

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1116/2017

Reserved on:21.08.2018

Pronounced on:31.08.2018

Hon'ble Ms. Praveen Mahajan, Member (A)

Prem Joseph
Aged 75 years
S/o Late Shri Joseph
Ex-Fireman 'C' Group D Loco Shed
Tughlakabad, Delhi Division, Northern Railway
Resident of E-51, House No.12
Mangi Rajapur, Sarai Kalekhan
Delhi – 110 013.

... Applicant

(By Advocate: Shri P.K.Ghosh)

VERSUS

1. Union of India through
The General Manager
Northern Railway, Baroda House
New Delhi – 01.
2. The Divisional Railway Manager
Northern Railway, State Entry Road
New Delhi – 55.

... Respondents

(By Advocate: Shri Kripa Shankar Prasad)

O R D E R

In the OA the applicant has sought the following reliefs :-

- “(a) To allow the present OA and set aside the impugned order dated 17.01.2017 and direct the Respondents to reconstruct the service records of the Applicant.
- (b) To direct the Respondents to release the retiral benefits and pensionary benefits with all the consequential benefits;
- (c) To pay the cost and expense of litigation and any other relief which could be deemed fit for the Applicant.

- (d) To pass any other order (s) or further orders as may be deemed fit in the interest of justice and equity."

2. The brief facts of the case are that the applicant was appointed as Loco-Cleaner under Loco Foremen, Ambala Cantt on 23.12.1961. He was promoted as Foreman Grade 'C' on 08.05.1963. The applicant was enrolled in Territorial Army on 24.09.1964 as a Foreman Grade 'C' vide Army No.12016774 Company 174 HQ971 Red Fort, New Delhi. In the year 1986 he (reportedly) became seriously ill and underwent treatment for TB and remained under sick list upto 1987. After medical treatment under the Railway Authority as well as private hospital, he was declared fit for performing his duties but was not allowed to resume his duty by the respondents. The applicant retired on normal superannuation in the year 2002.

3. The applicant avers that no removal order or termination order or any other order has been issued to him since the respondents were well aware about his serious illness. He states that from 23.12.1961 till 1986 he has completed more than 25 years of service and is entitled for pension and gratuity etc.

4. In the seniority list issued by the Divisional Office, Northern Railway, New Delhi the name of the applicant figured at Sl. No.654. The service particulars of the applicant were sent to the office of Record Officer, Bengal Engineers Group Record, Roorkee on 18.09.2008 as well as to the Sr. Divisional Personnel Officer, New Delhi on 22.09.2008 for verification.

5. On 27.01.2009, the Divisional Personnel Officer, New Delhi asked the APO/Settlement to release the PF in favour of the applicant. Vide communications dated 27.01.2011 and 26.06.2012 the applicant was asked by the respondents to contact the concerned Personnel Office for payment of his retiral dues. When a number of representations in this regard yielded no result, the applicant approached this Hon'ble Tribunal by filing an OA No.771/2014. Vide order dated 05.03.2014, the Tribunal disposed of the said OA and directed the APO to release his pensionary benefits, as per rules. Vide their impugned order dated 15.05.2014 the respondents have stated that the pensionary benefits cannot be granted to the applicant since the matter is 25 years old and they are not in a position to trace his service record.

6. The applicant filed another OA No.3125/2014 which was disposed of vide order dated 27.09.2016. The grievance of the applicant is that despite repeated directions the respondents have failed to reconstruct the service record of the applicant and to pay his retiral dues, which is in violation of Section 14, 16 and 18 of the Constitution.

7. In their counter affidavit, the respondents state that in the first order of the Tribunal dated 05.03.2014 the OA No.771/2014 was disposed of at the admission stage itself by directing the respondents to pay the admissible pensionary benefits to the applicant. The respondents issued a speaking order dated 15.05.2014 (Annexure R-4) and informed the applicant that -

"I have carefully considered your representation and record of the case personally and find that the matter pertains to the year

1986 and now after such a long period of 25 years this office is not in a position to lay hands on your Service Record and Personal File or any other relevant document. Further, as mentioned earlier you were asked to provide any document if it was in your possession but you failed to do so. In the absence of Service record and Personal file, no details regarding your pay particulars is available. Hence, it is not possible to process your case for arranging pensionary benefits. Accordingly, the directions of Hon'ble CAT dated 05.03.2014 in the subject OA is complied with."

8. The applicant again filed an OA-3125/2016, which was disposed of through a speaking order dated 17.01.2017. Even the C.P No.35/2017 filed for non-compliance was closed on 10.02.2017.

9. The respondents contend that the matter pertains to the year 1986 and after a lapse of 33 years their office is not in a position to retrieve any documents of the applicant, in the absence of which his request for grant of pensionary benefits cannot be processed further.

10. I have gone through the facts of the case. The impugned order dated 17.01.2017 rejecting the relief claimed by the applicant is in compliance to the order of the Tribunal dated 27.09.2016, passed in OA No.3125/2014 wherein it was directed that :

"4. From the letter dated 27.01.2009, one thing is clear that the applicant was in Government service and he was absenting himself from duty from the year 1986. Therefore, the respondents have to consider the period of 25 years of service with the Govt. but at the same time, it is acknowledged that since the records are destroyed, the applicant will have to co-operate with the respondents to provide whatever documents that are available with him to establish the period of service as well as leave etc. taken by him. Therefore, this OA is disposed of with a direction to the applicant to reply to the respondents' letter dated 29.02.2012 and provide whatever documents are available with him to the respondents for them to take a view in the matter. The applicant should make such a representation along with documentation within a period of 30 days from the date of passing of this order and the respondents shall take a decision on that within a period of 90 days from the date the documents are provided by the applicant."

11. It appears that though the applicant made a representation to the respondents but he could not produce any supporting record, leaving the respondents no option but to pass the following order dated 17.01.2017 :-

"In compliance of this, you had submitted your representation dated 07.10.2016 along with 39 Annexures. However all these annexures are already existing in DRM office. No new records have been provided. In light of this it is being informed once again that your case pertains to year 1986. After a period of 30 years you have submitted the representation regarding your settlement dues/pensionary benefits.

In view of the vintage nature of your request this office is not in a position to lay hands on your service record/personnel file. In absence of service record/other records your case cannot be processed further, your request is badly time barred. As per instructions contained in P.S. No.1656, such records are not maintained."

12. The issue raised in the current OA has already been decided by the Tribunal on 27.09.2016 in OA No.3125/2014 wherein Specific directions were given to the applicant to reply the respondents' letter dated 29.02.2012 and to provide whatever documents were available with him to enable them to take a view in the matter. The applicant has not able to do so.

13. As held in the order dated 27.09.2016 the applicant was in government service, but he was absenting himself from duty since 1986. Hence it was directed that the applicant himself should provide some assistance regarding period of service etc. to enable the respondents to take a view in the matter and to establish the period of service and leave (etc.) of the applicant. Despite clear directions, the applicant has not been able to provide any such documents.

14. Reportedly, the applicant has been absenting himself from duty w.e.f. 1986. It will not be fair to expect the respondents to put together a jig saw puzzle after three decades, without any assistance from the applicant. In view of lack of co-operation by the applicant, the impugned order dated 17.01.2017 cannot be faulted, and no further direction can be issued at this stage. The OA is dismissed. No costs.

(Praveen Mahajan)
Member (A)

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