

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 266 of 2012

wednesday, this the 03rd day of September, 2014

CORAM:

Hon'ble Mr. U. Sarathchandran, Judicial Member

S. Santhosh, aged 51 years,
 S/o. R. Sankara Warier,
 (Senior Clerk-Compulsorily Retired),
 Sreevilas, Changankulangara,
 Vavvakkavu PO, Kollam.

..... **Applicant**

(By Advocate – Mr. B. Harish Kumar)

V e r s u s

1. Union of India, represented by
 The General Manager, Southern Railway,
 Chennai – 600003.
2. The Chief Personnel Officer,
 Rail Wheel Factory, Ministry of Railway,
 Yelahanka, Bangalore – 560 064.
3. Finance Advisor and Chief Account Officer,
 Office of the FA & CAO (Pension),
 Southern Railway Head Quarters,
 Park Town, Chennai – 600 003.
4. The Branch Manager,
 State Bank of Travancore,
 Oochira Branch, Oochira PO,
 Kollam – 690 526.

..... **Respondents**

**[By Advocates – Mr. T.M. Nellimoottil (R1-3) &
 Mr. P. Ramakrishnan (R4)]**

This application having been heard on 25.08.2014, the Tribunal on
03-09-2014 delivered the following:

ORDER

MA No. 351 of 2012 praying for condonation of delay in filing the Original Application is allowed for the reasons stated in the MA and also in the interest of justice.

2. Applicant has approached this Tribunal for the third time for his pensionary benefits. He was working under the respondents Railways as a Skilled Artisan (Fitter Electrical) and latter he was promoted to the category of Highly Skilled Artisan Grade-II. While in service, after undergoing an operation to remove a wart from his finger, some medical complications led the applicant to become mentally ill finally affected with the illness of schizophrenia. He was proceeded against by the Railway for unauthorized absence and after inquiry he was ordered to be removed from service. On the representation by his mother, the order of removal from service was converted to compulsory retirement. Applicant requested the appellate authority for compulsory retirement on medical grounds with pensionary benefits but the appellate authority converted the penalty of removal from service to one of compulsory retirement under the provisions of Rule 64 of the Railway Servants Pension Rules, 1993 restricting pensionary and gratuity benefits. The revisionary authority namely the General Manager rejected the request stating that the pensionary benefits in real terms are not going to be affected and hence the decision taken by the appellate authority was upheld. The applicant approached this Tribunal with OA No. 600 of 2006 wherein this Tribunal directed the respondents to calculate the extent of pension payable to the applicant (i) on the basis of disability pension and (ii) on the



basis of compulsory retirement in the penalty procedure and to grant the most beneficial pension to the applicant. This order of the Tribunal was upheld by the Hon'ble High Court in WP(C) No. 28156 of 2007 (Annexure A8). Thereafter, respondents issued Annexure A9 order revising the pension with effect from the date on which this Tribunal had passed Annexure A7 order in OA No. 600 of 2006. Since Annexure A9 order revising the pension did not contain the service element of the applicant who had put in 18 years of service with the respondents, this Tribunal in OA No. 173 of 2008 directed respondents vide Annexure A10 order to re-calculate the disability pension afresh taking into account the service element of the applicant. The order in Annexure A10 was passed by this Tribunal on 12.2.2009 was again was upheld by the Hon'ble High Court in WP(C) No. 13484 of 2009. Now the applicant has approached this Tribunal once again seeking the following reliefs:-

1. To call for the records leading to the recovery initiated by the respondents from arrears of disability pension and set aside the same.
2. To call for the records leading to Annexure A12 order in so far as it denies the disability pension from the date of compulsory retirement and set aside the same.
3. To direct the first and second respondent to grant disability pension with effect from the date of compulsory retirement along with medical facility and privilege pass.
4. To direct the first and second respondent to disburse the recovered amount of Rs. 30,128/- to the applicant with regard rate of interest.
5. To direct the second respondent to pay the arrears the salary with effect from 1992 onwards till the date of compulsory retirement.
6. To consider and dispose of Annexure A14 representation in accordance with law.
7. Any other appropriate order or direction as this Hon'ble Tribunal deem fit in the interest of justice."



3. In the reply filed by respondents 1 to 3 while admitting all the proceedings ensued before this Tribunal and also in the High Court so far, it is stated that they have granted provisional disability pension to the applicant subject to the result of SLP they intend to file before the Hon'ble Apex Court.

With regard to the re-payment of Rs. 30,128/- deducted from his arrears of disability pension, respondents 1 to 3 state that they have not given any direction to the 4th respondent for recovering of the amount.

4. In the reply filed by respondent No. 4, the pension disbursing bank, it is stated that the applicant was paid the pension without deducting the commutation portion which amounts to Rs. 382/-. Subsequently, when the disability pension was sanctioned to the applicant a sum of Rs. 84,143/- was due to him and at the time of disbursement of arrears of disability element, the non-deduction of commutation pension at the rate of Rs. 382/- from February, 2004 to August, 2010 was calculated and accordingly Rs. 30,128/- was deducted from the arrears due to applicant and the rest was paid to him. Respondent No. 4 has produced a copy of the revised pension order issued by the Railways on 17.10.2007 marked as Annexure R4(b).


5. Additional reply was filed by respondents 1 to 3 stating that applicant had undergone the medical examination prior to granting of commutation of pension. Therefore, respondents 1 to 3 contend that the averment of the applicant that he had not opted for commutation is not correct.



6. Heard Mr. Harish Kumar, learned counsel for the applicant and Mr. Varghese learned proxy counsel for the respondents 1 to 3. Mr. Pratap, learned proxy counsel for respondent No. 4 also was heard.

7. After undergoing two rounds of litigation, applicant has again approached this Tribunal stating that in spite of Annexure A10 order of this Tribunal to re-calculate the disability pension of the applicant taking into account the service element, no attention was paid by respondents 1 to 3 in including the service element in the revised pension order i.e. Annexure A12 impugned in this OA. Applicant is further aggrieved by Annexure A12 wherein the disability pension is calculated with effect from the date of order passed by the Central Administrative Tribunal. He is also aggrieved by the act of respondent No. 4 in deducting Rs. 30,178/- as per Annexure A3 without any notice to him. According to Shri Harish Kumar, Advocate, applicant has not received any amount towards commutation of pension.

8. Although the respondents Railway (respondents Nos. 1 to 3) admit the proceedings and orders passed by this Tribunal in Annexures A7 & A10 and the orders of Hon'ble High Court upholding the same vide Annexures A8 and A11 judgments respectively, they state that they have issued the revised pension order subject to the result of the SLP which they intend to file before the Apex Court. This statement in the reply affidavit filed by respondents 1 to 3 clearly indicate the arrogance, audacity and reluctance of respondents 1 to 3 for complying the orders of this Tribunal which have been confirmed by the judgments of High Court in Annexures A8 and A11. It has to be noted



that a long period of time has already elapsed after passing the aforesaid judicial orders by this Tribunal and by the Hon'ble High Court. Yet the respondents officials are yet to open their minds to realise that these orders passed by the judicial institutions are to be obeyed by them, not mere papers on which they can contemplate initiating proceedings before the Hon'ble Apex Court. This reveals the mindset of the respondents and their legal department who are insensitive to the pleas of a former employee who was thrown out of employment – who had acquired mental illness during service – by initiating disciplinary proceedings and later by way of some apparent compassion converted the order of dismissal to compulsory retirement on medical grounds. It appears that the respondents are yet to understand that mental illness is a 'disability' under the Persons with Disabilities Act, 1995 and that they ought to have given the applicant the due protection under section 47 of that Act. The respondents have even refused to implement Annexure A10 order of this Tribunal to re-calculate the disability pension of applicant incorporating the service element put in by him. It has to be noted that the applicant had served the respondents Railway for 18 long years before acquiring his mental disability. No doubt, the refusal of the respondents Railways to re-calculate the disability pension taking into account the service element of the applicant is a contumacious act calling for penal action contemplated under Section 17 of the Administrative Tribunals Act, 1985 read with Section 12 of the Contempt of Courts Act, 1971. Nevertheless the applicant out of his magnanimity has once again approached this Tribunal reiterating his prayer for directing the respondents to grant disability pension reflecting the service element he has put in.



Nevertheless the pleadings of the respondent Railway and the arguments of their counsel are clearly evasive about the inclusion of the service element in the disability pension vide Annexure A12. Annexure A12 was issued by the respondent Railway with obvious reluctance and with an apparent threat to all concerned that Annexure A12 will be subject to the result of the SLP they intend to file. This is the least expected of the largest employe of our Country.


9. While issuing Annexure A12 respondents have granted disability pension at the rate of Rs. 3,500/- with effect from 12.02.2009 i.e. the order of this Tribunal in OA No. 173 of 2008. It is trite to say that a disability pension has to be paid from the date on which the employee was retired due to disability. Therefore, this Tribunal holds that the applicant is entitled to disability pension reflecting the service element of applicant from the date on which he was compulsorily retired on account of disability. The actual date of compulsory retirement shall be treated as the date from which the applicant is entitled to such pension.

10. The next grievance of the applicant is that a sum of Rs. 30,178/- was deducted by respondent No. 4 - the pension disbursing bank - without giving any notice to him. Unfortunately respondent No. 4 is not an authority who would come within the jurisdiction of this Tribunal. Nevertheless, respondent No. 4 is acting as an agent of respondents Railways and therefore, the responsibility of ensuring the correct payment and disbursement of pension through respondent No. 4 bank is on the official respondents 1 to 3.

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According to the applicant, he has never applied for commutation of his pension. In the reply statement filed by respondents 1 to 3 it is stated that the applicant had applied for commutation of pension and as a part of considering the request for commutation he was subjected to medical examination by the Railway authorities. No records were produced by the respondents to prove that contention made in the additional reply statement filed on 31.7.2014. According to the respondent No. 4 since the bank happened to release the pension amount to the applicant without noticing the fact that he had availed of commutation, it was decided to deduct a sum at the rate of Rs. 382/- from February, 2004 to August, 2010 when a lump sum amount of arrears of disability pension sanctioned to the applicant was received by the respondent No. 4. No records of receipt of commutation amount by the applicant was produced by respondent No. 4 bank. Even if the statements made by the respondents relating to the commutation of pension is true it was incumbent upon them to issue a show cause notice before they started recovering any amount from the pension of the applicant. Rules of natural justice demand such notice and also to hear applicant before a decision is taken to recover any amount from his meager pension.

11. Learned counsel for the applicant submitted that the applicant being a patient of schizophrenia he has to take strong medicines which require a huge amount every month and hence if any cut is made from his pensionary amount that will seriously impinge on his finances and would materially affect his medical treatment.



12. Therefore, taking into the facts and circumstances as revealed from pleadings, records and after hearing both sides, the following orders are passed by this Tribunal:

- i) Respondents Nos. 1 to 3 are directed to conduct a review of the entire matter relating to the grant of pensionary benefits to the applicant as per the orders of this Tribunal and to re-fix his pension strictly in accordance with the orders in Annexures A7 and A10 orders of this Tribunal after taking account the service element put in by the applicant also i.e. 18 years as stated by the applicant.
- ii) Payment of disability pension reckoning the element of service put in by the applicant shall commence from the date on which he was compulsorily retired vide Annexure A4 i.e. 14.9.2002.
- iii) The respondent Railways shall conduct an inquiry as to whether the applicant has actually received the commuted amount of pension and if so what was the mode of payment and the proof of receipt of such amount by the applicant. If any excess amount has been paid to the applicant, after giving notice to applicant, respondents shall examine his contentions and shall pass necessary orders for recovering the same, in a liberal manner, granting monthly instalment facility for such recoveries.
- iv) Respondents shall further consider granting medical facility and privilege pass to the applicant as per the extant rules.



v) The respondents shall also consider Annexure A14 representation of the applicant after giving him an opportunity of personal hearing assisted by his counsel and allow him to produce all the relevant records available with him.

vi) Respondent No. 1 shall conduct an enquiry to fix responsibility on the official who was responsible for not reckoning the service element in the pension payable to the applicant despite Annexure A10 order of this Tribunal which was confirmed by the High Court of Kerala. A sum of Rs. 10,000/- shall be recoverable from such official and the same shall be paid to the applicant towards cost.

13. Ordered accordingly.


(U. SARATHCHANDRAN)
JUDICIAL MEMBER

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