

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 287/2013

Order Reserved on 18.10.2016

DATE OF ORDER: 26.10.2016

CORAM

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Smt. Jaitun @ Sharifan W/o Layak Ahmed, aged 86 yrs. R/o Kumharon Ka Mohalla Ward No. 19 Phulera District Jaipur.

....Applicant

Mr. Nand Kishore & Mr. S.K. Bhargava, counsels for applicant.

VERSUS

1. Union of India through General Manager, North West Railway, Jaipur.
2. Assistant Divisional Finance Manager North West Railway, Jaipur.
3. General Manager, North West Railway, Jaipur.

....Respondents

Mr. Anupam Agarwal, counsel for respondents.

ORDER

This Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, aggrieved with the non-payment of interest on the amount of arrears of pension as granted by the Tribunal and order of the respondent nos. 2 and 3 denying the payment on the ground of having already made the payments thereby seeking the following reliefs:

“(a) That by an appropriate order or direction the respondents be ordered to make the payment of Rs. 156456.00 allegedly admitted by the respondents to have paid to the applicant vide Cheque No. 114735 dated 12.7.2005 but no yet received by the applicant and also pay the interest on the said amount at the rate of 18% p.a. on the said amount till the date of payment.

(b) Any other relief this Hon'ble tribunal deems fit may also be granted to her.”

2. When the case came up for hearing and consideration learned counsel for the applicant, submitted that the applicant is the widow of Shri Layak Ahmed (now deceased) who was employed in the Railways under the respondents as Diesel Assistant and retired from there. Shri Layak Ahmed filed OA No. 257/2002 before this Tribunal claiming the pension on the basis of recommendation of 4th and 5th Pay Commission w.e.f. 01.01.1986 and 01.01.1996. The above O.A. was allowed by this Tribunal vide judgment dated 24.03.2004, of which the operative part of the judgment (as referred in para 4 (i) of the OA) is as under: -

“12. The upshot of the above discussion is that the aforesaid original application merits acceptance in part and the same is allowed accordingly. The impugned order dated 26.2.2001 (Ann. A 1) is hereby quashed and the respondents are directed to review the applicant's pension as per the recommendation of 4th pay commission and also further revise his pension so fixed in implementation of the recommendations of the 5th pay commission. The applicant shall be entitled to all consequential benefits and the arrears on account of this order shall be payable along with interest @ 8% per annum from due date till the payment is made. No costs.”

When the applicant's husband did not receive the benefits as allowed in the OA, he filed a Contempt Petition No. 16/2005 (in aforesaid OA No. 257/2002) and the same was allowed vide order dated 11.08.2005

and the operative part of the order (as referred in para 4.2. of the OA) is as under: -

“We have heard the learned counsel for the parties. We are of the view that the present contempt petition can be disposed of with the directions to the Railway Authorities to send the specimen signatures sanctioning authority duly verified by the appropriate authority as asked for by the postal authority so that the arrears of pension and payment of gratuity amount can be credited in the account of the applicant. The Railway Authorities are directed to complete the aforesaid steps within a period of one month from the date of receipt of the copy of this order.”

3. In this regard, counsel for the applicant referred to Annexure A/1 and Annexure A/2 letters, dated 04.12.2012 and 16.01.2012, respectively, wherein the applicant was informed that the difference of DCRG and pension arrears along with interest at 8% i.e. Rs. 19519+136937, coming to a total of Rs. 1,56,456/- have been paid as per CO6 No. 265 and CO7 No. 11067104-00056 dated 12.07.2005 to Shri Layak Ahmed. In Annexure A/1 letter dated 04.12.2012 it was also mentioned that the said amount was deposited in her husband's Post office Phulera Account No. 680139 in the year 2005 itself. However, as the money was not received, the applicant made several representations that actually the said amount had not been paid and she even submitted an affidavit dated 18.12.2012 (Annexure A/3) that this amount as per Cheque No. 114735 dated 12.07.2005 has neither been received by her late husband nor by her and nor by any of other legal heirs. Thereafter counsel for applicant specially referred to Annexure A/4 dated 17.12.2012 which is a letter sent by the Railways to the Postal authorities at Phulera asking them to inform when the Cheque No. 114735 dated 12.07.2005 for Rs. 1,56,456/- issued in favour of late Shri Layak Ahmed, had been deposited in his Account

No. 680139. To this letter the postal authorities have responded by way of endorsement, that the said Cheque has never been deposited in SB Account No. 680139 and no such payment of pension has also been made. Counsel for applicant further submitted that the applicant continued to remind the authorities about non-payment of this amount and also submitted an application dated 11.02.2013 (Annexure A/5) but there has been no response from the respondents. Counsel for applicant reiterated that the applicant is the widow of late Shri Layak Ahmed and as Shri Layak Ahmed did not receive the said amount in his lifetime and in view of her genuine claim, she has been requesting the respondents to make the payment but as there has been no response, she has filed this O.A. He contended that as it is more than evident from Annexure A/4 and affidavit at Annexure A/3 that neither Shri Layak Ahmed nor any of his family members after his death have received this amount which is very much due to them, therefore, the payment of the said amount along with further due interest may be paid to the applicant and the O.A. be allowed.

4. Per contra, learned counsel for the respondents, with reference to the detailed written statement filed by the respondents, submitted that the O.A. itself is not maintainable on the basis of certain preliminary objections. In the first place, the O.A. has been filed by the widow of late Shri Layak Ahmed, and in this context, counsel for respondents referred to the earlier O.A. No. 257/2002 filed by Shri Layak Ahmed himself and decided by this Tribunal vide order dated 24.03.2004 and also to the Contempt Petition No. 16/2005, which was decided vide

order dated 11.08.2005. Referring to the directions in the Contempt petition, counsel for respondents submitted that the Contempt petition was disposed of with the direction to the respondents to complete the steps regarding payment of arrears of pension and payment of gratuity within a period of one month from the receipt of copy of the order. Thus, the payment of arrears of pension and payment of gratuity was to be made to Shri Layak Ahmed himself and within a period of one month. However, during his lifetime Shri Layak Ahmed never submitted any such grievance to the authorities concerned about any non-payment of arrears of pension or gratuity. The applicant is only a beneficiary and cannot claim the amount from the answering respondents. Counsel for the respondents further submitted that the O.A. has been filed in 2013 disclosing non-payment vide letter dated 17.12.2012. In this context, he submitted that admittedly as per order dated 11.08.2005 of the Tribunal in the Contempt Petition, the steps were to be taken within one month from the receipt of copy of the order. The limitation as prescribed under the Administrative Tribunals Act of 1985 is one year from the cause of action but in the first place Shri Layak Ahmed did not file any O.A. even after the order in the contempt petition, and further this O.A. has been filed in the year 2013 and further as per law of limitation as per the Schedule Part II Sr. No. 20, the period of limitation is three years from the date when the Cheque is paid and thus the present OA is barred by limitation. Shri Layak Ahmed survived subsequent to the order dated 11.08.2005 but never protested with regard to non-payment of arrears of pension and payment of gratuity during his lifetime. In this way, the cause of

action if any that arose to him was waived by him and therefore principle of estoppels applies. He further submitted that the O.A. is also not maintainable because the Annexure A/4 cannot be testified by the applicant. Thus counsel for respondents submitted that the OA is not maintainable on the basis of these preliminary objections and prayed that it be dismissed on the said basis alone.

5. Further on the merits of the case, counsel for the respondents submitted that Annexure A/4, upon which the counsel for the applicant has chiefly relied upon, only states that the Cheque No. 114735 issued on 12.07.2005 for Rs. 156456/- in favour of Shri Layak Ahmed has not been deposited in SB Account No. 680139. However, merely on the basis of this endorsement, an inference or a conclusion cannot be drawn that the Cheque No. 114735 dated 12.07.2005 that was issued in the name of Shri Layak Ahmed was never encashed by him because this endorsement pertains to the Phulera Post Office account only, and it could have easily been deposited and encashed by Shri Layak Ahmed in some other Bank account which he could have been having at that time. Moreover, Shri Layak Ahmed himself never raised any grievance after the disposal of the Contempt petition way back on 11.08.2005 in which only one month's time was given for compliance of the orders. Counsel for the respondents also drew attention to the fact that in the order of contempt petition, the Railway Authorities were directed to send the specimen signatures duly verified by the appropriate authority as asked by the Postal authorities. Thus, it is only a question of verifying the specimen signature of Shri

Layak Ahmed and this action was to be taken within a month after the order dated 11.08.2005 and much time has elapsed since then, but Shri Layak Ahmed never made any complaint during his lifetime. Now at this stage the applicant cannot claim the arrears of Rs. 156456/- along with further interest and accordingly prayed for dismissal of the O.A.

6. In rebuttal counsel for the applicant referred to the points raised in the O.A. and submitted that the legal rights cannot be nullified only on the ground that the husband of the applicant did not raise any grievances before the authorities during his lifetime and the question of limitation does not arise because the applicant has been representing before the respondents-department and even the Postal authorities have clearly stated that the said Cheque was never deposited in the Post Office Phulera SB account of late Shri Layak Ahmed.

7. On query neither of the counsels could inform about the exact date and period when Shri Layak Ahmed expired.

8. Considered the aforesaid contentions and perused the record. Though apparently Shri Layak Ahmed did not raise any grievance during his lifetime before the authorities for non-payment of arrears of pension and gratuity along with interest even after the decision dated 11.08.2005 of the Tribunal in CP No. 16/2005 (in OA No. 257/2002) but it cannot be accepted that the applicant being widow of late Shri Layak Ahmed, which is not a disputed fact, and a legal heir cannot

claim the said amount. However, it is noted from Annexure A/1 letter dated 04.12.2012 that vide CO6 No. 265 and CO7 No. 11067104-00056 dated 12.07.2005 payment for the said amount of Rs. 156456/- was ordered and it was sent to post office Phulera for being deposited in the SB account No. 680139 of Shri Layak Ahmed in 2005 itself. In this regard it has also been mentioned in Annexure A/4 that Cheque No. 114735 dated 12.07.2005 for Rs. 156456/- was issued in favour of the applicant. However, the Postal authorities have made an endorsement as a reply to Annexure A/4 letter dated 17.12.2012 that such a Cheque No. 114735 issued on 12.07.2005 for Rs. 156456/- has never deposited in the SB account No. 680139. Therefore, it appears from the response of the Postal authorities that the said cheque has not been deposited in SB Account no. 680139 of Shri Layak Ahmed and further no payment of pension has been made. However, at the same time, there is force in the contention of the counsel for respondents that Shri Layak Ahmed, during his lifetime, never informed the concerned authorities of not having received the payment and such payment was to be made after verification of his specimen signatures sent to postal authorities as asked for, within one month from the date of order in the Contempt Petition i.e. 11.08.2005. However, as the postal authorities have clarified that they have not received such a Cheque and not deposited it in the SB Account of Shri Layak Ahmed and no such payment of pension has also been made and the applicant being a widow lady more than 86 years old, it is incumbent upon the respondents to consider her case more sympathetically.

9. Therefore, after considering the entire facts and circumstances of the case, the respondents are directed to further endeavor to obtain the details of the case and find out more specifically whether the postal authorities had received the said Cheque No. 114735 dated 12.07.2005 for Rs. 156456/- and deposited in the SB Account of Shri Layak Ahmed in 2005 itself or it somehow remained un-deposited or not credited in his SB account no. 680139. The applicant is also directed to cooperate in the matter and inform whether late Shri Layak Ahmed had any Bank account at that time in which he could have possibly deposited the said Cheque. As the Cheque is said to have been issued in the year 2005 and may therefore take some time for the respondents to search out the record, four months' time is given to the respondents to carry out this exercise and inform the applicant about the position of the case and the decision taken by them in this regard. Thereafter, if any grievance remains with the applicant she may approach the appropriate forum as per law.

The Original Application is disposed of as above with no order as to costs.


(MS. MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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