

CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH, LUCKNOW

ORIGINAL APPLICATION NO. 600/1992

this the 11th day of May, 2001

HON'BLE SMT. LAKSHMI SWAMINATHAN, VICE CHAIRMAN (J)
HON'BLE MR. A.K. MISRA, MEMBER (A)

Roop Lal Pandey, aged about 60 years, son of Sri Ram Narain Pandey, resident of Gipsanganj, Sitapur Road, Near West Railway Cabin of Hardoi Railway Station, Hardoi.

.....Applicant

By Advocate: Shri S.N. Saxena

Versus

1. Union of India, through Secretary to Department of Railways, Ministry of Railways, Rail Bhawan, New Delhi.

2. Divisional Rail Manager, Northern Railway, Moradabad.

3. Medical Superintendent/Divisional Medical Officer, Divisional Railway Hospital, Northern Railway, Moradabad.

4. D.O.S.(M), Northern Railway, Moradabad.

.....Respondents

By Advocate: Shri Anil Srivastava.

ORDER

A.K. MISRA, MEMBER (A)

The applicant of this O.A. has prayed for quashing the order dated 16.8.1990 and the appellate order dated 11.3.1991 dismissing the appeal filed by the applicant. A further prayer is to treat the applicant on duty and to pay him full salary and other allowances for the period during which he was deprived from working in light job category and to adjust his medical leave and other leave in his leave account. It has also been prayed that directions be issued for payment of arrears of salary and other allowances. A further prayer is for issue of directions to the respondents to complete the applicant's pension papers and to pay provisional pension without any further delay alongwith the

other retiral dues such as insurance amount, Provident Fund etc. It is also prayed that Railway passes be also issued to him.

2. Pleadings on record have been perused and learned counsel for the parties have been heard.

3. On the last date of hearing on 21.3.2001, the following order was passed by the bench:-

"For proper adjudication of this case, it is necessary to see the relevant official records from which Annexure I to the Counter Affidavit has been issued vis-a-vis Annexure A-2."

4. The records were submitted by the learned counsel for the respondents on 4.4.2001. The office records have been perused. It may also be mentioned that applicant filed O.A. No. 61/1989 which was disposed of on 16.3.1992 as infructuous in the light of the fact that during the intervening period between the filing of the O.A. numbered as O.A. No. 61/1989 and its disposal on 16.3.1992, the applicant in pursuance of a chargesheet and enquiry, had been compulsorily retired from service by order dated 13.8.1990 and the appeal filed by him against the said order on 11.3.1991. Since the O.A. No. 61/1991 was not decided on merits the applicant filed the present O.A. It may be stated here that the order of compulsory retirement was passed in the case of the applicant on 13.8.1990 (Not on 16.8.1990 as stated in the relief clause), whereas the applicant's normal date of superannuation was 31st August, 1990.

5. The applicant was posted as Switchman at Railway Station Kaurha in 1987 in the Northern Railway. On 20.4.1987, the applicant fractured his right collar bone and remained under medical treatment for quite some time. On 24.9.1987, the applicant was declared fit for duty but since he did not join his

duties, a charge sheet was issued to him on 11.11.1987. The only charge against the applicant was of unauthorised absence from duty from 24.9.87 onwards. An enquiry was held in pursuance of the charge sheet and the enquiry officer in his report dated 25th January, 1988 found the charge as fully proved. The report of the enquiry officer was accepted by the disciplinary authority who by his order dated 13.8.1990 imposed the penalty of compulsory retirement and in the departmental appeal filed by the applicant, the appellate authority by his order dated 11.3.1991 dismissed the appeal observing that the penalty imposed "was humane and merited the situation." Accordingly, he declined to interfere in the order of disciplinary authority and dismissed the appeal. The order of compulsory retirement dated 13.8.1990 was served on 22.8.1990, whereas the normal superannuation of the applicant was on 31st August, 1990.

6. According to the applicant on account of the fracture sustained on the right collar bone in his right hand became weak and he was not in a position to perform the arduous duty of a Switchman involving pulling and pushing the lever on the rails a number of times during the day so as to change the railway track. The contention of the applicant is that as a result of fracture, he was not able to push and pull lever and therefore, he should have been given a light duty job for which he made a request a number of times. According to the applicant from 24.9.1987 when he was declared fit by Medical Authorities till 13.8.90, the date of his compulsory retirement- he should have been treated on medical leave and should not have been treated as absent from duty without any authority or sanction. Accordingly, the applicant has contended that the order of compulsory retirement was bad and should be quashed and he

medical examination. Annexure 14 to the OA is a letter dated 22.5.88 from Medical Superintendent, Moradabad addressed to Chief Hospital Superintendent, Central Hospital, New Delhi referring the applicant to Medical Superintendent (Orth), Central Hospital, New Delhi as the applicant was a case of Mal-United Facture. Thereafter, it appears that one Dr. Goyal of All India Institute of Medical Sciences, New Delhi examined the applicant and in pursuance of the examination made by Dr. Goyal, the Divisional Medical Officer of Central Hospital, Northern Railway New Delhi by his report dated 23.6.88 observed that surgical interference will not improve the movement of the applicant's right hand and accordingly he advised change of category for the applicant where forceful involvement of right hand is not required. On the basis of the report of the Divisional Medical Officer, Central Hospital, New Delhi the applicant was referred back to the ADMO, Northern Railway Health Unit, Rosa by letter dated 5.7.88 (Annexure 17 to the OA). The ADMO, Rosa has observed that the applicant was declared fit by Medical Superintendent, Moradabad on 28.7.1988 and further he was examined by DMO (Orth), Central Hospital, New Delhi. The ADMO, Rosa found the applicant fit for duty as per his examination made on 7th September, 1988. He also observed that the condition of the applicant will be reviewed after six months. The various medical reports as discussed in this paragraph show that the applicant was finally declared fit for duty on 7.9.1988 but he showed his inability to work as Switchman and therefore made a request for a light duty job.

9. Thus, at best the unauthorised absence of the applicant can be considered from 7.9.88 when he was finally declared medically fit but he expressed his inability to perform the duties of a Switchman.

As far as the order of compulsory retirement dated 13.8.1990 is concerned, no material difference would result ~~arise~~ whether the date of unauthorised absence is taken as 24.9.87 or as 7.9.88. Thus even if the date of unauthorised absence is taken as 7.9.88 on the ground that the applicant continued to remain under medical supervision/examination, no interference would be warranted by us in the impugned order of compulsory retirement dated 13.8.90 and the impugned appellate order dated 11.3.1991. Therefore, in so far as the impugned orders dated 13.8.1990 and 11.3.1991 are concerned, no interference is called for.

10. In arriving at the above findings, we have considered Annexure No. 2 to the O.A. vis-a-vis Annexure No. 1 to the CA which are copies of the same letter addressed to TIM, Shajahanpur. We may point out that the date shown in the Annexure 1 to the CA is 20.9.1987 and the date of the same letter filed as Annexure 2 to the OA is shown as 28.9.1987. Since the date shown in the copy of this letter filed with the O.A. appeared to have been tampered the original records were called for and from the original records, on verification, it has been found that the date of this letter is 20.9.1987. Accordingly, the applicant has tampered with the date on the photo-stat copy of this letter filed by him as Annexure -2 to the O.A. We cannot ignore such a mal-practice amounting to forgery even if by altering the date in the photo- stat copy from 20.9.1987 to 28.9.1987, the applicant did not stand ^{to derive}

any advantage in so far as the relief claimed in this O.A. is concerned. We may also observe here that the applicant was asked by the respondents No.2 (DRM, Northern Railway, Moradabad) that in case he wants a change in category for a light job, he should formally make a request in this regard with an undertaking that he is willing to accept bottom seniority as may be assigned to him as a result of change in category. Accordingly, although the applicant kept on asking for a change of category, no such change could be given to him. For this reason also, the order of compulsory retirement on the ground of unauthorised absence from duty needs no interference.

11. The other relief claimed by the applicant relates to payment of arrears of salary and other allowances, provident fund and other retiral benefits such as arrears of pension, GPF, gratuity etc. As regards the payment of salary and arrears of salary, the pleadings on record show that the applicant was not paid salary for the period during which he did not perform his duties and absented himself from duty. Thus the applicant was not paid any wages between the period 24.9.87 to 13.8.90 i.e. the date on which the order of compulsory retirement was passed. We may observe here that since the applicant's unauthorised absence had commenced from 7.9.88 as per our finding in paras 8 and 9 above, the applicant has to be treated on medical leave upto 7.9.88 and consequential benefits of salary and allowances have to be given upto 7.9.88 as admissible under medical leave rules. In the supplementary application filed under MP No.1817/97, it has been stated on behalf of the respondents that

following retiral benefits have already been paid/released:-

1. Group Insurance and DCRG -Rs.22,954
(1834+21,120)

2. Provident Fund 19,571

12. The cheque of Rs. 22,954 in respect of Group Insurance (1834) and DCRG (21,120) was received by the applicant and subsequently lost by him. Thereafter, the cheque for the same amount was reissued and paid to the applicant. According to the respondents no arrears of salary are due to the applicant and further he has been paid all his retiral dues. According to the respondents since the applicant remained absent from duty for a very long period, his last pay drawn of Rs. 1320/- as on 1.1.96 was taken for calculation of pensionary benefits. The respondents have submitted that the applicant cannot be given any increment unless he is on regular duty. As against this, the applicant has contended that pension should have been paid on the basis of basic salary as on 1.8.90 the month in which he was compulsorily retired. The respondents have however, taken the basic pay of the applicant at Rs. 1320/- as on 1.1.86 and have submitted that no increment can be granted during the period in which the applicant remained absent. The period of unauthorised absence of the applicant commenced from 7.9.88. Therefore, the pensionary benefits of the applicant should be calculated after giving him the increment due in 1986 and increments due upto September, 1988. Thus the basic salary taken at Rs. 1320/- as on 1.1.86 for calculating the pensionary benefits should be raised by increments earned by the applicant in 1986 and upto September, 1988 and DA/Dearness pay should be included for calculation of the pensionary benefits due to the

applicant.

13. The applicant concedes that a sum of Rs. 21,120/- was received by him as gratuity, a sum of Rs. 1834/- was received by him as Group Insurance and a sum of Rs. 19,571/- has been received towards P.F. According to the applicant, the full amount of gratuity, PF has still not been paid to him. The following amounts according to the applicant are still payable to him which have not yet been paid:-

1.	Gratuity	14.912
2.	Provident Fund	30,429
3.	Arrears of Salary	1,05,722
4.	Unpaid TA Bills	2,986
5.	Court Attendence TA Bills dated 9.12.87	90
6.	CDF (Continued from may 74 to March, 1977)	1,088
7.	Commutation of Pension	64,216
8.	Group Insurance	566
8.	Bonus	1238.29
9.	23 days salary for the period for 9.4.85 to 1.5.85	1670
10.	Salary from 25.5.86 to 28.7.86	2672

14. The respondents are directed to verify the admissibility of the claims as detailed in the tabular statement above and to ascertain whether any amount is payable under different heads as claimed by the applicant. In case any amount is payable, the same be paid within two months of the communication of this order. It may however, be kept in mind that the pensionary benefits and arrears of salary have to be worked out by adding the increments due in 1986 and upto Sept., 1988 as per directions in para 11 above.

15. As regards commutation of pension, the same cannot be given to the applicant unless he is subjected to a medical examination after receipt of a formal application in the prescribed form. Further after the expiry of one year from the date of retirement, the applicant has to be subjected again to medical examination and fresh claim for commutation of pension has to be made on the prescribed form. Since this formality has so

passed by the Senior Divisional Accounts officer. Moradabad vide PPO No. 96080389 dated 19.6.1996. The applicant was also advised vide registered letter dated 5.7.1996 to collect the PPO. Thus the delay in payment of pensionary benefits was on account of the applicant's failure to complete the necessary formalities by filing in the prescribed forms and by furnishing copies of his photographs. Therefore, in our opinion, no interest is payable to the applicant on the delayed payment of pensionary benefits.

17. While no interference is made in the order of compulsory retirement dated 13.8.1990 and in the appellate order dated 11.3.1991 as per finding given above in paras 9 and 10, the O.A. is disposed of with the following directions:-

1. To verify whether any amount under any head as shown in the tabular statement on page 9 is payable to the applicant. If any amount under any head is found payable, the same be paid within two months of the receipt of this order after taking into consideration the increments due in 1986 and upto September, 1988 as per directions in para 11.
2. To calculate and pay to the applicant commuted value of pension within two months from the date the applicant completes the formalities required in this regard.
3. to recalculate the monthly pension of the applicant after taking into account the annual increments due in 1986 and upto Sept., 1988 and to make regular payment of monthly pension accordingly.

far not been completed by the applicant, the claim for commutation of pension has not been allowed to the applicant. The respondents are directed in this regard to have the necessary formalities completed thereafter and to pay the commuted value of pension to the applicant. The applicant is also directed to complete the necessary formalities so that the commuted value of pension may be paid to him. It is directed that the commuted value of pension be also paid within 2 months from the date of completion of formalities by the applicant.

16. As regards the interest on the delayed payment of pensionary benefits, it is observed that the applicant did not fulfil the necessary formalities to enable the respondents to pay the pensionary benefits to the applicant within time. The respondents by their letter dated 21.9.1990 duly informed the applicant that consequent upon his compulsory retirement on 13.8.1990, he has not filled up the pension form nor has he submitted three photographs along with the duly filled in form. The applicant was accordingly requested by this letter dated 21.9.1990 to complete the formalities and to send three photographs so that the pensionary benefits may be paid to him. Formalities in this regard were not completed by the applicant and accordingly payment of pensionary benefits could not be made to him. Subsequently a reminder dated 14.3.1996 was also sent to the applicant by registered post for completing the necessary formalities of filling up of pension forms and of providing three photographs. In pursuance of this reminder dated 14.3.1996, the applicant finally submitted the duly filled in pension forms along with three photographs. Thereafter, the pension case of the applicant was submitted to the Accounts Department on 28.5.1996 by the respondents. The pension has been

4. To pay arrears of salary plus other allowances from 24.9.1987 to 7.9.1988 in accordance with the relevant Medical Leave Rules within the time given in para 17(1) above.

18. The O.A. is disposed of as above with no order as to costs.

Seal
MEMBER (A)

Seal
VICE CHAIRMAN

LUCKNOW: DATED: 11th May 2001

HLS/-

Specified copy

Signature / 17.5.01
Medical Section
G. A. V.
LUCKNOW
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