

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 263/2010

Dated this the 17th day of February, 2011

CORAM

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

B.C. Ekanathan
S. No. 2114, A-3,
Jegathambal III am, Nadar Medu
Lenin Street, Erode District
Tamil Nadu - 638 002.

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Applicant

(By Advocate Mr. S.M. Prasanth)

Vs

- 1 Union of India represented by
The General Manager
Southern Railway, Chennai.
- 2 The General Manager
Southern Railway
Chennai
- 3 The Senior Divisional Personnel Officer
Southern Railway, Palakkad Division
Palakkad.

.... Respondents

(By Advocate Mr. Thomas Mathew Nellimootttil)

The Application having been heard on 27.01.2011, the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who was removed from service on 4.7.1986 for unauthorised absence, seeks compassionate allowance in terms of Rule 65 of Railway Services (Pension) Rules, 1993.

2 The applicant joined the services of Railways on 29.11.1958 as medical Sweeper and was working as Fireman-C. While so, in the year 1986 his mother expired, followed by the death of his son who was 20 years old. He became mentally sick thereafter. After recovery, he requested the respondents to take him back in service and grant all consequential benefits. He was directed to appear before the pension Adalat in 1995 (A-1). On 26.12.2001 he submitted another representation before the 3rd respondent detailing all these facts and seeking ex gratia pension which was followed by another representation (A-3, A-4 and A-5). Thereafter, the Indian Railway Employees Human Rights Association took up the matter of the applicant (A-6 and A-7). The respondents have passed an order dated 13.8.2008 refusing him retiral benefits except payment of Rs. 2,448/- as Provident Fund amount to his credit (A-10). Hence, he filed this O.A challenging Annexure A-11 order dated 30.11.2007 stating that he is entitled to compassionate allowance in terms of Rule 65 of RS(Pension) Rules, 1993, He stated that he is 75 years old and is in a very penurious condition and struggling for survival, the right to receive compassionate allowance is a continuing cause of action and the respondents are bound to grant it to the applicant irrespective of time lag. The applicant has also filed M.A. 280/2010 to condone the delay in challenging the A-11 order stating that he was

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awaiting the results of his representation at A-4, A-6, A-7 and A-12. He also stated that if the delay is not condoned, he would be put to irreparable injury and manifest injustice.

3 The respondents stated that no cogent and convincing reasons have been stated by the applicant for the inordinate delay in filing the present O.A. It is highly barred by limitation and liable to be dismissed in limine in the light of the judgments of the Apex Court in JT 1998(7) SC 21, 1993 Supp. 4 SCC 67, 1992(3)SCC 136 & 1997 (4)SCC 284.

On merits they stated that the applicant was imposed with a Penalty of removal from service w.e.f. 4.7.1986 for unauthorised absence by Sr. Divisional Mechanical Engineer, Palghat vide penalty order dated 11.6.1986. The Disciplinary Authority has not sanctioned any compassionate allowance. The applicant submitted his representation for compassionate appointment only on 12.120.2007 without furnishing any service details (Annexure R-1) They also denied the submission of A-4, A-6 and A-7 and A-12 representations.

They stated that the grant of compassionate allowance cannot be claimed as a matter of right. It is the discretion of the authority competent to grant it or not.

4 The applicant filed rejoinder stating that the grant of compassionate allowance is a continuing cause of action and therefore it is not barred by limitation. It has to be considered compassionately and not in a technical and strictly legalistic manner.

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5 I have heard learned counsel for the parties and perused the documents.

6 It is a fact that the applicant was in service from 29.11.1958 but he was dismissed from service on 4.7.1987 for unauthorised absence. At the time of removal he has completed 27 years of service. He has filed this O.A only on 15.3.2010. In this Application he is challenging Annexure A-10 and A-11 orders rejecting his request for pension and settlement benefits. He has filed M.A. 280/2010 to condone the delay of 461 days from the date of issue of Annexure A-4 i.e. 7.2.2007. On perusal of the documents I find that this O.A is filed after more than 23 years of removal from service. The delay has not been satisfactorily explained. In Ramesh Kumar Vs. UOI & Others (2003 (4) SCT 69), the Apex Court has held as follows:

"Administrative Tribunal Act 21 and 19(1) delay-Condonaon of delay - scope of jurisdiction under Article 21 to condone the delay. Scope is very limited. There must exist sufficient grounds for the satisfaction of the Tribunal to condone only a reasonable delay, filing of repeated representation will not enlarge the period for filing an Application under the Act nor it will provide a sufficient ground and reason for condonation of delay. Entertaining belated claims by the Tribunals will defeat the very object of the Act. The Machinery under the Act was provided by the Parliament for speedy disposal of service disputes of the Government employees. That is why a shorter period of limitation is provided"

In State of Karnataka Vs. Laxman (2005 (8)SCC 709) the Apex Court held that the right available to a litigant becomes unenforceable if the litigant does not approach the court within time prescribed. The law expects a litigant to seek the enforcement of a right available to him with a reasonable time of the arising of the cause of action and that reasonable time reflected by the various articles of the Limitation Act.

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7 The applicant has contended that he was awaiting the disposal of his representation at Annexure A-4. Even if it is so, I find that Annexure A-4 itself is dated 7.2.2007, which is hit by Limitation Act. Apart from that, a perusal of the documents would show that the applicant approached the Pension Adalat in 1995. When he was advised to attend the Adalat on 15.12.1995 with certain documents, he failed to attend the Adalat. Thereafter, nothing was heard from him till Annexure A-4 representation dated 30.11.2007.

8 On 27.1.2011 when the case was heard and orders reserved, the learned counsel for the applicant sought sometime to produce medical certificate to show that the applicant was under treatment due to mental illness from 1986 onwards. However, the same has not been produced till date. M.A. 280/2010 to condone the delay in filing the O.A is therefore, dismissed. Consequently, the O.A is dismissed on delay and laches. No costs.

Dated 17-2-2011.


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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