

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

**O. A. No. 260/578 OF 2017**  
**Cuttack, this the 25<sup>th</sup> day of May, 2018**

CORAM  
**HON'BLE MR. S. K. PATTNAIK, MEMBER(J)**

.....

Duryodhan Behera,  
aged about 75 years,  
S/o-Late Ratnakar Behera,  
At-Gujarpur, PO-Vairapur,  
P.S-Jagatpur, Dist-Cuttack.

...Applicant

(By the Advocate- M/s. S. B. Mohanty, S. Mohapatra)

-VERSUS-

**Union of India Represented through**

1. Secretary, Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, East Coast Railway, At-Chandrasekharpur, Bhubaneswar, Dist-Khurda.
3. Additional General Manager-cum-Director Public Grievance, E.Co.Rly, Chandrasekharpur, Bhubaneswar, Khurda.
4. Divisional Railway Manager (DRM), Khurda Road Division, East Coast Railway, At/PO-Jatni, Dist-Khurda.
5. Chief Personnel Officer (CPO) East Coat Railway, Rail Bhawan, Chandrasekhrpur, At/PO-Bhubaneswar, District-Khurda.
6. Assistant Personnel Officer under the DRM Khurda, East Coast Railway, Jatni, District-Khurda.

...Respondents

(By the Advocate- Mr. B. B. Pattnaik)

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## **ORDER**

**S. K. PATTNAIK, MEMBER (J):**

Applicant, Sri Duryodhan Behera, who is stated to be 75 years of age, has filed this O.A. praying for the following reliefs:

*“(i) To admit the Original Application.*

*(ii) To quash the impugned decision/letter of Asst Personnel Officer (Khurda Road) dated 29.08.2016 & 15.12.2016 (Annexure-14, series)*

*(iii) To direct the Respondents for reconstruction of the service Records (Pension file) in view of Rule 79( C) (ii) Rly. Service Pension Rule 1993 read with provisions under Central Civil Service Regulation (Chapter-XLVII) (Article 905-917) by accepting the carbon copy official documents like Appointment order, Transfer order, P.F slip, Certificate showing as a member of the Rly Co-operative Society and other allied documents filed in shape of affidavit, duly indentified by two Retired Rly employee and same be verified for the purpose of pension.*

*(iv) To direct the respondents more specially the Divisional Railway Manager, Khurda Road ECO Railway to sanction Minimum Pension in view of Rule-69, 2(b) of Railway Services Pension Rule, 1993 and also to direct the Respondents to release his Provident Fund, Gratuity and other retrial dues as prescribed under Rule-3(22) and (24) of railway Service Pension Rule, 1993.*

*And pass such other order/orders and/or directions/directions as the Hon’ble Tribunal deems fit & proper.”*

2. The claim of the applicant is that he was initially appointed as Clerk on 22.01.1959 under the then South-Eastern Railway and was posted under the Divisional Manager, Khurda Road. During the course of his service, he was promoted to the post of Senior Clerk in 1970. He has submitted that vide Annexure-A/1 dated 15.02.1972, his seniority

has been reckoned from 22.01.1959. He has stated to be holder of P.F. Account No. 241993 (Annexure-A/3) having deposit of Rs. 982/- by 31.03.1973 and was also a member of the South Eastern Railway Employees Co-operative Credit Society (Annexure-A/4 dated 31.12.1975). Applicant has also relied on the quarter allotment letter dated 01.05.1972 (Annexure-A/5) to buttress his claim regarding his appointment. While he was working as Sr. Clerk he suffered with some mental disorder and submitted a series of leave applications on medical ground (Annexure-A/6 series). Even if the departmental authorities asked him to report to duty and explain about his absence, he could not attend the office due to his illness and, in the meantime, he attained the age of superannuation in the year 1996. After his recovery from the illness, he sought some information under RTI to which he was replied vide letter dated 05.12.2013 (Annexure-A/7 series) that since he had not mentioned his date of retirement, Place/Office of last working, P.F. number & PPO number to trace out his service record, no information can be furnished. Grievance of the applicant is that despite giving the required information, neither his service book was traced nor he was paid the retiral benefits as per Railway Services Pension Rules 1993. Thereafter, the applicant filed O.A. No. 260/00490/2014 before this Tribunal and in pursuance of the order dated 26.06.2014 passed by this Tribunal, Respondents considered the representation of the applicant and passed speaking order dated 11.12.2014 (Annexure-A/11) with the observations that despite their all efforts to find out any D&A case file

pertaining to the year 1976, i.e. the year he remained absent unauthorizedly, the same could not be traced and in the absence of such crucial document containing personal as well as service details of an employee during his span of service it is beyond the ambit of Railway Administration either to accept or to consider his request for payment of settlement dues at this distant date after nearly 38 years. It was further clarified that there is no Railway Board guidelines for payment of settlement dues in absence of such vital document such as Service Record and, accordingly, his request was regretted. Applicant's further mercy petition to reconstruct his service record as per the available official documents with him has been rejected vide Annexure-A/14 series dated 29.08.2016 and 15.12.2016 on the ground that after lapse of about 40 years of unauthorized absence from duty, it is not possible to reconstruct the service record and to release the settlement benefits.

3. Respondents have filed a counter opposing the prayer of the applicant. According to the Respondents, despite their best efforts to trace out the D&A case record, if any, against the applicant due to his unauthorized absence or the order book pertaining to the period for the year 1979-1980, Sr. Divisional Engineer, Khuda Road vide letter dated 04.12.2014 (Annexure-R/9) communicated that no such order book pertaining to the year 1979 and 1980 is available in their office. Vide letter dated 05.12.2014 (Annexure-R/11), Ch. O.S. Engg/Bills also informed that after verifying all records, the applicant's service record is not traceable. Respondents have taken a plea that in the absence of vital

documents such as copies of appointment order, posting order, promotion order, if any, copy of any pass availed, medical ID card issued during his 15 years of service, it is not feasible to examine and appreciate applicant's claim for payment of settlement dues.

4. On going through the speaking order dated 11.12.2014, it is crystal clear that the applicant is claiming for pension by way of a representation dated 06.12.2013 though after submitting leave application dated 11.10.1976 he had not assumed duty and attained the age of superannuation in 1996. Claiming retiral benefits nearly after 38 years cannot be extended without substantial documents of appointment, promotion and last pay certificate. The Railway Administration has categorically reflected in the speaking order that in the absence of document no effective order can be passed for settlement of retiral dues. Even after the long absence from duty, i.e. from 1976 to 1996, claim of pensionary benefits in 2013 for the first time cannot be permitted to be entertained being hopelessly barred by limitation. Pension may be recurring right but such recurring right flows only after establishment of right. Since the applicant could not establish his legal right within a reasonable distance of time and as the documents are not available, Respondents cannot be directed to release the pensionary benefits without substantive and corroborative document. There is absolutely no explanation for such inordinate delay and delay defeats justice. The right not having been established within the period of limitation, the claim of the applicant was clearly barred by limitation as has been observed by

the Hon'ble Supreme Court in the case of *Union of India Vs. Surjit Kaur [(2010) 1 SCC(L&S) 735]*.

5. In view of the discussions made above, the O.A. being devoid of merit is dismissed. No costs.

(S.K.PATTNAIK)  
Member (Judl.)

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