

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**PATNA BENCH, PATNA**

**OA No. 050/00706 of 2017 & MA No. /050/377/2017**

Date of order 23.07.2018

**CORAM**  
**HON'BLE MR. JAYESH V. BHAIRAVIA, MEMBER (J)**

1. Kamla Prasad, s/o Late Ram Pukar Yadav, r/o village-Bela, Post Office: Krishnagard (Deoria), PS Arrah Mufasil, District; Bhojpur (Arrah), Bihar.

..... Applicant.

**By advocate: Sri Deo Raj Kumar Prasad.**

Verses

1. The Union of India through the Secretary, Railway Board, New Delhi-110001.
2. The Chairman of the Railway Board, Govt. Of India, Railway Ministry, New Delhi-110001.
3. The General Manager, Eastern Railway, Hajipur, Bihar-844401.
4. The Divisional Railway Manager, Danapur Division, Eastern Railway, Danapur (Khagaul), Patna-801105.
5. The Divisional Personnel Officer, Eastern Railway, Danapur (Khagaul), Patna-801105.
6. The Traffic Inspector Security, Jehanabad Railway Station, E.C. Railway, Jehanabad (Bihar).804401.
7. The Station Master, Jehanabad Railway Station, Jehanabad (Bihar) 804401.

..... Respondents.

**By advocate: Sri K.P. Narayan.**

**ORDER (ORAL)**

**Per Mr. Jayesh V. Bhairavia /M (J):-** In the instant OA, the applicant has sought direction upon the respondents to pay his retrial dues with statutory interest.

2 The brief facts of the applicants are as under:-

(i) The applicant, namely Shri Kamla Prasad, initially appointed as Liverman Gr.I at Mughalsarai on casual basis on 10.10.1965. Later on his service was regularized vide order dated 04.10.1972, and subsequently appointed as Screened Substitute Box Porter in scale of Rs. 70-85 (AS) on 10.10.1972. Thereafter On 05.03.1987, he was promoted as Liverman-II in scale of Rs. 210-270/800-1150 (RP), and he was transferred and posted under TI/Patna vide office order no. 892/88 dated 29.11.88.

(ii) According to the applicant, he worked in Railway till 26.01.1990. It is further contended that while returning from office on 26.01.90, his mind got upset and since then he has been wandering. He did not go to his house or office. He came to his house only in the month of August, 2003. He had filed representation dated 07.04.04 addressed to DRM, Danapur for his reinstatement followed by reminder dated 24.01.2008. However, the respondents have not taken any decision on his representation and subsequently he retired on superannuation on 31.01.2008, he was not paid any retiral dues. Therefore, he had filed OA 520/08 before this Tribunal. The said OA was disposed of by this Tribunal vide its order dated 15.10.2008 (Annexure-A/1). The Tribunal had disposed of the OA by recording following observations:-

*“4. Admittedly, the applicant did not work after 26<sup>th</sup> January, 1990. He filed representation in the year 2004*

*after lapse of more than 14 years and instant application after 18 years.*

5. *Apparently, the OA is barred by delay and laches. However, since the claim is only with regard to payment of retiral dues, therefore, we do not consider it appropriate to dismiss this application on the ground of limitation.*

6. *Accordingly, we hereby direct the respondent no.4 to examine the case of the applicant and verify the same from the record and pay, if due the retiral dues to the applicant within a period of three months from the date of receipt of a copy of this order along a copy of OA. The applicant is directed to serve the copy of the OA and certified copy of this order to the respondent No.4 within ten days of the receipt of certified copy.”*

(iii) It is further submitted by the learned counsel for the applicant that the directions issued by this Tribunal in aforesaid OA was not complied and, therefore, the applicant had filed contempt petition being CCPA No. 115/2013 in OA 520/08 along with MA 519/2013 (for condonation of delay). This Tribunal, vide its order dated 14.01.2014, dismissed the said OA and MA, however, liberty was granted to the applicant to file a fresh OA to agitate his matter with respect to decision dated 04.10.2010 of the respondent which was taken in compliance of the order passed by this Tribunal in OA 520/2008 (Annexure-A/3).

(iv) However, the applicant aggrieved with the order passed by this Tribunal dated 14.01.2015 in CCPA 115/2013 and MA

519/2013, he had filed writ petition before the Hon'ble High Court of Patna by way of CWJC No. 4124/2015. The said petition of the applicant was dismissed vide order dated 19.07.2016 by the Hon'ble Patna High Court. Thereafter, the applicant has filed the present OA on 03.11.2017 (Annexure-A/4). In the said order the Hon'ble High Court of Patna has observed that “ *we find that the invocation of jurisdiction by the petitioner is misconceived. The order was passed by the Divisional Railway Manager in October, 2010, but instead the challenging the same, the petitioner has filed a contempt petition that too in the year 2013. An order passed may be after specific period of representation does not become non est or void. It is a valid order, which has to be disputed by the aggrieved person in accordance with law. Since, no action has been taken against the order passed by the Divisional Railway Manager, we do not find any ground to interfere to pass by the Tribunal refusing to condone the delay and to initiate contempt; proceeding. It is, accordingly, dismissed.*”

(v) The learned counsel for the applicant further submit that the hon'ble High Court had passed the order on 19.07.2016 and the applicant had received the copy of it after three months and thereafter due to his pathetic poor condition could not file the OA in prescribed time limit to challenge the legality and propriety of order dated 04.10.2010 passed by the DRM whereby his case for a pension was finally not decided. Learned counsel for the applicant further submitted that he had filed MA

377/2017 for condonation of delay, the said MA be allowed, considering the poor condition of the applicant.

(vi) Learned counsel for the applicant further submitted that the applicant has filed supplementary affidavit and the copy of impugned order dated 04.10.2010 has been placed on record,(Annexure-A/6).

(vii) It is further contended by the l/c for the applicant that the applicant remained absent from his duty for the period January, 1990 till his superannuation on 31.01.2008. During this period of 17 years, the respondents had not initiated any action with respect to his absence from duty, no show cause had been issued by the respondent in this regard. The applicant did not remain on his duty due to mental agony and economical crisis. The applicant and his family are living the life as a beggar. Therefore, he has submitted that considering his pathetic condition the unauthorized leave of 17 years may be ordered to regularized by the respondents and further direction be issued to the respondents to grant pension and other reitiral benefits on sympathetic grounds.

3 (i) In contra, the respondents had filed their WS, denied the contentions of the applicant. The l/c for the respondents raised the preliminary objection for maintainability as well as admission of this OA, on the ground that the instant OA is filed after gross delay, the applicant has not explained the delay caused in filing the present OA. It is further submitted that the reasons stated for condonation of delay in the MA of applicant is not sufficient to accept it and therefore,

requested to dismiss the MA for condonation of delay. It is further submitted by the l/c for the respondent that in response to order passed by this Tribunal in OA No. 520/2008, the case of the applicant was considered by the DRM, EC Railway, Danapur vide order dated 04.10.2010, and it was found that the applicant remained absent from his service for about 20 years without any sanction or leave, till and until the period which is of unauthorized absent regularized by the competent authority, his case cannot be considered for pension therefore, it was decided by the DRM to obtain appropriate decision from the higher authority accordingly, his case was forwarded to the office of General Manager (P) /HJP for necessary approval with respect to regularization of unauthorized absent of the applicant.

(ii) It is further submitted by the learned counsel for the respondents that the entire case of the applicant was examined by the Railway Board, in the light of RBE No. 79/11, with respect to the regularization of the period of unauthorized absence and vide their decision dated 23.06.2016, the period of unauthorized absence of the applicant for the period from 1988 to 31.01.2008 has been treated as “break in service”. Since, the unauthorized absence is not regularized by the competent authority the applicant has not completed requisite qualifying service to claim any pension. The applicant is entitled to only PF, GIS amount. The said decision dated 23.06.2016 had already been communicated to the applicant (Annexure-R/2). It is further submitted that the details of decision of respondents dated 23.06.2016 was brought to the knowledge of Hon’ble High court of Patna during the pendency of Writ Petition filed by the applicant. The Hon’ble

High Court of Patna have dismissed the said writ petition vide their order dated 19.07.2016. It is further submitted that vide communication dated 18.08.2016, an amount payable towards GIS has been released in favour of the applicant and Divisional Finance Manager has intimated through his noting that there is no any amount at credit in PF account of the applicant, therefore, hence, whatever amount admissible, as per the rule, has already been paid to the applicant. It is submitted by the respondents that the applicant is not entitled for any relief as sought in this OA.

4. Heard the parties and perused the records.

5. (i) In the instant OA, the applicant has prayed for direction to the respondent to grant his pension and other retiral dues on his superannuation dated 31.08.2008. It is noticed that the applicant remained absent for the period from 29.11.1988/January, 1990 to 31.01.2008, the said absence of the applicant was without any sanctioned earned leave hence, the said period of absence was unauthorized absence. After superannuation on 31.01.2008, the applicant had filed OA No. 520/2008 and sought relief for direction to grant retiral dues and pension. This Tribunal vide its order dated 15.10.2008 disposed of the said OA of the applicant with a direction to the respondents to examine the case of the applicant and verify the same from the record and pay if, due the retiral dues to the applicant within a period of three months. In compliance to the order of this Tribunal, the respondent had considered the case of the applicant and vide their speaking order dated 04.10.2010, decided that since the applicant remained unauthorized absent for more than 20 years, the

said unauthorized period of absence required to be regularized by the competent authority and, accordingly it was forward to the competent authority for their consideration and approval. Since, the respondents took more than one and half year to comply the order passed by this Tribunal, the applicant had filed contempt petition along with an application for condonation of delay in the year 2013 before this Tribunal. The said OA was vide order dated 24.01.2014, however the applicant was granted liberty to file a fresh OA to agitate his matter. That is with respect to order dated 04.10.2010 passed by the respondents.

(ii) It is further revealed from the records that the applicant had filed writ petition before the Hon'ble High Court of Patna against the order dated 24.01.2014 passed by this Tribunal in contempt petition instead a fresh OA against the order dated 04.10.2010 passed by the respondents. It appears that during the pendency of writ petition the respondents vide their order dated 23.06.2016, decided that the applicant remained absent from duty from 29.11.88 to 30.01.2008 (date of retirement) without any information. The said period of absence, in terms of provision of para 6 of RBE 79/11 has been treated as 'break in service'. Accordingly, the case of the applicant was examined for the purpose of calculating his qualifying service and it was found that applicant had not rendered qualifying service to become eligible for pension, hence he was not entitled for any pension. The said decision dated 23.06.2016 taken by the respondents was placed on record by the Hon'ble High Court and the Hon'ble

High Court vide its order dated 19.07.2016 dismissed the writ petition No. CWJC 4124/2015 with following observations:-

*“We find that the invocation of jurisdiction by the petitioner is misconceived. The order was passed by the Divisional Railway Manager in October, 2010, but instead of challenging the same, the petitioner has filed a contempt petition that too in the year 2013. An order passed may be after specified period of representation does not become non est or void. It is a valid order, which has to be disputed by the aggrieved person in accordance with law. Since, no action has been taken against the order passed by the Divisional Railway Manager, we do not find any ground to interfere with the order passed by the Tribunal refusing to condone the delay and to initiate a contempt proceeding.*

*It is, accordingly, dismissed.”*

6. (i) It is further noticed that subsequent to order passed by the Hon'ble High Court of Patna on 19.07.2016, the applicant has approached this Tribunal and filed the present OA on 03.11.2017, whereby the applicant has again sought relief for a direction to pay his retiral dues, including pension, by way of supplementary affidavit, the applicant has placed the copy of order dated 04.10.10 passed by the respondent and further prayed to quash and set aside the order dated 04.10.2010. It is noticed that along with the present OA the applicant had filed MA No. 377/2017 for condensation of delay. The reason stated by the applicant in his application for condonation of delay that the case of the applicant was pending before the Hon'ble Patna High

Court which was disposed of on 19.07.2016. A copy of the said order was received after 3 months. It is further contended that the applicant belongs to flood area and he was disturbed due to lose of his house and after recovery from mental agony and stress, he approached his advocate and filed this OA for direction upon the respondents to release his dues including pension. Considering the pathetic condition of the applicant and as contended the same in the MA the delay caused in filing the present OA is hereby ordered to be condoned. Accordingly, MA stands allowed.

(ii) So far relief prayed in the present OA, i.e. OA 706/2017 is concerned, in this regard, from the material on record, it revealed that the applicant remained absent unauthorizedly on duty for the period 29.11.88 (as contended by the respondents) till 31.01.2008. However, according to the applicant he remained absent unauthorizedly from 26.01.90 till he superannuated on 31.01.2008. Therefore, it is an admitted fact that for more than 17 years the applicant remained absent on his duty without any sanction leave or approval or any authorization. Therefore, the DRM had decided vide its order dated 04.10.2010 that till and until the competent authority regularized the said unauthorized absence of applicant, the claim of the applicant with respect to grant of pension cannot be decided and hence he further decided to put up his case before the competent authority for regularization of unauthorized absence of the applicant. The said decision dated 04.10.2010 cannot be said to be illegal or erroneous. Without regularization of unauthorized absence of the employee his service cannot be counted for the purpose of calculating the qualifying

service for grant of pension. Hence, I did not find any error in the said decision dated 04.10.2010. Therefore, the grievance of the applicant against the very said order does not tenable.

(iii) It is further noticed that the case of the applicant was considered by the competent authority for the purpose of regularization of period of unauthorized absence, in terms of RBE No. 79/11 and para 6 of OM dated 22.06.2010 (Annexure-R/1). For the purpose of regularization of unauthorized absence the instructions issued under para 6 of aforesaid RBE and OM reads as under :-

*“ Comptroller and auditor General have issued orders that the period of absence not covered by grant by leave shall have to be treated as “ dies non” for all purposes, viz. increment, leave and pension. Such absence without leave where it stands singly and not in continuations of any authorized leave of absence will constitute an interruption of service for the purposes of pension and unless the pension sanctioning authority exercise its power under Article 421 of Civil Service Regulation (now rule 27 of CCS (pension) Rules ) to treat the period of leave without allowance, the entire past service stands forfeited.”*

(iv) According to the aforesaid provision for regularization of unauthorized period of absence, the competent authority vide their decision dated 23.06.2016 has treated the period of absence, i.e. 1988 to 31.01.2008 of the applicant as “break in service”. Hence, the applicant has not rendered qualifying service to claim pension. In other words, the competent authority has not regularized the period of unauthorized absence of the applicant and therefore, he has not rendered qualifying service for the purpose to claim benefit of pension. The said decision of respondents is inconsonance with provision of RBE 79/2011 as well as instruction issued under OM as

also provisions of pension rules. Therefore, the respondents have rightly denied the claim of the applicant. It is noticed that the respondents have already released the admissible amount towards GIS in favour of the applicant and as there is no amount credited in PF account by the applicant, the said is not found to be payable accordingly, the dues of the applicant is settled by the respondents. The said action of the respondents is also inconsonance with the service record of the applicant and as also with existing rules and policy with respect to grant of pension to the railway employee. Hence, in this regard, no interference is required by this Tribunal.

7. In view of this matrix and the discussions stated herein above, I did not found any merit in the submission and claim of the applicant, the OA is devoid of merit. Accordingly, the OA is dismissed with no order as to costs.

[ Jayesh V. Bhairavia ]/M(J)

Bp/