

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI

Original Application No.210/0083/2016

Dated this *Monday* the *18th* day of *February*, 2019

Coram: Dr. Bhagwan Sahai, Member (A).
Ravinder Kaur, Member (J).

JAGDISHPRASAD LORIK YADAV

aged 62 years,
(Date of Birth 25.05.1953)
RETIRED AS CHIEF LUGGAGE
SUPERVISOR (Group 'C')
in Mumbai Division of
Western Railway,
Mumbai Central, Mumbai.

and

residing at:
Flat no.106, Arihant Complex,
Building No.2, Near PNB,
Viva College Road,
VIRAR (WEST)-4010303, Dist.Palghar,
State of Maharashtra.

...Applicant.

(By Advocate Shri L. R. Ajmera).

Versus

1. **THE UNION OF INDIA**
Through, General Manager,
Western Railway,
Headquarters Office,
Churchgate, Mumbai-400 020.
2. **DRM (Divisional Railway Manager)**
DRM's Office, Western Railway,
Mumbai Division, Mumbai Central,
Mumbai-400 008.

... Respondents.

(By Advocate Shri S. Ravi).

Order reserved on: 03.01.2019

Order delivered on: 18-02-2019

O R D E R

Per : Dr. Bhagwan Sahai, Member (Administrative)

1. Shri Jagdishprasad Lorik Yadav has filed this OA on 08.01.2016 seeking directions to the respondents to sanction him leave from 07.08.2002 to 06.01.2003 (153 days) and issuing of fresh Pension Payment Order to him for the subsequent period alongwith all the consequential benefits with interest @18% per annum.

2. Summarized facts:-

2(a). The applicant was working as Deputy Station Superintendent at Nandurbar station (Traffic Department) when he was medically de-categorized on 03.07.2002 because of being unfit in eye two medical classification and fit in Cee-One as per the certificate issued by Divisional Medical Officer, Mumbai Central dated 03.07.2002 and office memorandum dated 05.08.2002.

2(b). The respondents issued memorandum dated 10/11.10.2003 stating that the applicant was medically unfit. The applicant was offered alternative job as Office Superintendent Grade-II but he refused it. Subsequently, the screening committee offered him another alternative job as

Chief Booking Clerk, Nandurbar which he accepted and joined on 06.01.2003.

2(c). The applicant claims that he was on private sick leave (i.e. from 07.08.2002 to 06.01.2003). When he retired on 31.05.2013 he was working as Chief Luggage Supervisor at Mumbai Central, Mumbai Division, Western Railway. At the time of his retirement his basic pay was Rs.22,840/- per month in pay scale of Rs.9300-34800 - G.P.4600/- and accordingly he was paid pension and other retiral benefits. This Pension Payment Order (PPO) was issued on 07.06.2013.

2(d). The applicant further claims that he applied to the respondents through proper channel on 07.01.2003 for sanction of Leave Average Pay / Leave Half Average Pay (LAP/LHAP) due to severe illness. He also claims that thereafter also he repeatedly applied to the respondents for sanctioning his leave for the above period and has attempted to enclose copies of such applications as annexes A-4 to A-11.

2(e). The respondents replied to him vide letter dated 17.10.2014 stating that his leave

application can not be considered by the Competent Authority in terms of Rule 541 of Leave Rules. On 29.10.2014 he also applied for counting the period of his medical de-categorization for 153 days as qualifying service for pensionary benefits. The respondents again sent him a similar reply on 10.12.2014 as had been sent earlier on 17.10.2013. The respondents vide letter dated 09.10.2013 also gave post-facto sanction of officiating allowance in favour of the applicant from 28.02.1985 to 15.01.1986 and later on; accordingly his pay was also revised.

2(f). The applicant claims that because of his pay revision, the last pay drawn by him was of Rs.23310/- and therefore the pension should be re-fixed at this amount.

2(g). Since repeated request of the applicant to the respondents did not result in resolution of his problem, he has filed this OA.

3. Contentions of the parties:-

The applicant and his counsel have contended that:-

3(a). the applicant has repeatedly requested

before his retirement for sanctioning him leave for 153 days from 07.08.2002 to 06.01.2003 but it has not yet been sanctioned hence the OA be allowed.

The respondents have contended that:-

3(b). that the OA has been filed after 13 years and half and therefore it is hopelessly time-barred and be dismissed. The vague attempt by the applicant to justify the delay is in the form of non-existing applications / letters for sanction of leave in the year 2003 which was never received by the respondents. As per the Hon'ble Supreme Court view in S.S. Rathore Vs State of MP and U.O.I. Vs. Sarkar, Bhoop Singh Vs. U.O.I. 1992(2)SLJ103, limitation starts after six months of cause of action and the delay and latches could not not condoned by repeated representations. Therefore, this OA be dismissed for the unjustified delay; and

3(c). when the applicant was declared medically unfit by the certificate of 03.07.2002, and as per office memorandum of 05.08.2002 the was medically de-categorized. The Screening Committee subsequently agreed to provide him alternative job but this has nothing to do with the period of his

absence 07.08.2002 to 06.01.2003. After being declared medically unfit to continue in service, the basic pay of the applicant was subsequently revised and refixed at Rs.23310/-vide letter dated 09.10.2013. The claim of the applicant that he repeatedly submitted applications from 10.10.2003 to 24.07.2003 for sanction of leave of the above period is only a after thought, that too after his retirement on 31.05.2013. The application of leave or extension of leave can be made to the Competent Authority only as per the provisions of Leave Rule 5.11, which was never made by the applicant and therefore he seeks back-dated sanction of leave for period of absence after his medical de-categorization.

4. Analysis and Conclusions:-

4(a). We have perused the OA memo, reply of the respondents filed on 12.08.2016, and considered the arguments advanced by both the parties on 03.01.2019 when their counsels remained present and were heard.

4(b). As per the admitted position by the parties, on being medically found unfit, the

applicant was de-categorized from 03.07.2002 vide office memorandum dated 05.08.2002. Thereafter, he does not seem to have been in service till he was provided and accepted alternative job from 06.01.2003. The applicant has claimed repeated submission of application for sanction of LAP / LHAP from 2003 onwards for this period of his absence but the respondents have denied receipt of any such application. Also it is noted that in the applications claimed by the applicant as having been submitted to the respondents, annexe A-2 to A-9, there is no acknowledgment of their receipt by the office of the respondents. Therefore, it seems that the first applications received by the respondents was only the ones dated 29.10.2013 (Annexure A-10) and 02.08.2014 (Annexure A-11).

4(c). From the above facts it gets established that the applicant not only applied for leave for that period after his retirement but he did so after more than 11 years of the actual period of his absence from duty. As per the Railway Leave Rule 541, the leave can be sanctioned only when the employee is in service. Therefore, the

submission of the respondents have no leave can be sanctioned to the applicant for the period after his medical de-categorization and relief from the service is correct. Since the applicant himself slept over a long period of more than 11 years, he cannot agitate for sanction of any leave after his retirement, when the issue is not alive.

4 (d). In view of these facts, because of unjustified long delay in filing of this OA as well as in applying for leave, the OA is devoid of merits and deserves to be dismissed. As regards the request of the applicant for revision of pension, the respondents have already revised and re-fixed his pay as per the order of 09.10.2013 and they seem to be in process of taking necessary action in this regard. Hence, there seems no grievance on this issue too.

5. Decision:-

The OA is dismissed. The parties to bear their own cost.

(Ravinder Kaur)
Member (J)

V.

(Dr. Bhagwan Sahai)
Member (A)

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