

Central Administrative Tribunal
Principal: New Delhi

OA No.130/2015

Reserved on: 22.12.2015
Pronounced on:05.01.2016

Hon'ble Dr. B.K. Sinha, Member (A)

Pran Nath Mehta s/o Sh. G.M. Mehta
Retd. CSI, Railways Service,
Central Railway,
Mathura.

...Applicant

(By Advocate: Mr. H.K. Gangwani)

Versus

1. Union of India through
Chairman, Railway Board,
Rail Bhawan, New Delhi-110 001.
2. Member (Electrical),
Railway Board, Rail Bhawan,
New Delhi – 110 001.
3. Additional Member (Signal),
Railway Board, Rail Bhawan,
New Delhi – 110 001.
4. General Manager,
North-Central Railway,
Allahabad – 211 012.
5. Divisional Railway Manager,
North Central Railway,
Jhansi.

...Respondents

(By Advocate: Sh. Shailendra Tiwari)

ORDER

The applicant, who was a railway employee recruited in the year 1964, sought voluntary retirement by serving a notice to the respondents on 22.12.1990. However, the aforesaid notice of voluntary retirement had neither been accepted nor rejected as he did not receive any communication from the respondents to that effect. It is the case of the applicant that he re-joined the services of

the respondents for a brief period and would have attained the age of superannuation on 01.04.2006 in normal course. When he found that his representations had not been answered, he has filed the instant OA praying for the following relief(s):-

- “(a) Release applicant’s all retiral dues, pension (including commutation), DCRG, GPF, leave encashment, group insurance, etc., and release the payments to the applicant.*
- (b) Award interest @ 18% till payment is made to the applicant.*
- (C) Any other relief or order in applicant’s favour which this Hon’ble Tribunal considers appropriate in the facts and circumstances of the case.”*

2. The applicant submits that as per the terms of voluntary retirement, he would be deemed to have retired consequent to his notice dated 22.12.1990 seeking voluntary retirement within three months, if nothing were to be heard from the respondents to the contrary. The applicant has also referred to the communication dated 21.05.2001 issued by the respondents perusal whereof reveals that the applicant had retired in August, 1990 (page 11 of the paper book). The applicant further submits that it is an anomalous position that while the notice of retirement had been given in December, 1990, the respondents are treating him to have retired in August 1990. It is the argument of the applicant that his prayer for voluntary retirement should have either been accepted or as per the relevant rules, he would be deemed to have retired from service w.e.f. 22.03.1991 i.e. after expiry of three months from the date of notice

for voluntary retirement. Despite this, his retiral dues have not been settled including the Provident Fund, which is his own contribution.

3. The applicant also submits that the respondents have consistently taken the stand that no service records in respect of the applicant are available with them. However, this is not possible as the service records are the permanent records and, therefore, this plea will not sustain in light of the decision of this Tribunal in *T.R. Utpal vs. Union of India & Ors.* [OA No. 2560/2013 decided on 16.12.2015]. The applicant along with one of the representations dated 14.10.2011 has also enclosed his service records to the respondents, which lists at least 15 stations of the respondents where he had worked/transferred.

4. The learned counsel for the applicant also drew my attention to the fact that several superior authorities including one Ravinder Kumar, IRPS, who also written to the Sr. DSTEJHS on 31.12.2013 (page 22 of the paper book) reciting therein that despite his retirement in August, 1990 the applicant had not been released his retiral dues and requested the competent authority to help the applicant in settlement of his dues.

5. Per contra, Sh. Shailendra Tiwari, learned counsel for the respondents rebutted the averments of the applicant and submitted that a good deal of efforts has been made but no records relating to the applicant has been unearthed till date. The learned counsel has

also pleaded limitation and drew my attention to paras 4.2, 4.3 and 4.9 of the OA in this regard. He further submits that the fundamental discrepancy between the claim of the applicant is that he submitted his request for voluntary retirement on 22.12.1990 and his voluntary retirement had taken place in August, 1990 gives rise to suspicious and the case has been connected after an inordinate delay to reap advantage from the loss of records and the lost in memory. The learned counsel contends that the pleading of the applicant that he joined under pressure at one stage further lends ways to the suspicion. He vehemently stated that no such request of the applicant had been received in the respondent-organization nor any order was issued thereon, and the applicant in all likelihood was a confidence trickster seeking to reap advantage from delay.

6. I have carefully gone through the pleadings of rival parties and patiently heard the arguments advanced by their respective learned counsels.

7. The sole point to be determined is that whether the applicant had worked in the respondent-department and applied for voluntary retirement. This is largely a matter of fact. As regards the issue of limitation, it is well settled principle that in matters like pension, the law of limitation does not apply as has been held by the Hon'ble Supreme Court in *M.R. Gupta Vs. Union of India & Ors.* [1995 (5) SCC 628].

8. Reverting to the main issue, we are influenced by the fact that the applicant has a large number of documents which tend to indicate that he was an employee of the Railways and that he had at one time sought voluntary retirement. In this regard, he has submitted two documents, which compel my attention one of which is a copy of letter (page 11 of the paper book) of the letter of Chief Personnel Officer (G) of the Central Railway, which is being extracted hereunder for the sake of convenient:-

"Sub: Representation dtd. 14.10.11 of Shri Pran Nath Mehta CSI (C) (MTJ Vol. Retired in 1990.

Shri Pran Nth Mehta CSI (C) MTJ Vol. Retired from Railway Service in August, 1990. Shri Mehta Retd. CSI has represented that he has not been paid retirement dues as he was unwell/sick after giving notice of his retirement.

A copy of the representation is enclosed for ready reference.

You are requested to examine the case in light of his/her representation & furnish your remarks to this office at the earliest (By fax) to enable us to reply to the representation accordingly.

An early reply will be highly appreciated."

Similarly, I find that the applicant in his representation dated 14.10.2011 (page 15 of the paper book) has given a list of his postings with designation and period of posting while in service. The contents of the said letter are being reproduced for the sake of greater clarity:-

"Sub:- Payment of My settlement dues after due date of my retirement on 31.03.2006.

Ref:- My appointment letter no.HPB/ST/REC/APRR DT 20-06-66 for Asstt. Signal Inspector and 14-02-1962 as Trade Appr. ESM GR-C Mumbai Division.

Sir,

I, Pran Nath Mehta was appointed as trade appr ESM gr-III on 14-02-1962 and then on 20-06-1966 appointed as Asstt. Sig. Inspector Gr. 175-6-240 on C. RLY. Vide letter No. In Ref.(copy attached).

My date of birth as per record is 07-03-1946.

I, worked on different divisions as detailed below as my memory.

- 1. ESM-C under CSI Byculla 14-02-62*
- 2. ESM-C under CSI (C) Thane 1964 to 1966*
- 3. Appr ASI from 20-06-1966 Mumbai Division and training at Secunderabad upto March, 1967*
- 4. Then posted as ASI(M) under CSI C.R. Kalyan RRI upto Sept. 1967*
- 5. Posted then from Sept., 1967 under CSI KYN as ASIU Igatpuri Upto Sept 1974*
- 6. Then posted as ASI_Katni Jabalpur Disionunder CSI(M)-Katni from Sept 1974 to 1978*
- 7. Then posted as ASI-Jabalpur in DSTE JBP Office as ASI-L/R from 1978 to March 1979.*
- 8. Then posted as ASI (M) Mathura on Jhansi Division under CSI(M) Mathure C. Rly from March, 1978 to Jan.,1981.*
- 9. Then posted as ASI_Ballbgarh under CSI(M) Mathure Jan.1981 to 1982*
- 10. Then promoted as Jr. S.I. and posted as Jr. SI Palwan from 1982 to April, 1984*
- 11. Then promoted as CSI and posted on Nagpur Division on Nagpur Division in Sr. DSTE Office Nagpur April 1984 to May, 1984*
- 12. Then posted as CSI C.Rly Bina on Jhansi Division from May 1984 to Nov.1984*
- 13. Then transferred to Bhopal Division as CSI in DSTE Office Bhopal from Nov 1984 to July 1985 (Under sick for 3 months from July to Oct 1985)*
- 14. Then transferred as CSI (C) Gr. 700-900 Mathura under Dy. CSTE (C)MTJ From Oct.,1985 to Aug.1990.*
- 15. Then I submitted a notice to Dy. CSTE (C) Mathura for my voluntary retirement in 1990 due to my memory lost problem as told to me by my wife who took me to my native place Kurukshetra and her native place Jullundar for looking after me and the children.*

16. I do not recollect anything upto May, 2008

17. Now since I regained some of memory due to my wife's labour etc., I request you to pl. settle my retirement dues treating my regular service upto Aug., 1990 from 1962.

I had only few record like my recruitment letter of 1966 as Appr. ASI and a Commendation Certificate by D S CR Mumbai Dt 22nd July, 1967. No other record is traceable to my upset condition which i am submitting along with this letter."

9. Considering the arguments of both the parties, we find that there are indeed lapses on part of the applicant inasmuch as he could not approach the Tribunal earlier. However, we are swayed by the fact that it is virtually impossible that the service records of applicant, which is treated to be the permanent records and not to be destroyed, are not available with the respondent-organization. Moreover, the plea of the respondents that there are no records available does not appear tenable on face of it in view of the details furnished by the applicant himself.

10. I also take note of the fact that the applicant was mentally disturbed and in his application dated 23.08.1991 (page 18 of the paper book), he has clearly mentioned that he had sought voluntary retirement on account of his mental disturbance which did not permit him to undertake sensitive services like CSI duties. It is also intimated that he will be at Punjab and given his address as well. For the sake of greater clarity, the aforesaid letter dated 23.08.1991 is being extracted hereunder:-

"Sir,

It is again to advice you that nothing has been done on my notice of three months before Vol. Retirement and I have

been forced to join service at Mathure after due Rly Doctors certificate.

I request your honour to pl. settle my case early since my Mental disturbance does not allow me to continue on any sensitive services like CSI duties or my home children managements which my wife is managing.

My wife is forcing me to take to her parents at Jullundar for recuperment etc. Hence, if at all I leave I will be at Jullundar – Punjab on the following address and my settlements may be sent there only.”

11. Here, I feel that so many records, which have been produced by the applicant in this case, cannot be manufactured with a back date. Some of the inconsistencies could be ascribed to his mental disturbance. However, the onus was entirely upon the respondents to have proved that the applicant was not their employee and was an imposter, which I find that the respondents have failed to prove.

12. I am also swayed by the fact that in a similar decision in *T.R. Utpal Vs. Union of India & Ors.* (supra), the dispute was relating to the year 1985 and his records were missing. However, the Tribunal recognized in its order dated 16.12.2015 that the claim related to his pension which does not die out or becomes time barred with the passage of time. It was for the respondents in that case to search out the records in respect of the applicant therein or else his words on oath have to be accepted.

13. In totality of facts and circumstances of the case, I am inclined to agree with the argument advanced by the learned counsel for the applicant and, therefore, allow the prayer (a) of the OA. However, considering the fact that the applicant himself had been mentally

disturbed, no interest will be paid to him on the retiral payments to be made nor any cost is to be awarded.

(Dr. B.K. Sinha)
Member (A)

/AhujA/