

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 751 of 2002

Jabalpur, this the day of 17th November, 2003.

Hon'ble Mr. M.P. Singh, Vice Chairman (Administrative)
Hon'ble Mr. G. Shanthappa, Judicial Member

Krishna Kumar Naickar, Age-56 years
S/o Late Shri V.K. Naickar
R/o 'Upasana' Gwarighat,
Jalpur Road,
Jabalpur

APPLICANT

(By Advocate - Smt. S. Menon)

VERSUS

1. Union of India
Through : Secretary,
Ministry of Railways,
New Delhi.
2. General Manager,
Central Railway,
Mumbai.
3. Divisional Railway Manager,
Central Railway,
Jabalpur

RESPONDENTS

(By Advocate - Shri H.B. Shrivastava)

ORDER

By G. Shanthappa, Judicial Member -

The above application is filed for the relief, to extent the similar relief to the applicant as granted in OA No. 623/91 decided on 13.10.95 as per Annexure-A-1 and to grant compensation to a tune of Rs. 25,000/- in favour of the applicant and against the respondents jointly and severally for not releasing the pension despite and for the inordinate delay along with interest 48 percent per annum for non release of pension.

2. The case of the applicant is that the applicant was appointed in the Railways w.e.f 1.12.1964 and continued to function until he sought for resignation on 22.4.1985. He had completed 21 years of service in the Railways hence he submitted his resignation.

2. One Shri A.P. Shukla, who was also functioning as Senior Clerk at the time when he submitted his resignation,



moved this Hon'ble Tribunal for release of pension, in OA No. 623/91 Shri A.P. Shukla got the order in his favour and got the benefits though he has completed 17 years and 9 months of service. Under the said order the applicant is asking for the similar relief in this OA. The applicant relied on Rule 102 and 311 Railways Pension Rule 1950, para 4.4. is extracted below :-

4.4. That, as per Rule 102 of the Railway Pension Rules, 1950, and employee, who has completed 10 years qualifying service becomes entitled to pension. Besides this, Rule 49(b) of Central Civil Services(Pension) Rules, 1972 stipulated that:-

"(b). In the case of Government Servant retiring in accordance with the provision of these rules before completing qualifying service of thirty-three years, but after completing qualifying service of ten years, the amount of pension shall be proportionate to the amount of pension admissible under Clause (a) and in no case the amount of pension shall be less than (Rupees three hundred and seventy five per month)."

The decision of Hon'ble Supreme Court M/s J.K. Cotton Spinning, reported in AIR 1990 SC 1808 and also the orders of this Tribunal in OA No. 623/91 dated 30.10.95 which was confirmed by the Hon'ble Supreme Court in SLP No. 940/96. Under the said judgment the applicant is entitled for the relief as prayed in the OA. Along with this OA the applicant has also filed MA No.1467/02 for condonation of delay in filing the OA in the said MA, the applicant has specific stated that he came to know about the decision of this Tribunal only in the month of February 2002 and since then, he was personally visiting the Office of respondent No.3. Besides this, he had also submitted an application, duly received by the Officer on 4.2.2002 for inspecting certain documents but the respondents failed to co-operate with the applicant. The delay is deserves to be condoned.


4, Per contra the respondents have filed their detailed reply denying the averments in the OA and also the application is liable to be dismissed only on the ground that the OA has been



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filed after elapse of nearly 18 years and is hopelessly delay and bared by limitation as provided in section 21 of AT Act 1985. The applicant had resigned in 1985 and kept silent for all these years which clearly goes to indicate that he was satisfied with whatsoever payment made to him as settlement dues quitting service. The judgment of OA No. 631/91 is a in personam and not a judgment in Rem. On the ground of delay the applicant carried the judgment of Full Bench Judgment of Principle Bench of New Delhi in OA No. 2626/92, decided on 9.10.96 in the case of B.P. Sharma and Others. Vs. UOI & Ors. and also Bhoop Singh Vs. UOI reported in 1992(3) SCC 136

5. The respondents have ^{filed} reply on the merits of the case, taking the ground that the applicant had to be in more than 10 years of qualifying service, but his case is covered and governed by the provision of Pension Manual of 1950, which does not term payment of pension untill the employees has completed 20 years of qualifying service and has sought voluntary retirement and resigned. Rules of Pension Manual 1950 provides payment of pension to such employees to have ~~superannuated~~ on completion of 58/60 years of age after not less than 20 years of qualifying service in the present case, the applicant voluntarily retired on completion of 20 years of qualifying service. The applicant was also not medically unfit, he was not granted pensionary benefits as the resigned from service. The respondents further contended in the reply according to the provisions of Rule existing at the time, he was settled under provision of SRPF Rules and paid all his settlement dues vide provident fund, GIS, PLB, wages etc. has advised vide letter dated 18.8.2000. The specific contention of the respondents in respect of provisions of Pension Rules that the averments made in Rule 49(B) of Central Service Pension Rules are not applicable to the Railways employees, Railway have thier own set off Pension Rules. The employee



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The employee is entitled for full pension when he completes 33 years of qualifying service. The applicant had put in only 15 years, 5 months and 21 days of qualifying service. after deducting the period of leave without pay and apprenticeship period. The period has been as ~~Apprentice-ship~~ ^{Apprentice-ship} is not counted in qualifying service. The particular of service as are under :-

- (1) The applicant resigned on 22.4.85.
- (2) The applicant appointed on 1.12.64 (21.4.90)
- (3) (-) Less period of leave without pay 2-0-1
- (4) (-) Less apprentice Period 0.11.3

19-5-15

Hence the applicant is not qualified for the pension. Accordingly the applicant is not entitled for the pension since he was not qualified for pensionary benefits. The respondents relied on Rule 311 resignation from service and no pensionary benefit (or compassionate grant(s) and or allowances) may be granted to a Railway servant who resigns from service Annexure-R-1 in terms of said Rule, the applicant is not qualified for pension. The respondents further contended Rule 101(1) The retirement benefits under these rules for a permanent Railway servant comprise to Railways Servant. The relevant portion is extracted below :-

" The benefits are admissible to all permanent Railway servants except those who are removed or dismissed from service or resign from it before completion of 30 years' qualifying service"

The respondents also relied on the judgment of this Tribunal in OA No. 878/96 decided on 6.8.2002. In the said judgment of this Tribunal in OA No. 623/01 filed by A.P. Shukla as also referred other judgment of the Hon'ble Supreme Court has also referred. The respondents have produced the judgment of the Hon'ble High Court of Delhi which was decided on 7.2.2003



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i.e. in respect of denying the retiral benefits on the ground of resignation, the said judgment was rendered as under the Border Security Force Rules 25 of 1969. The relevant portion of the said decision as under :-

Reported in 2003(3) AISLJ 226

" It having been a case of discharge from service on a notice for resignation from service Rule 25 of the Border Security Force Rules, 1969 has no application to the facts of the case. It was not the respondents who took initiative in discharging the petitioner from service on medical ground, rather the discharge from service was as a result of acceptance of offer for resignation made by the petitioner himself which was not induced by any pressure or undue influence. Having resigned from service before completing qualifying service of 20 years for retiral benefits, including pension and gratuity etc., the petitioner cannot be held entitled to any financial benefits. Further, for the same reason, there is no case, for entertaining any request on behalf of the petitioner's wife for compassionate appointment in place of the petitioner. Thus, no interference is warranted with the order of discharge of petitioner from service without any financial benefits, rejection of his representation for reinstatement, retirement benefits etc., and appointment of his wife on compassionate ground.

The facts of the case, on the ground that prior for switch over pension scheme was not allowed on the ground that the pension scheme and provident scheme were strictly and they do not belonging to one clause and it was also held that having withdrawn entire Rules which the applicant entitled to get under provident fund scheme, we cannot be allowed to switch over pension scheme after long period i.e. 28 years in the instant case. In the present case, there is no case of switch over to pension scheme for all provident fund schemes. The applicant has resigned and he has not completed 30 years of following service for the purpose of pension. Accordingly the relief of the applicant cannot be granted.

5. We have heard the learned counsel for the applicant as well as respondents and carefully perused the records and pleading.

6. After hearing from both the side. The application on the ground of limitation, admittedly the applicant has approached this Tribunal after elapse of 18 years. In the MA for

condonation of delay, the applicant has not assigned the proper reason for condonation of delay. He has given the reasons, he came to know the decision of this Tribunal only in the month of February 2002 and he approached the respondents by way of representation dated 4.2.2002 for in respect of certain documents. From the date of cause of action till February 2002, no reasons are assigned, hence the averments made in the reply of the respondents are considered and the OA is liable to be dismissed on the ground of laches.

7. Even under the provisions of Pension Rules the applicant has no qualified service for grant of pension, the applicant has to be in less than 20 years of qualifying service, i.e. 19 years, 5 months and 15 days when the applicant has not completed years of qualifying service; the provision of 311 Railway Pension Rule 1950 no pensionary benefits are to be granted to the Railway Servants to resigne from service.

8. After the persual of the record and also arguments submitted by both the side we are of the considered view, that the applicant has failed to prove his case for approaching this Tribunal well in time, the application is barred by limitation is prescribed under Section 21 of AT Act.

9. Accordingly the MA No. 1467/02 is rejected, consequently the OA No. 751/02 is also dismissed. No costs.

G. Shanthappa
(G. Shanthappa)
Judicial Member

M.P. Singh
(M.P. Singh)
Vice Chairman

Accepted
19/11/03

पूठकन सं ओ/न्या.....जबलपुर, दि.....
पतिलियि अगो शित:-

- (1) सतिव, उच्च न्यायालय द्वार एपेसिएशन, जबलपुर
- (2) आदेशक श्री/श्रीमती/पु.....के काउंसलर S. Menon, Adm.
- (3) सतिव श्री/श्रीमती/पु.....के काउंसलर H B Shivartava, Adm
- (4) सतिव श्री/श्रीमती/पु.....के काउंसलर

SKM

H B Shivartava
उप-निदेशक
19.11.03