

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 173 OF 2008

THURSDAY, THIS THE 12TH FEBRUARY, 2009

C O R A M :

HON'BLE MR. JUSTICE K. THANKAPPAN, JUDICIAL MEMBER

S. Santhosh,
S/o. R. Sankara Warier,
(Senior Clerk-Compulsorily retired))
Sreevilas, Changankulangara,
Vavvakkavu, Kollam

... Applicant

(By Advocate Mr. B. Harish Kumar)

versus

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,
Personal 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. Thomas Mathew Nellimoottil)

The Original Application having been heard on 12.2.09, this Tribunal
on the same day delivered the following :



ORDER
HON'BLE MR. JUSTICE K. THANKAPPAN

The applicant, a Railway employee having rendered 18 years of service, has filed this Original Application claiming the benefit under Rule 10(2) of the Railway Services (Extra-Ordinary Pension) Rules, 1993. The applicant had earlier approached this Tribunal by filing O.A. No.600 of 2006. In the said O.A., the grievance projected by the applicant was that respondent-Railways was that since the applicant was suffering from mentally disorder, namely "Schizophrenia", after he met with an accident, he claimed for medical decategorisation and also applied for medically invalidated pension under the provisions of relevant rules. However, for the alleged misconduct of absence without due sanction, an enquiry was conducted and on the basis of the enquiry report, a penalty of removal from service was imposed on the applicant. Thereafter, applicant submitted an appeal before the Appellate Authority, who after consideration of his case, modified the order of the Disciplinary authority into one of compulsory retirement. Subsequently, he submitted a revision petition before the Revisional Authority requesting to treat his compulsory retirement as one under the Medical Manual and to grant him disability pension as per rules. But the Revisional Authority without considering the merit of the case rejected the application of the applicant taking the stand that there will be no difference in the pension emoluments on the basis of medical invalidation and on the basis of compulsory retirement. However,



this Tribunal in its order dated 8.6.2007 in O.A. No. 600/2006 came to the conclusion that the applicant is entitled to be treated as medically invalidated and also entitled for disability pension. Accordingly, a direction was issued to the respondents to calculate the difference, if any, between the pension payable to the applicant on account of compulsory retirement and on the basis of medical invalidation under the rules, and the amount of pension, whichever is beneficial should be made available to the applicant. This matter was further taken up by the respondents before Hon'ble High Court of Kerala in Writ Petition (C) No. 28156 of 2007 and the High Court confirmed the order passed by this Tribunal. Thereafter, the applicant was conveyed the decision taken by the respondents vide Annexure A-8 order dated 17.10.2007, which is under challenge in this O.A.

2. When the O.A. came up for admission, notice was ordered to the respondents and reply statement on their behalf has also been filed. In the reply statement, it is stated that the applicant was not medically examined by the Medical Board as per the existing rules of the Railways, as such he could not be treated as medically invalidated and cannot be entitled for disability pension. That apart, it is again stated in the reply statement that since the applicant has been compulsorily retired from Railway service, the question of disability or percentage of disability does not arise. It is further stated that they have calculated the pension of the applicant on the basis of compulsory retirement due to penalty as it will not make much



~~makes no~~ difference in the pension amount available on the basis of compulsory retirement as well as on medical invalidation. It is also the case of the respondents that the pension now ordered is the pension little more than that of the amount of compulsory retirement pension.

3. I have heard the learned counsel appearing on either side and have perused the records. Admittedly, the order Annexure A-8 has been passed by the authorities after the order of this Tribunal as well as the judgment of Hon'ble High Court of Kerala impliedly allowed the applicant to draw disability pension under the Rules. The case now put forward by the applicant is that even though as per Annexure A-8 order there is no much difference between the pension available on compulsory retirement due to penalty and on the basis of medical invalidation, his entire service of 18 years has not been counted for calculating the disability pension. Hence, there is difference in the calculation of pension available to the applicant.

4. I have perused the Rule 10(2) of Railway Service (Extra-Ordinary Pension) Rules, 1993, and found that the pension available under the head of "disability pension" shall be dependent on the service element, namely the entire period of service, which an employee had rendered in his/her service career. In the instant case, the applicant had rendered 18 years of service and this aspect has not been considered by the respondents while calculating the disability pension of the applicant. In these circumstances, I am of the



view that the impugned order is not tenable.

5. In view of the above, the O.A. is allowed. The impugned order Annexure A-8 dated 17.10.2007 is quashed and the respondents are directed to recalculate the disability pension afresh taking into account the service element of the applicant and pass appropriate order within a period of two months from the date of receipt of a copy of this order. The difference amount of pension, if any, shall be disbursed immediately on passing of such fresh order.

6. No order as to costs.

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER

CVR.