

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA No. 163 of 2006**

Date of order : 10<sup>th</sup> November, 2010

**C O R A M**

**Hon'ble Mrs Rekha Kumari, Member [Judicial]  
Hon'ble Mr. Sudhir Kumar, Member[Administrative]**

Nasimullah Khan, son of Late Nasarullah Kha, Resident of Chawani, P.S. -  
Bettiah Town, District – West Champaran, Bihar.

..... **Applicant.**

By Shri M.P.Dixit, Advocate

Vrs.

1. The Union of India through Divisional Railway Manager, Eastern Railway, Mugalsarai [U.P.].
2. The General Manager, North Eastern Railway, Samastipur, P.S. Samastipur, District – Samastipur.
3. The Loco Foreman, Narkatiyaganj, P.S. - Shrikarpur, District – West Champaran.

..... **Respondents.**

By Shri N.K.Sinha , ASC

**O R D E R**

**Justice Rekha Kumari, Member [Judicial] :-**

The applicant initially had filed this OA for pension and other retiral benefits. Subsequently, by amendment, he also challenged the order of removal from service passed on 22.8.1999 for unauthorised absence from 22.06.1992 to 28.02.1997.

2. The applicant was initially appointed as Engine Cleaner, and joined th post at Narkatiaganj on 19.11.1964. He was promoted lastly as Shunter. He remained absent from duty since 22.06.1992. He was removed from service by order dated 22.07.1997 for unauthorized absence.
3. The case of the applicant is that he became mentally sick, and thus was not in a position to attend the job. On his behalf, applications were given before the

appropriate authority for medical leave from time to time [Annexure-A/1 series]. In August, 2002, he recovered from his illness. He went to join his duty but he learnt that behind his back, a departmental proceeding was initiated against him and he was dismissed on 22.08.1997. His further case is that he made representations for reinstatement but when he was not reinstated, he filed representation [Annexure-A/5] for retiral benefits but in vain.

4. The case of the respondents in their written statement and additional written statement inter alia is that the application for quashing the order of removal is badly barred by limitation.

5. Their case also is that no information about his illness was given to the department. No representation was given to the authorities regarding his illness. The authority, on the other hand, had sent letter [Annexure-R/1] regarding his absence. Ultimately, the Railway Authorities started departmental proceeding for his unauthorized absence. The charge-sheet was sent by registered post with A/D. He received the same on 19.4.1997. A copy of the charge-sheet was pasted in the Notice Board. In spite of letter sent by the Enquiry Officer, he did not participate with the enquiry. Accordingly, ex-parte enquiry was held. The applicant was found guilty and ultimately he was removed from service.

6. It is also the case of the respondents that he never approached the appropriate authority through proper channel/procedure regarding his retiral benefits.

7. The learned counsel for both sides were heard.

8. As regards the order of removal of the applicant from service, the same was passed on 22.08.1997 and the present OA has been filed in 2006. Therefore, the OA with respect to this relief is hopelessly barred by limitation.

9. The applicant has filed MA 528 of 2007 for condonation of delay. His case therein that the applicant after recovery from illness went to join his duty in August, 2002 when he learnt about his removal. He then filed representations and

one of the representation is dated 30.09.2002 [Annexure-A/3] to allow him to join duty. He has also annexed some medical certificates along with MA to show that he was under treatment of doctor from 22.06.1992 to July, 2002. But there is no averment as to why he remained silent after 30.09.2002 ,and filed this OA after so many years in 2006.

*relief in respect of*

10. The delay, hence, cannot be condoned. The impugned order for removal from service of the applicant hence cannot be allowed as the relief is barred by limitation.

11. As regards the retiral benefits, the applicant has filed a copy of his representation dated 15.12.2003 [Annexure-A/4] for payment of retiral/dismissal benefits and his case is that no action was taken by the authority in this regard. The case of the respondents, in this regard, simply is that no representation was filed by the applicant before the appropriate authority through proper channel.

12. The Bombay Bench of Central Administrative Tribunal in Kamal Vithal Zalta vs. TheG.M., Eastern Railway in OA 3 of 2009 relying on the decision of the Hon'ble Supreme Court in the case of **State of Kerala vs. Padmanabham, AIR 1985 [SC] 356** wherein it has been observed that payment of pension and gratuity is a social welfare measure rendering socio economic justice to those who in the hey day of their life ceaselessly ~~toiled~~ toiled for the employer on the assurance that in their old age they would not be left in lurch, and has ~~been~~ been held - delay, if any, regarding the claim of pension and pensionary benefits should be condoned.

13. Again if the applicant was removed from service and he is entitled to pension and pensionary benefits, it was the duty of the respondents to fix and pay the same and the department cannot raise their plea of limitation when it was at fault vide decision of the Hon'ble Supreme Court.

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14. Under the circumstances, the respondents are directed to pass a reasoned order finalizing the claim of pension and other pensionary benefits of the applicant within a period of four months from the date of receipt/production of this order and pay the amounts due within a month thereafter.

16. With the above direction, the OA stands disposed of. No costs.



[ Sudhir Kumar ]  
Member [Administrative]  
mps.



[ Rekha Kumari ]  
Member [ Judicial ]