

3 A copy of this order may be sent directly to the applicant at the given address by Registered Post.

Dated this the 5<sup>th</sup> day of February, 2007.



GEORGE PARACKEN  
JUDICIAL MEMBER

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

Original Application No. 600 of 2006

Friday, this the 8<sup>th</sup> day of June, 2007

**C O R A M :**

**HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER**

S. Santhosh,  
S/o. R. Sankara Warler,  
(Senior Clerk – compulsorily retired)  
Sree Vilas, Changankulangara,  
Vavakkavu P.O., Kollam. ... Applicant.

(By Advocate Mr. B. Harish Kumar)

**v e r s u s**

1. The Chief Personnel Officer,  
Rail Wheel Factory,  
Ministry of Railways, Yelahanka,  
Bangalore.
2. The General Manager,  
Rail Wheel Factory,  
Ministry of Railways,  
Office of the General Manager,  
Personnel Department, Yelahanka,  
Bangalore.
3. Finance Advisor and Chief Accounts Officer,  
Office of the FA & CAO (Pension),  
Southern Railway Headquarters,  
Park Town, Chennai.
4. Union of India, represented by  
The General Manager, Southern Railway,  
Chennai. ... Respondents.

(By Advocate Mr. Sunil Jose, ACGSC)

**O R D E R**  
**HON'BLE DR. K B S. RAJAN, JUDICIAL MEMBER**

The question involved in this case is whether the applicant is entitled to disability pension as claimed by him.

2. The admitted facts of the case are as under :

(a) Applicant was initially appointed as Orientation Trainee in the post of Skilled Artisan (Fitter Electrical) vide order dated 11.10.84. He was promoted to Higher Grade Skilled Artisan - II and later in Grade-I respectively in October, 1987 and 1992. It was on 3.3.1992 that the applicant sustained an injury in his right hand ring finger which forced him to be hospitalized and was diagnosed as "Tenosynovitis". The applicant was declared medically unfit to carry out the work of the post in medical classification B-1 and B-2 and was found fit to work in the post of C-1 category. The applicant was also suffering from a kind of mental disorder requiring constant regular treatment.

(b) Applicant vide Annexure A/4 was informed of his medical category and opportunity was given to him to prefer an appeal against the finding of medical examination as per extant rules. Applicant vide Annexure A/5 letter dated 14.02.97 asked for an alternate appointment in Class-III grade as he was diploma holder in Electrical Engineering.

(c) Respondents vide A/6 order dated 30.11.99 decided to place the applicant on sick list with effect from 15.6.99 and that he would be continued on sick list till he was declared fit. As regards the period anterior to the above date (from 4.11.92 to 14.6.99), the period was not held to be covered.

(d) On 26.06.99, for the alleged misconduct of absence without due sanction, the applicant was proceeded against. This culminated into imposition of penalty of removal from Railway Service vide Annexure A/8 order dated 14.09.02. Applicant's mother by communication dated 10.10.2002 addressed to the Chief Mechanical Engineer (Axle) - [Appellate Authority] requested to consider the case of the applicant by converting penalty of removal from service into one of compulsory retirement with pensionary benefits on humanitarian consideration. On the very same day, in a comparatively short communication, the applicant himself requested the Appellate Authority stating "*I pray that I may be considered for compulsory retirement on medical*

*ground with pensionary benefits*". The Appellate Authority by its order dated 16.12.02 converted the penalty of removal from service into one of compulsory retirement under the provisions of Rule 64 of Railway Services (Pension) Rules, 1993, restricted the pensionary and gratuity benefits (Annexure A/10 refers).

(e) Not being satisfied with the above order, the applicant preferred revision petition on 13.02.03 which was rejected vide order dt. 15.03.03 by the Revisionary Authority namely, the General Manager, stating that as the pensionary benefits in real term are not going to be affected, the decision taken by the Appellate Authority was upheld.

(f) Necessary Pension payment Order was issued vide A/12 order dated 11.8.03. Subsequently, the applicant on 5.7.04 penned another representation.

The applicant has prayed, *Inter alia*, for quashing of Annexures A/10 and A/14 orders (A/14 order relates to grant of post retirement complimentary pass and medical facilities).

3. Respondents have contested the O.A. According to them, the applicant has been paid his entitlement and it was at his request that the penalty order of dismissal from service has been converted into one of compulsory retirement. His further request for holding the compulsory retirement as one under the Medical Manual has been rejected as virtually there is no difference in respect of the extent of pension admissible to the applicant.

4. The applicant has also contended that his subsequent deterioration was due to the direct impact of his injury in the right finger, as such subsequent event is attributable to the earlier injury in which the

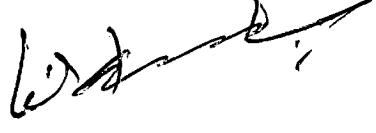
applicant is entitled to disability pension. Applicant has also relied on a certificate issued by the Medical officer, Ayurvedic College, Trivandrum and his leave application dated 6.3.97.

5. Arguments were heard and documents perused. Right from the beginning, applicant had been praying only for compulsory retirement on medical grounds and the respondents have retained the character of compulsory retirement as one in the penalty and rejected the request to treat the retirement on medical ground, as according to them, there will be no difference on the emoluments of pension. The acceptance of applicant's request for compulsory retirement goes to show that the respondents were satisfied about the genuine claim of the applicant and as such converted the penalty of removal from service into one of compulsory retirement. If their version to the effect that there will be no difference in the final penalty by converting the penalty of removal from service into one of compulsory retirement on medical ground, even if the applicant's O.A. is allowed he will not be eligible for disability pension as the decision of compulsory retirement of the applicant was taken on the basis of his request. It could have been in different matter if there is any difference in the pension payable to the applicant on the basis of disability pension and on the basis of compulsory retirement in penalty procedure. Details in respect of the above two are not available on record. The respondents should, therefore, work out the extent of pension available to the applicant on compulsory retirement due to penalty and compulsory retirement due to medical invalidation and whichever is beneficial should be made available to the applicant.

6. In view of the above, Original Application is disposed of with the direction to the respondents to calculate the extent of pension payable under two different stages and in case both are identical the applicant be so informed and if disability pension happens to be more, his pension may be accordingly revised. This order is passed as the rejection of applicant's request for the same was on the premises that there would be no difference in the quantum of pension payable to the applicant.

7. The above drill be performed within a period of three months from the date of this order. No. costs.

(Dated, the 8<sup>th</sup> June, 2007)



(Dr. K B S RAJAN)  
JUDICIAL MEMBER

cvr.