

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH,
MUMBAI.**

O.A.210/00665/2017

Dated this Tuesday the 19th day of February, 2019.

Coram: Dr. Bhagwan Sahai, Member (Administrative).

Suresh Udhavdas Shahdadpuri,
residing at B-2403 Mahendra
Splendour, L.B.S. Road,
Bhandup (West),
Mumbai - 400 078.

.. Applicant.

(By Advocate Shri R.S. Lulla).

Versus

1. Union of India, through
The Secretary,
Ministry of Health & Family Welfare,
Nirman Bhavan, New Delhi - 110 001.
 2. The Indian Council of
Medical Research (ICMR),
Represented by its
Director Genral & Secretary to
Department of Health Research,
V. Ramlingswami Bhawan,
Ansari Nagar, New Delhi-110 029.
 3. Enterovirus Research Centre (ERC)
represented by Director,
Haffkine Institute Compound,
Acharya Donde Marg, Parel,
Mumbai - 400 012.
- .. Respondents.

(By Advocate Shri A.V. Shinde).

Order reserved on : 08.01.2019

Order delivered on : 19.02.2019.

O R D E R

Shri Suresh Udhavdas Shahdadpuri has filed
this O.A. on 26.09.2017 seeking direction to the
respondents to pay legitimate pension to him along

with past arrears from the date of his superannuation on 30.09.2012 and to pay interest @ 12% per annum.

2. Facts of the case:

2(a). The applicant states that Indian Council of Medical Research (ICMR) under the Ministry of Health & Family Welfare, Government of India (Respondent No.2) conducts medical research work out of which one being in human reproduction. ICMR has a network of 33 centres across the country and it is the decision making authority with respect to employment of staff and their service matters. The applicant has further stated that after his earlier employment with Central Railway, he joined service with ICMR as Accounts Officer from 01.10.1999 at National Institute for Research in Reproductive Health (NIRRH), Mumbai (Annex-A-2) (wrongly mentioned by the applicant as Annex-A-1).

2(b). The applicant served at the NIRRH till 31.03.2007. In view of available vacancy, the applicant applied through proper channel for the post of Administrative Officer at Enterovirus Research Centre (EVRC), Haffkine Institute Compound, Parel, Mumbai (Respondent No.3), in the pay scale of Rs.8000-275-13500 with protection of pay with 3 premature increments (Annex-A-1) (wrongly mentioned

by the applicant as Annex-A-2) and joined on 02.04.2007 there as per Memorandum of 16.11.2006. The applicant worked as Administrative Officer with the EVRC upto his retirement on 30.09.2012.

2(c). The applicant claims that he submitted his pension papers to EVRC on 02.07.2012, a copy of the forwarding letter dated 02.07.2012 is at Annex-A-5 (page 49). He claims to have submitted a reminder on 09.08.2012 to ICMR for grant of first financial upgradation on completion of 10 years under the MACP Scheme, 2009. But the respondents did not grant him promotion on financial upgradation and pension. Then he sent a legal notice on 23.04.2013 as per copy at Annex-A-7, to which the Director, EVRC, Parel, Mumbai replied vide letter dated 08.05.2013 (Annex-A-8).

2(d). On 19.03.2014, the Administrative Officer, ICMR, New Delhi on behalf of Director General, ICMR, New Delhi replied to the present applicant that in view of his joining service with EVRC, Parel, Mumbai on 02.04.2007 and his retirement on 30.09.2012, he was not eligible for grant of MACP. Earlier another letter from that office of Director General, ICMR was sent to the Director, EVRC, Parel, Mumbai on 13/14.08.2012 stating that the applicant was appointed as Administrative Officer at EVRC, Parel,

Mumbai with effect from 02.04.2007 and since he had not completed 10 years regular service in the Council, he is not entitled for first financial upgradation under MACP Scheme.

2(e). The applicant again submitted representation to Director General, ICMR on 15.04.2014 (Annex-A-10) stating that he had become eligible for benefit of first MACP from 01.10.2009 after completing 10 years of service and he also mentioned that after his retirement on 30.09.2012 he had not received payment of pension. Since he did not get his grievance settled, he has filed this O.A. and claims that at the time of filing the O.A. in September, 2017, he was 65 years old and suffering from Diabetes, Hypertension, general debility, etc.

3. Contentions of the parties:

The applicant has contended that -

3(a). the action of the respondents in not sanctioning payment of pension to him after his retirement on 30.09.2012 is egregious, illegal, discriminatory and contrary to Pension Rules;

3(b). the action of the respondents in not granting him first MACP after he completed 10 years of service on 30.09.2009 is illegal and contrary to rules;

3(c). the claim of the respondents that the applicant had concealed/suppressed the fact of the earlier employment with the Central Railway is not correct as he has mentioned in Para 4.2 of the O.A. that leaving his earlier employment with the Central Railway he joined the respondents, thus he has not concealed any facts;

3(d). he is getting pension from the Central Railway for his employment with it from 14.06.1974 to 30.09.1999 and for his employment with the two organs of ICMR from 01.10.1999 to 30.09.2012 i.e. 13 years he is entitled for pension;

3(e). after his service with NIRRH from 01.10.1999 to 31.03.2007, he submitted his technical resignation and then from 02.04.2007 till 30.09.2012, he has served with EVRC. The respondents cannot take defence/shelter under Rule 7 of the CCS (Pension) Rules which prohibits payment of two pensions to a Government servant in the same service or post at the same time. Since the applicant had worked with Central Railway for 25 years and half and gets pension from the Railway for his service which is paid out of Railways Pension Fund, for his subsequent service with the respondents he has to be paid pension out of Central Grants-in-aid. Therefore, Rule 7 is not applicable

to him;

3(f). in view of these provisions, the action of the respondents in not sanctioning and paying pension to him after 30.09.2012 for his 13 years of continuous service with the respondents is colourable exercise of power, it is illegal and violative of Rule 18 of the CCS (Pension) Rules and, therefore, the Tribunal should allow the O.A. and direct the respondents to pay pension to him along with past arrears and interest. He has enclosed copy of Rule 7 and Rule 18 of the CCS (Pension) Rules;

3(g). the applicant has also filed M.A.625/2017 for condonation of delay claiming in it that after his retirement he has been suffering from diabetes, hypertension and general debility associated with old age and consequent infirmities, and thus was prevented from pursuing his legal remedies about his pensionary benefits and, therefore, his claim is subsisting and he is entitled for condonation of delay. Beyond this statement, he has not submitted any reason or justification for the delay in filing this O.A. on 26.09.2017.

The respondents have contended that -

3(h). there is no specific order which is being challenged by the applicant in the O.A. and his

grievance pertains to pension and its arrears after his retirement. However, as per Rule 7 of the CCS (Pension) Rules, a Government servant is not eligible for two pensions. A pensioner receiving superannuation or retiring pension and re-employed subsequently is not eligible for separate pension and gratuity for the period of his re-employment and the balance admissible amount of retirement gratuity has already been sanctioned to him on 12.02.2013;

3(i). there is gross delay in filing of the O.A. as the applicant had been informed on 27.05.2014 that he is not eligible for any pension and thereafter filing of this O.A. on 26.10.2017 suffers from delay and laches and, therefore, the long delay cannot be condoned. Consequently the M.A. for condonation of delay as well as O.A. deserve to be dismissed on this ground itself;

3(j). in the reply of 27.05.2014, the ICMR very clearly replied to him stating that before joining ICMR on 01.10.1999 at the age of 47 years, the applicant had served with Central Railway for 25 years, 3 months and 17 days, and retired from there on 30.09.1999. On his retirement, the Railways paid him DCRG amounting to Rs.1,56,694/-, commuted value of pension of Rs.2,26,206/- and monthly pension @Rs.3,411/- for a total qualifying service of 30

years, 3 months and 17 days thereby granting weightage of additional 5 years for the pension purpose. Though the balance admissible amount of retirement gratuity has already been sanctioned to him on 12.02.2013, the applicant has concealed the fact of above replies and sanction of the admissible gratuity; and

3(k). in order to approach the Tribunal late, the applicant has simply added flimsy ground of oral request made by him and it is not clear as to why the applicant was silent for many years and why the fact of drawing pension from the Central Railway has been concealed by him. Also in the order of 16.11.2017 when the OA was admitted, there is no mention of MACP. This proves that the applicant has not approached the Tribunal with clean hands. Therefore, the M.A. for condonation of delay and O.A. should be dismissed.

4. Analysis and conclusions:

I have perused the O.A. memo, rejoinder, and written arguments of the applicant, reply of the respondents as well as arguments of both the sides. From the consideration of all these, the following conclusions emerge:

4(a). The applicant has claimed that there is inaction on the part of the respondents to sanction

his pension after his retirement on 30.09.2012. Therefore, his cause of action arose from 30.09.2012 and filing of this O.A. on 26.09.2017 is obviously barred by limitation and suffers from long delay and laches. In his application for condonation of delay i.e. M.A.625/2017, except mentioning a general statement about his suffering from diabetes, hypertension and general debility associated with old age, he has not mentioned any sound reason which prevented him from approaching the Tribunal in time. Diabetes, hypertension, etc are common routine health related minor issues widely prevalent in the Society and, therefore, this is not an acceptable explanation for the long delay. It is more so because while he claims that he could not approach the Tribunal earlier due to the minor health issues, he has failed to explain as to how he has approached the Tribunal after 5 years of the cause of action when these health issues are claimed to be still continuing with him now also. In view of this, the application filed for condonation of delay is without any justification and satisfactory reason and hence it is rejected.

Because of rejection of the application for condonation of delay the O.A. also deserves to be dismissed. However, on merits of the case also the

following conclusions emerge:

4 (b) . The applicant joined as Accounts Officer with NIRRH on 01.10.1999, one of the research Centres of ICMR. He continued his service with that Institute upto 30.03.2007. From 02.04.2007 to 30.09.2012, the applicant worked as Administrative Officer with EVRC, another ICMR Centre, Parel, Mumbai. Before joining the NIRRH the applicant had worked with the Central Railway for more than 25 years and on his retirement from the Central Railway on 30.09.1999, he received payment of DCRG i.e. Gratuity, commuted value of his pension and since then has been in receipt of monthly pension from the Central Railway.

4 (c) . In the O.A., the applicant has sought direction to the respondents for grant of pension by the respondents after his retirement on 30.09.2012. After joining the service of Accounts Officer / Administrative Officer with NIRRH/EVRC, the applicant also continued receiving pension from the Railway. For the service rendered with NIRRH and EVRC, after his retirement on 30.09.2012, he has been paid the amount of admissible gratuity.

4 (d) . As pointed out by the respondents, as per Rule 7 of CCS (Pension) Rules, 1972, a Government servant shall not earn two pensions in the same

service or post at the same time or by the same continuous service, except as provided in Rule 18, i.e. a Government servant who having retired on a superannuation pension or retiring pension is subsequently re-employed shall not be entitled to a separate pension or gratuity for the period of his re-employment.

4(e). As provided under Rule 7 of the CCS (Pension) Rules, since the applicant is already in receipt of pension from the Railway for his earlier service, for his subsequent service he is not entitled for 2nd pension. In this regard the applicant further claims that he is entitled as per the provisions of Rule 18 of the CCS (Pension) Rules. The relevant stipulations under Rule 18 are these -

"(1). A Government servant who, having retired on compensation pension or invalid pension or compensation gratuity or invalid gratuity, is re-employed and appointed substantively to a service or post to which these rules apply may exercise option either -

(a). to continue to draw the pension or retain the gratuity sanctioned for his earlier service, in which case his former service shall not count as qualifying service, or

(b). to cease to draw his pension and refund-

(i) the pension already drawn,

(ii) the value received for the commutation of a part of pension, and

(iii) the amount of [retirement gratuity] including service gratuity, if any,

and count the previous service as qualifying service:

Provided that -

(i) the pension drawn prior to the date of re-employment shall not be required to be refunded,

(ii) the element of pension which was ignored for fixation of his pay including the element of pension which was not taken into account for fixation of pay shall be refunded by him,

(iii) the element of pension equivalent of gratuity including the element of commuted part of pension, if any, which was taken into account for fixation of his pay shall be set off against the amount of [retirement gratuity] and the commuted value of pension and the balance, if any, shall be refunded by him."

4 (f) . While the applicant claims that his case is covered under Rule 18, he has neither made any averment in O.A. to the effect that he had applied under stipulations of Rule 18(1)(a) or (b) nor enclosed any evidence to that effect. This is so when he joined as Accounts Officer with NIRRH in October, 1999. This shows that at the time of joining with NIRRH, he did not take action required

under Rule 18. Then he slept over it for 18 years. Hence this claim now being almost 20 years is totally stale. Since the applicant has not made any averment about exercising of his option as provided under Rule 18(1)(a) or (b), then as stipulated under Rule 18(2)(b) the applicant has to be deemed to have opted for clause 18 (1)(a) i.e. to continue to draw the pension or retain the gratuity sanctioned by the Central Railway for his earlier service. Therefore, his claim for payment of pension from the respondents in addition to pension already being paid to him by Central Railway is not justified.. It is not acceptable. Therefore, rejection of his request in this regard by Respondent No.2 ICMR on 27.05.2014 with reference to representation of 15.04.2014 is correct and fully justified. I do not find any flaw or infirmity in that order of Respondent No.2.

4(g). From the details of case it is also clear that except mentioning that after leaving of his earlier service with the Railway, in para 4.2 of the O.A. the applicant did not mention anything about receipt of pension by him from the Railways. Also it was not leaving of his earlier service, it was his retirement. Thus this fact has been suppressed by him in the O.A. The claim of the respondents in

this regard is justified.

4 (h). In his Para 4.7 of the O.A., the applicant has claimed that he did not receive any reply to his representation on 15.04.2014 till filing of the O.A. However, this claim is false and misleading as the Respondent No.2 i.e. ICMR replied to him on 27.05.2014 rejecting his claim for payment of pension in view of his continuing to receive pension from the Railways.

In fact in view of continued receipt of pension from the Railways while in service of the respondents, he was entitled for receipt of salary minus his pension. However, it appears that not only he continued to draw the pension from the Railway he has also drawn full payment of salary from the respondents. This he did in spite of himself working as Accounts Officer with NIRRH. The respondents ought to have been more vigilant in this regard, not to allow him receipt of full salary in addition to his pension but this seems to have happened as he himself was the Accounts Officer. This was not only illegal but unbecoming of a public servant. This amounts to exploitation of the system for personal enrichment.

4 (i). In the O.A. the applicant has also sought direction to the respondents to sanction MACP

benefit. As regards his claim for MACP benefit, the respondents have already replied to him that he was not eligible for it. After his retirement from the Central Railway in 1999, he has not worked continuously on the same post with the same employer. From 01.10.1999 to 30.03.2007, he worked as Accounts Officer with NIRRH i.e. for less than ten years. Then he worked as Administrative Officer with EVRC from 02.04.2007 to 30.09.2012, i.e. again for less than years. Hence rejection of his claim in this regard was justified.

4(j). The claim of the applicant that his pension is paid by the Central Railway from a different fund and if paid by EVRC, it would be from grants-in-aid. This is an attempt at being too clever by half and a sheer attempt to somehow exploit the system by indulging in chicanery. Hence it cannot be accepted.

4(k). In view of the indulgence of the applicant in falsehood and submission of misleading details, he deserves no sympathy on any other ground. I do not find any merit in the claims of the applicant in the O.A. and, therefore, it being totally devoid of merits and containing false statements deserves to be dismissal with cost. Hence it is dismissed with cost of Rs.1,000/- to be paid by the applicant to

Respondent No.3.

5. Decision:

The O.A. is dismissed for unjustified long delay and on merits, with cost of Rs.1,000/- to be paid by the applicant to Respondent No.3 within one month of receipt of this order.

(Dr.Bhagwan Sahai)
Member (A) .

H.

JD
20/2/19