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CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA No.440 of 2006
[with MA 374/06]

Date of order : 7th August, 2006

C O R A M

Hon'ble Mr. Justice P.K.Sinha, Vice-Chairman
Hon'ble Mr.S.N.P.N.Sinha, Member[Admn.]

Nutan Kumar. **Applicant**

Vrs.

Union of India & Ors. **Respondents.**

Counsel for the applicant : Shri Bimal Kumar.
Counsel for the respondents : Shri Mukundjee, SC

O R D E R [ORAL]

Justice P.K.Sinha, Vice-Chairman :-

The learned counsel for the applicant and the ld. Standing Counsel for the respondents have been heard.

2. The case of the applicant in short is that he had met an accident and had been on IOD [Injury on Duty] from 22.2.1991 to 6.11.1991 and after

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medical examination, he was made to retire on medical grounds w.e.f 7.11.1991 while he was only 45-46 years old. The applicant has come up with prayer for issuance of directions to the respondents to pay him arrear salary/emoluments till the date of retirement as the applicant was entitled, on having been declared medically unfit, for an alternative job. The second prayer is that though the applicant had been on IOD from 22.2.1991 to 6.11.1991, i.e., on duty, and was made to retire with effect from 7.11.1991, yet the aforesaid period of IOD was not calculated for computing his pension and other pensionary benefits which ought to have been done.

3. The ld. counsel for the applicant has also filed a M.A. No.374 of 2006 for condonation of delay in filing O.A.

4. In so far as the first prayer is concerned, having gone through this M.A. and having heard the learned counsel thereupon, we are of the opinion that no cogent ground has been shown for condoning the delay of about 15 years which the applicant took in coming to the Tribunal. According to him, by now he would have reached the age of superannuation.

5. In that view of the matter in so far as first prayer is concerned, the prayer for condonation of delay is rejected. Also on the ground of latches, this prayer is not fit to be accepted.

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6. The ld. counsel for the applicant submits that the main prayer of the applicant is latter prayer which may be considered.

7. If the pensionary benefits have been calculated on the basis of lesser period of service, thereby diminishing the amount of pension and other pensionary benefits, that would be recurring loss to the applicant. Therefore, this will not be barred by limitation.

8. The claim of the applicant clearly ^{is} _{as} that this period of IOD, for calculating for the purposes of pension and penionary benefits has not been taken into consideration.

9. The ld. counsel for the respondents also agrees with the Tribunal that if that period was considered to be IOD, then that period should have been considered by the respondents so far calculation of pensionary benefits were concerned.

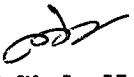
10. In that view of the matter, we dispose of this application directing the Respondent No. 2, the Divisional Railway Manager, South Eastern Railway, Division Adra, to consider this aspect of the prayer and if he finds that the applicant was on IOD from 22.2.1991 to 6.11.1991 and if he further finds that this period has not been taken into consideration while calculating the pension and pensionary benefits of the applicant, he would record an order in that regard in accordance with law and extant rules within



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a period of three months of the receipt of a copy of this order. If the prayer is allowed and pension is increased, then the arrears for the period of one year prior to filing of this application [18.1.2006] should also be paid to the applicant which should be up to the date of payment. The applicant is directed to provide to the Respondent No.2 a copy of this order along with a copy of this application with annexures, within fifteen days of the receipt of certified copy of this order.

11. With the aforesaid direction, this O.A. and M.A. 374 of 2006 are disposed of.


[S.N.P.N.Sinha]M[A]


[P.K.Sinha]VC

mps.