

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 215 of 2007

This the 11th day of February, 2013

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. D.C. Lakha, Member-A

Ziaul Hasan Qureshi, aged about 54 years, S/o late Kamrul Hasan Qureshi, R/o 100/135 Gannewali gali, Aminabad, Lucknow.

.....Applicant

By Advocate : Sri Amit Verma for Sri A. Moin

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Divisional Office, Allahabad.
3. Deputy Chief Mechanical Officer (Workshop), Northern Railway, Alambagh, Lucknow.

.....Respondents.

By Advocate : Sri B.B. Tripathi

O R D E R (Open Court)

By Justice Alok K. Singh, Member-J

This O.A. has been filed for directing the respondent no.3 to sanction compassionate allowance to the applicant in terms of Railway Board's order dated 3.6.1988 with effect from the date of his dismissal i.e. 14.8.1992 with all consequential benefits.

2. This is second round of litigation. The case of the applicant is that he had earlier filed an O.A. no. 606 of 2002 praying for reinstatement of the applicant in service and to consider the case of the applicant sympathetically for retiral benefits. The said O.A. was dismissed on 7.1.2003 on the ground of delay and laches (Annexure-3). Subsequently, the applicant came across of Railway Board's order dated 3.6.1988, which provides that a railway servant who is dismissed or

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removed from service shall forfeit his pension and gratuity, but the competent authority may in deserving special consideration, sanction a compassionate allowance not exceeding two-third of pension of Gratuity (Annexure-4). The applicant, therefore, moved a representation dated 9.3.2007 for grant of compassionate allowance to respondent no.3 (Annexure-1), but without any effect. Hence, this O.A.

3. O.A. has been vehemently contested by the official respondents by filing a detailed Counter Reply saying that the earlier O.A. was dismissed on 7.1.2003 with liberty to file a representation claiming retiral benefits as per rules on the ground that he had served the department for several years. In furtherance of that judgment, the applicant submitted a representation dated 5.2.2003 (Annexure CR-1), which was considered and decided by the competent authority on 11.4.2003 (Annexure CR-2), which has not been challenged in this O.A. Thereafter, the applicant again submitted a representation on 8.7.2003 for payment of retiral benefits, which was again rejected on 11.8.2003. Copies of the above representation and order passed thereon have also been brought on record and placed at Annexure nos. CR-3 and CR-4 respectively. Further, it has been pointed out that the relief(s) pertaining to any retiral benefits is barred by the principle of res-judicata. The alleged representation dated 9.3.2007 has been denied saying that no such representation was ever submitted to the respondents.

4. Supplementary Reply has also been filed by the applicant.

5. We have heard the learned counsel for the parties at length and perused the material available on record.

6. At the outset, this O.A. appears to be barred by the principle of res-judicata and also barred by time.

7. The principle of res-judicata applies in this case because the earlier O.A. no. 606 of 2002 was filed by the applicant for reinstatement with all consequential benefits and for all retiral benefits. It is true that compassionate allowance was not specifically claimed in that O.A. for the simple reason that the

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applicant himself was not aware about this and according to himself, he came to know about the above Railway Board's order dated 3.6.1988 after about 18 years at the time of filing the present O.A. in the year 2007. But ignorance of law is no excuse. It would be deemed that the present relief for compassionate allowance was included in the aforesaid previous O.A. because he ought to have claimed all the relevant reliefs comprehensively in one go in the very first round of litigation when he filed the earlier O.A. in the year 2002. It may also be mentioned here that the applicant was removed from service on the ground of long unauthorized absence and he even did not avail an opportunity to file statutory appeal against the removal order. The only pretext, which was taken in his earlier O.A., was his alleged mental state. But as would be apparent from the perusal of order/ judgment rendered in the above O.A., there was not even an iota of evidence on record to show that he was not in a proper mental state. Therefore, this Tribunal found that he had not availed alternative remedy provided under Section 20 of Administrative Tribunals Act, 1985 rendering the said O.A. liable to be dismissed on this ground itself. In this regard, a reference was also made of a Full Bench in the case of B. Paremshwara Vs. Telecommunications & Others reported in Full Bench judgments of CAT 1989-91 Vol. II 250. Finally, therefore, the delay condonation application was rejected and O.A. was dismissed. However, the applicant was given liberty to file a representation before the competent authority claiming retiral benefits as per rules as the applicant had completed 20 years of service. In furtherance thereof, he did move a representation, which has already been decided against him in 2003. The applicant has not challenged that order. Here, one thing more may be mentioned that the applicant has suppressed and did not file either a copy of his representation, which he moved by him in furtherance of the above order dated 7.1.2003 passed by this Tribunal in O.A. no. 606 of 2002, or a copy of the order passed thereon by the authority concerned. However, the respondents have brought both these documents on record. Perusal of his representation reveals that he had sought all retiral benefits of his service. The compassionate allowance is also a kind of retiral benefit. After

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the previous O.A., this was second opportunity for him to have asked comprehensively all retiral benefits including compassionate allowance, if any. He ought to have mentioned about it specifically. But he did not do so because, as discussed above, he himself was not aware about the above Railway Board's order dated 3.6.1988. But as said earlier also, an ignorance of law is no excuse and, therefore, it would be deemed to have been included under the prayer for retiral benefits which he had sought in his representation which had already been considered by the respondents and rejected on 11.4.2003 by passing a detailed order consisting of two pages, which has not been even challenged till date either in the present O.A. or elsewhere. After sleeping over the matter for about four years, he has now again chosen to invoke the jurisdiction of this Tribunal at his sweetwill by filing the present O.A. in 2007 on the basis of above R.B.O. of 1988 and a representation dated 9.3.2007 which actually he had never sent to the respondents. No specific date has been mentioned as to how and when this Railway Board's order dated 3.6.1988 came to applicant's notice after more than 18 years. Similarly, he has also not disclosed that when and in what manner he submitted the alleged representation dated 9.3.2007 to the respondent no.3. The respondents have denied to have ever received any such representation. Therefore, it was the duty of the applicant to have proved its receipt by the respondents. But the applicant has failed to prove it. He has not even disclosed as to whether the alleged representation was given personally or sent by an ordinary or registered post. It is obvious, therefore, that the alleged representation dated 9.3.2007 is only a pretext with a view to meet the point of limitation. Similarly, he has mentioned about the first O.A. in a slipshod manner and as said before he did not even file a copy of representation moved in furtherance of final order of this Tribunal and order passed thereon by the respondents. It is, thus, clear that the applicant has not come before this Tribunal with clean hands. This O.A. has no substance and it is also highly barred by limitation and by the principle of res-judicata.

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8. In view of the above, we have no other option, but to dismiss this O.A. being highly time barred and also barred by the principle of res-judicata. The O.A. is, therefore, dismissed.

No order as to costs.



(D.C. Lakha)
Member-A
Girish/-

Alok Kumar Singh
(Justice Alok K. Singh) 11.2.13
Member-J