

(RESERVED ON 25.05.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

This the **01<sup>st</sup>** day of **JUNE 2018**.

**ORIGINAL APPLICATION NO. 35 OF 2014**

**HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).**

1. Tej Singh, S/o Late Ram Chandra, Resident of Village-Phoolpur,  
Post Office-Chandikara, District Mainpuri (U.P.).  
.....Applicant

**VERSUS**

1. Union of India, through General Manager, North Central Railway,  
Headquarters Office, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad.
3. Sr. Divisional Personal Officer, N.C. Railway, DRM's Office,  
Allahabad.
4. Sr. Divisional Commercial Manager, N.C. Railway, DRM's Office,  
Allahabad.
5. Assistant Personal Officer (Mech, N.C. Railway, DRM's Office,  
Allahabad.  
.....Respondents

Advocate for the Applicant : Shri Satya Prakash Shukla

Advocate for the Respondents : Shri Bashisht Tiwari

**ORDER**

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- "(a) It is prayed that the respondents may be directed to pay all the retiral benefits which was due till 30.09.2005.*
- (b) It is further prayed that this Hon'ble Tribunal may kindly direct the respondents to sanction interim pension to the applicant for his undisputed service till 30.09.2005.*
- (c) Issue any other order or direction which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.*
- (d) Award costs of the original application to the applicant."*

2. The facts of the case in brief, are that the applicant was initially appointed as Porter, which is a Class-IV post, in NCR Railway, Allahabad and continued on the said post till 1982. Thereafter, the applicant was promoted as Coach Attendant in the same division and continued as such till his retirement on 31.07.2011. During the service period of the applicant, the respondent no. 2 had passed an order dated 30.09.2005 (Annexure No. 2 of the OA) for redeployment of the applicant from commercial department to technical department and assigning him the post of Helper (khalasi), which according to the applicant, is a lower post as compared to coach attendants. Being aggrieved by the redeployment order dated 30.09.2005 the applicant filed Original Application no. 858 of 2006 before this Tribunal which was decided on 29.10.2007, directing the respondents to consider the possibility of accommodating the applicant on the other categories of attendants i.e., Coach Attendants, Passenger Attendants, Passenger Attendants A.C. Coach, A.C. Coach Attendants or A.C. Passenger Attendants. It was also stated in the order passed by this Tribunal that the decision of the respondents will be final in this regard and no further liberty would be granted to the applicant to file any Original Application on the same matter.

3. In pursuance of the order dated 29.10.2008 passed by this Tribunal, the respondent no. 5 passed order dated 22.01.2008 (Annexure No. 3 of the OA) rejecting the claim of the applicant, stating that there is no possibility to accommodate the applicant in any of the category of attendants. Since, this Tribunal vide order dated 29.10.2007 had observed that the decision of the respondents would be final in this

regard and no Original Application would be filed by the applicant for the same cause of action, the applicant filed Writ Petition no. 73736 of 2010 before the Hon'ble Allahabad High Court which was disposed of with the direction to the applicant to approach this Tribunal. In pursuance of the order passed by the Hon'ble High Court, the applicant filed Original Application No. 744 of 2012 before this Tribunal.

4. After his retirement, the applicant, after his superannuation on 31.07.2011 submitted representation to the respondents requesting to release his pensionary benefits. However, the respondents released the amount of provident fund only and the remaining amount towards his retiral dues are still to be released. Thereafter, the applicant submitted many representations/reminders praying therein for the release of his pension, but no action was taken on the same by the respondents. As the respondents did not take any action on his representation, the applicant filed Original Application No. 606 of 2013 before this Tribunal, which was disposed of vide order dated 23.05.2013 with the direction to the respondents to decide the representation of the applicant dated 06.12.2012 (Annexure no. 10 of the OA) within two months. The respondents had also filed time extension application seeking two months further time to decide the representation of the applicant, which was allowed by this Tribunal. Finally, vide order dated 06.12.2013 (Annexure No. 1 of the OA) the representation dated 06.12.2012 of the applicant was decided stating therein that the absence period of the applicant would be treated as "no work no pay" and the applicant was directed by the respondents to submit his settlement papers through

SSE (C &W) CNB to arrange settlement dues in his favour. Thereafter, the applicant filed this Original Application challenging the aforesaid order dated 06.12.2013.

5. It has been stated in the OA that the impugned letter/order dated 06.12.2013 issued by the respondent no. 5 is illegal and arbitrary as the applicant has retired from the post of passenger attendant. It has also been stated that it has been settled by the Hon'ble Delhi High Court vide its judgement and order dated 07.02.2008, that all the coach attendants are entitled to get the pay scale of Rs. 110-180 and revised pay scale from time to time along with all consequential benefits and the aforesaid judgment has also been confirmed by the Hon'ble Supreme Court vide its judgement and order dated 23.06.2010. Hence, the order of redeployment from the post of coach attendant to helper was illegal and arbitrary. It has been further stated that no inquiry was contemplated or is pending against the applicant and as such the period of his absence cannot be treated as "no work no pay" and his services cannot be said to have culminated on 30.09.2005 i.e., on the date of order of redeployment.

6. The respondents filed counter affidavit in which it is stated that the applicant was appointed as porter/peon in the grade pay of Rs. 196-232/-. Thereafter, he was promoted as coach attendant in grade pay of Rs. 200-250/- and he was upgraded in grade pay of Rs. 210-270/- (revised 2650-4000/-). As per requirement of coach attendant, posts of coach attendants grade of Rs. 2650-4000 have been surrendered. Due to

surrender of posts, coach attendants were declared surplus staff. As per the instructions of Northern Railway, vide letter dated 13.10.1999 and 13.03.2001, all surplus Coach Attendants were given two chances for redeployment as Ticket Collector in grade of Rs. 3050-4590/- but they were not found suitable to be redeployed as T.C. Thereafter, the applicant and other surplus Coach Attendants were redeployed as Helper Grade-I in the grade of Rs. 2650-4000/- in Mechanical (Carriage & Wagon) & Electrical Departments i.e., equivalent grade to Coach Attendant. It has also been stated in compliance of the order passed by this Tribunal in OA No. 77 of 2005 for redeployment of surplus coach attendants, a revised seniority list was issued vide letter dated 27.09.2005. Surplus Coach Attendants were redeployed as Helper Grade-I in Grade pay of Rs. 260-4000/- in Mechanical (Carriage & Wagon) & Electrical Departments as per existing vacancies at that time. Most of the surplus Coach Attendants joined duty as Helper Grade-I where they were posted on redeployment and some (including the applicant) did not join duty. It has further been stated that as per the letter dated 26.09.2011 (Annexure No. CR-3), the applicant Tej Singh absented himself from duty on 02.10.2005 and did not come back to resume duty and a person who has voluntarily absconded from service cannot ask relief of re-engagement and regularization in service from this Court.

7. The respondents have also filed supplementary counter affidavit on 05.01.2015, by which it is stated that the OA No. 744 of 2012 filed by the applicant for an order or direction to the respondents to pay his salary till 31.07.2011 and all the retiral benefits including pension treating him

as retired passenger attendant, which have been dismissed vide order dated 03.11.2014 of this Tribunal in OA No. 744 of 2012 and hence the claims for salary and retiral benefits which have been dismissed vide order dated 03.11.2014 passed by this Tribunal in OA No. 744 of 2012, cannot be raised again. It has also been stated that this original application is barred by the principle of res-judicata and order II Rule 2 (3) of CPC as once an original application filed by the applicant has been dismissed on 03.11.2014 and matter is subjudice before the Hon'ble High Court in Civil Misc Writ Petition No. 16019 of 2015 this Tribunal has no jurisdiction to try the same issue again which has already been decided by the Division Bench of this Tribunal.

8. Thereafter, the applicant amended the reliefs in the OA restricting his claim to the retiral dues for his undisputed service till 30.09.2005. The respondents have filed another supplementary counter affidavit on 22.02.2017 on the amended reliefs claimed by the applicant for pensionary benefits upto the undisputed service till 30.09.2005. It is stated that the claim is barred by res judicata as the claim for retiral benefits have been dismissed by this Tribunal vide order dated 03.11.2014. Judgement of Hon'ble Apex Court in the case of **C. Jacob Vs Director of Geology and Mining reported in 2008 (2) SCC (L &S) page 961** has also been cited by the respondents in support of their case and copy of the judgement is enclosed in Annexure SCR-2 to the supplementary counter affidavit.

9. The applicant filed rejoinder affidavit broadly reiterating the facts stated in the OA. In the supplementary rejoinder filed by the applicant it is stated that the respondent no. 3 has issued a letter dated 19.08.2014 to respondent no. 4 by which he has requested to forward the settlement forms of the applicant and some other similarly situated persons so that their pension can be released. Thereafter, the CIT, Kanpur allowed the applicant to submit his settlement form, which he submitted on 07.09.2014 but till today neither the applicant has been paid his retiral dues nor his pension has been fixed, however, he has moved several applications. It has also been stated that the present OA is not barred by the principle of *res-judicata* as after the dismissal of OA No. 744 of 2012 vide order dated 03.11.2014, the situation was changed and therefore, the applicant filed the amendment application amending his relief restricting his claim for pensionary benefit for his services till 30.09.2005.

10. Learned counsel for the applicant submitted that according to the order dated 03.11.2014 passed by this Tribunal in OA No. 744 of 2012, the period of his service from 2005 till his date of retirement would be treated as voluntary abandonment of service as decided by the respondents. He further submitted that his services prior to 2005 are undisputed for which the applicant is entitled for pensionary benefits for his services till 30.09.2005. He has also submitted copy of following two judgments in support of his case:-

- (i) VC Banaras Hindi University vs Shrikant 2006 Law Suit (SC) 424
- (ii) Shamim Ahmad Khan Vs State of Bihar 2004 Law Suit (Pat) 332.

In the case of VC Banaras Hindu University (supra), Hon'ble Apex Court held the action of the VC Banaras Hindu University terminating services of the respondents as illegal. The action was taken on the ground that the respondents had voluntarily abandoned the service after he did not join at the end of his leave. The appeal filed by the university was dismissed by Hon'ble Apex Court.

In the case of Shamim Ahmad Khan (supra) decided by Hon'ble High Court of Patna, the issue of automatic dismissal from service after the refusal of the concerned employee at the end of the leave was decided in favour of the employee in view of specific provision of the rules. In the present OA, the applicable rules for the applicant's service are different, hence the findings in the case of Shamim Ahmad Khan (supra) will not be applicable to the present OA.

11. Learned counsel for the respondents submitted that from 02.10.2005, the applicant did not report for duty, the period from 02.10.2005 has been treated as voluntary abandonment of service, which has been upheld by this Tribunal vide order dated 03.11.2014 passed in OA No. 744 of 2012. He submitted that the OA is barred by res-judicata, since the claim of the applicant for retiral benefit in OA No. 744 of 2012 has not been accepted by this Tribunal. He further submitted that the applicant cannot raise his claim again in this OA. In support of his argument, he cited the judgement of the Hon'ble Supreme Court in the case of C. Jacob Vs Director of Geology and Mining and another, copy of which is enclosed at Annexure SCR-2 of the supplementary counter



reply filed on 22.02.2017. He specifically referred to th para 19, 20, and 21 of the said judgement to argue that the case of the applicant does not fall within the category of pension like superannuation pension, retiring pension, pension on absorption in or under a corporation, or a body owned by the Central Government, invalid pension, compensation pension, compulsory retirement pension or compassionate allowance to the Government servants who forfeit their pension on being dismissed or removed. It was, therefore, submitted that the applicant was not entitled to any pensionary benefits.

12. The issue in this case is whether the applicant is entitled for the pensionary benefits based on his services till 30.09.2005, which is not under any dispute. The dispute in this case pertains to the period from 2.10.2015 when the applicant failed to report for duty as Helper (Khalasi) Grade-I on redeployment from his earlier post of Coach Attendant and the period of service from 02.10.2005 till his date of superannuation on 31.07.2011 has been treated as voluntary abandonment of service by the respondents, which has also been upheld by this Tribunal's order dated 03.11.2014 passed in the OA No. 744 of 2012.

13. One of the contention of the respondents is that the applicant had already raised his claim for pensionary benefits in OA No. 744 of 2012, which was dismissed by this Tribunal vide order dated 03.11.2014, copy of which is annexed to the supplementary counter reply filed on 05.01.2015. Therefore, the claim of pensionary benefit in the present OA is barred by the principle of res judicata. It is seen from the order dated

03.11.2014 passed by this Tribunal in OA No. 744 of 2012 that this Tribunal has not adjudicated the applicant's claim for pensionary benefit.

The first para of the above said order states as under:-

*"The present O.A. has been instituted seeking to quash the impugned orders dated 27.09.2005, 30.09.2005 and 22.01.2008 (Annexures 1, 2 and 3 of the O.A.). The applicants have also sought payment of salary in terms of the judgement of the apex court in Civil Appeal No. 1248/2009 dated 23.06.2010."*

There is no mention about the claim for pensionary benefit in the order dated 03.11.2014, where the claim for salary till 31.07.2011 was adjudicated by this Tribunal in the order dated 03.11.2014. Hence, the claim that the applicant's present claim for pensionary benefit in respect of services till 30.09.2005 is barred by res judicata is misconceived and hence, it is not acceptable.

14. In the order dated 03.11.2014, regarding the status of the applicant's services after he did not report back to his duty from 02.10.2005, it was held as under:-

*"13. From the above, it is seen that the inference related to abandonment of service has to be withdrawn from the facts and surrounding circumstances of the case as to whether there has been a voluntary relinquishment on the part of the employee. From the facts of the case, it is evident that the applicants abandoned their duties since 2005 and did not report back (CR-3). It clearly manifests an intention on the part of the applicants to abandon their service. Their cases cannot be treated as that of unauthorized absence. Having regard to this fact, the treatment of the period of absence of the applicants without intimation has rightly been treated by the respondents as the case of abandonment of the service.*

*14. Keeping in view the above mentioned facts and circumstances we find that the O.A. is devoid of merit and accordingly dismissed. No order as to costs."*

Based on the judgement dated 03.11.2014 passed by this Tribunal in OA No. 744 of 2012, the applicant has amended the relief of this OA

restricting his prayer seeking retiral benefits due till 30.09.2005 i.e., in respect of his service period till 30.09.2005, which is undisputed.

15. The respondents have contested the claim in the supplementary counter reply filed by them on 22.02.2017 on the following grounds:-

- (i) That the claim for retiral benefit is barred by the principle of res judicata since his prayer has already been dismissed vide order dated 03.11.2014 passed by this Tribunal in OA No. 744 of 2012.
- (ii) As per the judgement of the Hon'ble Supreme in the case of C. Jacob (supra), the applicant is not entitled for any benefit.
- (iv) The respondents in para-6 of their supplementary counter reply have stated as under:-

"...Since case of applicant does not within any of the category mentioned in Rules-51 to 65 of Railway Servants (Pension) Rules, 1993 and judgement given by Hon'ble Supreme Court in the case of C. Jacob v. Director of Geology and Mining and another (supra), the claim filed by applicant is not sustainable in the eyes of law. Photocopies of judgment of Hon'ble Supreme Court in the case of C. Jacob v. Director of Geology and Mining and another, reported in 2008 (2) SCC (L&S) Page 961 and Rules-51 to 65 of Railway Servants (Pension Rules), 1993 are being annexed herewith and marked as Annexure Nos. SCR-2 and SCR-3 respectively to this supplementary counter reply"

16. On perusal of the judgment of the Hon'ble Apex Court in the case of C. Jacob (supra), which has also been quoted in para-6 of the supplementary counter reply, it is stated as under:-

*"12. When a government servant abandons service to take up alternative employment or to attend to personal affairs, and does not bother to send any letter seeking leave or letter of resignation or letter of voluntary retirement, and the records do not show that he is treated as being in service, he cannot after two decades, represent that he should be taken back to duty. Nor can such employee be treated as having continued in service, thereby deeming the entire period as qualifying service for purpose of pension. That will be a travesty of justice.*

*.....*  
*16. The appellant neither produced the order of termination, nor disclosed whether the termination was by way of dismissal,*

*removal, compulsory retirement or whether it was a case of voluntary retirement or resignation or abandonment. He significantly and conveniently, produced only the first sheet of a show cause notice dated 8.7.1982 and failed to produce the second or subsequent sheets of the said show cause notice in spite being called upon to produce the same. There was absolutely no material to show that the termination was not preceded by an enquiry. When a person approaches a court after two decades after termination, the burden would be on him to prove what he alleges. The learned Single Judge dealt with the matter as if he the appellant had approached the court immediately after the termination. All this happened, because of grant of an innocuous prayer to 'consider' a representation relating to a stale issue.*

.....  
 23. *The petitioner contends that if the minimum service for entitlement to retiring pension was 20 years and not 10 years, Rule 43(2) would not have stated "qualifying service of not less than 10 years". He contended that as Rule 43(2) of the TNP Rules (Rule 49(2)(b) of CCSP Rules) refers to "not less than 10 years service", any government servant who has put in service of 10 years or more is entitled to retiring pension. The said contention is misconceived. As stated earlier, the said rule does not relate to 'entitlement' of pension nor does it prescribe the conditions for eligibility, but only provides how the amount of pension should be calculated in cases where the retiring Government servant is entitled to pension under the chapter V of the pension rules. The said Rule regulates the 'amount' of pension not only in case of retiring pension, but in case of all classes of pension."*

It would be seen from the above that the facts of the petitioner in the case of C. Jacob (supra) and this case are different. In the case of C. Jacob, the petitioner was silent for about 18 years. But in the present case, the applicant was constantly pursuing the matter with the authorities by submitting representations for his alternative posting and for pensionary benefits. Hence, the case of C. Jacob (supra) is factually distinguishable from the present OA. The respondents vide, the impugned order dated 06.12.2013 have stated as under:-

"During the period of your absence from 2005 to July 2011 you did not join the post and fail to perform duty assigned to you. As such your absence period will be treated as "No work No Pay". Your pay is fixed as per Hon'ble High Court's directives and now your settlement dues will be paid on the basis of fixation done by granting higher pay scale. Your

demand to allow Gr. Rs. 330-560 to you is not as per rule hence denied. Your demand to pay arrear of HRA and City Allowance is under process.

In compliance of orders passed by Hon'ble Tribunal in OA No. 858 & 359 of 2006, you were also advised to join the post/duty where you were posted on redeployment vide this office letter No. ET-4/CA/Court Case/CAT/06 dated 22.01.2008 but you failed to comply the orders deliberately & involved yourself in repeated litigation & remain unauthorized absent. For the period of your absence from duty, your statement that you had not been spared & allowed to join duty on the re-deployed post, is a misleading averment.

I find that your settlement dues will be paid by granting higher pay scale as extended by Hon'ble High Court, on the basis of last rate of pay so fixed and drawn by you during your actual service. You are advised to fill and submit your settlement papers through SSE (C&W) CNB, to arrange settlement dues in your favour.

Your representations dated 06.12.2012 is disposed off accordingly."

Hence, as per the above order, the period from 2005 to July, 2011, the absence of the applicant has been treated as "No Work No Pay".

17. Subsequently, vide order dated 19.08.2014 (Annexure No. SA-1 to the supplementary affidavit dated 17.03.2016 filed by the applicant), the respondents have stated as under:-

"सूच्य है कि रेलवे बोर्ड के पत्र सं० पीसी -III /2008 /सीटीसी -II /1 दिनांक 24 .2 .12 ( फोटोप्रति सलंगन है) के द्वारा कोच अटेन्डेन्ट का पद नाम पैसेंजर अटेन्डेन्ट ग्रेड 1 वेतनमान रु 0 110 -180 वर्ष 1960 द्वितया वेतन आयोग के अनुरूप किया गया है तदनरूप कार्यवाही सुनिश्चित की जाए ।

अतः आपसे अनुरोध है के ऐसे सरप्लस भूतपूर्व पैसेंजर अटेन्डेन्ट ग्रेड 1 , कर्मचारियों का, जिन्हे रिडेप्लॉयमेंट पर यांत्रिक एव विदुत विभाग में हेल्पर ग्रेड-1 पद पर वर्ष 2005 में पोस्ट किया गया था और रिडेप्लॉयमेंट पर कार्यभार ग्रहण न कर अनुपस्थित रहते हुए आयुसीमा के अन्तर्गत सेवा निवृत्त हो गए है, समापन फॉर्म भरवाकर संबंधित मुख्य टिकट निरीक्षक द्वारा अग्रसारित कराकर हिज कार्यालय को सीघ्रतिशीघ्रा भेजने की व्यवस्था करे ताकि समापन भुगतान की कार्यवाह की जा सके ।

कृपया इसे अत्यावश्यक समझे।"

From above, it is clear that no order was passed by the respondents to the effect that no pensionary benefit was admissible to the applicant.

18. Even after passing of the order dated 03.11.2014 of this Tribunal, where period of absence of the applicant from 2005 till his age of superannuation was considered to be voluntary abandonment of service, no order was passed by the respondents to decide if the applicant was entitled for any retiral benefits as per rules, or if any such order is passed, copy of that order has not been furnished by the respondents alongwith their pleadings. No action to terminate the services or forfeit the qualifying service prior to 02.10.2005 have been issued by the respondents till date, and neither there is any record to that effect available in this case, nor any order has been furnished along with the pleadings of the respondents. Further, no rule or instruction of the Railway Board has been cited by the respondents to prove that voluntary abandonment of service w.e.f., 2005 would automatically result in forfeiture of past services of the applicant without initiating any proceedings on the part of the respondents.

19. On perusal of the Railway Servants (Pension) Rules, 1993, it is seen that the Rule-42 deals with effect of interruption of service on the pensionary benefit of Railway Servants, which is quoted below:-

"42. Effect of interruption in service-

(1) An interruption in the service of a railway servant shall lead to forfeiture of his past service, except in the following cases namely: - (a) authorised leave of absence; (b) unauthorised absence in continuation of authorised leave of absence so long as the post of absentee is not substantively filled; (c) suspension, where it is immediately followed by reinstatement

whether in the same or a different post, or where the railway servant dies or is permitted to retire or is retired on attaining the age of compulsory retirement, while under suspension; (d) transfer to non-qualifying service in an establishment under the control of the Government if such transfer has been ordered by a competent authority in the public interest; (e) joining time while on transfer from one post to another.

(2) Notwithstanding anything contained in sub-rule (1) the appointing authority may, by order, commute retrospectively the period of absence without leave as extraordinary leave."

As per the above rule, the status of the service of the applicant after 2005, if it is considered as interruption in service under Rule-42, then it shall lead to forfeiture of past service of the applicant. But, the respondents have not taken any such action in the case of the applicant. Further, under sub rule-2, of the Rule-42, it is stated that the Appointing Authority has the power to commute the period of absence without leave retrospectively as extraordinary leave, which in other words would imply continuity in service for the purpose of pensionary benefits.

20. In view of the above discussions and taking into the fact that the respondents have not issued any specific order regarding the forfeiture of past services of the applicant for the purpose of pension under the Railway Servants (Pension) Rules, 1993 and that there is no dispute about the applicant's service till 30.09.2005, the respondents are directed in the interest of justice, to finalize the pension and retiral dues based on the applicant's services till 30.09.2005 as per rules within three months from the date of receipt of a copy of this order.

21. The OA is allowed in terms of the para 20 above.

**(GOKUL CHANDRA PATI)**  
**MEMBER-A**

Arun..