

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, CAMP AT NAGPUR**

ORIGINAL APPLICATION No.2068 OF 2014

Dated this Tuesday, the 02nd day of April, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (ADMINISTRATIVE)

Smt. Annapurna Wd/o Sitaram Thul,
age about 66 Yrs., Occ : Housewife,
R/o Post : Wadhona, (Dattapur-Dhamangaon),
Ta : Chandur, Dist. Amaravati 444 709.
(By Advocate Shri A.B.Bambal)

... *Applicant*

VERSUS

1. General Manager, Central Railway,
Mumbai CST - 400 001.
2. Divisional Railway Manager,
Nagpur Division, Central Railway,
Nagpur 440 001.

... *Respondents*

(By Advocate Shri R.S.Sundaram with
Ms. Usha Tanna)

Order reserved on 25.03.2019

Order pronounced on 02.04.2019

ORDER

Smt. Annapurna widow of Late Shri Sitaram Thul has filed this OA on 14.02.2014 seeking direction to the respondents to grant her family pension, along with arrears of retiral benefits of Late Shri Sitaram Thul along with 12% interest per annum.

2. Briefly stated facts :-

2(a). It has been claimed in the OA that late Shri Sitaram Shivram Thul had joined the Railway service on 23.10.1952 in Operating Department and while working as Leverman with

Station Superintendent, Wardha, Central Railway he retired on 27.01.1977 after completing 25 years of service.

2(b). It is also claimed that late Shri Thul had submitted declaration of details of his family members for post-retirement complimentary passes on 16.07.1990. Based on it, the respondent No.2 i.e. DRM, Nagpur, Central Railway had sent a letter to AEN, Wardha on 03.07.1991 for issuing complimentary passess for him and his family (copy at Annex A-2 and A-3).

2(c). It is also claimed that the applicant was issued Medical Identity Card No.50217 for him and 122243 for his wife and children (copies annexed at A-4 and A-5).

2(d). It is further claimed that since late Shri Thul was in service with the Railways on 16.11.1957, he was governed by the Pension Rules but he did not get the pension and after getting proper advice, he submitted a representation to the respondent No.2 on 06.09.2011 (Annex A-6). Since he did not get any response to his representation, he earlier filed OA No.2013/2012 which was disposed of by the Tribunal on 03.02.2012 directing the Respondents to decide his representation dated

06.09.2011 (Annex A-6).

2(e). It has been stated that the respondents rejected his claim vide order dated 30.10.2012 with a cryptic order in a printed format mentioning that certain record pertaining to the applicant was not available with them. This is the impugned order in the present OA (Annex A-1).

3. ***Contentions of the parties :-***

The applicant contends that -

3(a). the impugned order dated 30.10.2012 (Annex A-1) is a cryptic reply in a printed format rejecting family pension to late Shri Thul. In fact, late Shri Thul had applied for pension to him and not for family pension;

3(b). as per the Railway Board letter dated 18.07.2008, to avoid delay in finalization of terminal benefits to employees, speedy action should be taken by concerned authorities. Pay sheets, Pension Pay Order and SR of an employee is a permanent record and is maintained in the Division Office in safe custody and, therefore, the said record of settlement of late Shri Thul has to be available with the respondents. The respondents have not stated that the record of late Shri Thul has been destroyed.

The ex-employee i.e. late Shri Thul was

not paid gratuity, leave salary, provident fund, group Insurance and those amounts are lying with the respondents;

3(c). the document (copy at Annex A-3) was prepared, signed and checked by the DRM (P) Office and not by the applicant. That document also has on it photograph of late Shri Thul and the present applicant and therefore, it was genuine;

3(d). the letter for issuing post retirement passes proves that late Shri Thul had not been retired compulsorily on account of any penalty and he retired either voluntarily or on superannuation;

3(e). in the earlier OA, the greivance was not related to non-grant of family pension but it was for sanction of pension and pensionary benefits to late Shri Thul and that is why the Tribunal directed the respondents to decide his representation. In the document (copy at Annex A-3), the date of retirement of late Shri Thul is 27.11.1977 (page 42, para 2) and therefore, there is no reason to doubt it. The date of birth of the ex-employee has to be about 1927 and therefore, the age mentioned at very stages of averments has to be taken as fairly correct [page 88 para 5(a)];

3(f). when late Shri Thul retired on 27.01.1977, he must have retired at the age of 49 or 50 years. This has also been mentioned in the report of the Welfare Inspector submitted on 06.05.2017 with reference to reconstruction of service record of the late Shri Thul. In the post retirement passes issued in 2006, 2008 and 2009, age mentioned of the applicant was 80, 81 and 82 years respectively, which was correct;

3(g). after search of the documents carried out by the respondents, it can safely be presumed that the applicant had retired from service at the age of about 49 years and had not completed age of 55 years for superannuation prevalent at that time and therefore, he must have retired voluntarily; and

3(h). there is delay of four months in filing the present OA from the impugned order and, therefore, it should be condoned and the OA should be allowed.

The respondents contend that -

3(i). in the representation dated 06.09.2011 (Annex A-6), the applicant i.e. late Shri Thul mentioned his age on that day as of 83 years. From this it appears that he has made a

representation after 33 years of his retirement. Filing of the OA is thus abuse of process of law and it needs to be dismissed with exemplary cost;

3(j). the then applicant late Shri Thul had claimed his retirement on 27.01.1977 but this is denied because retirement on superannuation is on the last working day of the month and therefore, his claim of retirement on 27.01.1977 cannot be relied upon. The claim of the applicant that he retired after serving the Railways for 25 years is also doubtful and this claim seems to have been submitted to take undue advantage of the fact that no proper service particulars of late Shri Thul are available with the respondents;

3(k). the basic pay mentioned by the applicant at the time of his retirement as Rs.270/- does not correspond with the pay scale of Rs.196-252/- mentioned by himself. The letter of 03.07.1991 (copy Annex at A-3) claimed by the applicant for issuing post retirement passes is a doubtful document;

3(l). late Shri Thul has claimed to have retired on 1977 but no service record prior to the year 1982 is available with the respondents. The Railway Board letter dated

18.07.2008 mentioned by the applicant is not applicable in his case as that letter was to ensure speedy processing of retirement related papers of those employees who are likely to retire in near future;

3(m). the declaration of the family members claimed to have been submitted by late Shri Thul on 16.07.1990 (copy Annex at A-2) are not reliable because it is only a form for mentioning the family particulars for getting passes which are easily available in the office of the respondents. Hence, the document annexed at A-2 is a bogus and snide document, it is not an authentic document related to particulars of the family members of late Shri Thul;

3(n). similarly, the Medical Identity Card claimed by the applicant (copy enclosed as Annex A-4 and A-5) are also bogus. Approaching the respondents after 33/34 years of claimed retirement, the applicant (late Shri Thul) is only a *mala fide* attempt to take benefit of the fact that such an old record of service cannot become available with the respondents;

3(o). since late Shri Thul did not retire on superannuation from the Railways, he was not entitled for any pension and accordingly, the

present applicant is also not entitled for grant of family pension;

3(p). in view of the direction of the Tribunal in its order dated 03.02.2012 (Annex A-7) to consider the representation of 06.09.2011, the respondents informed by letter of 30.10.2012, the impugned order, the then applicant that his settlement record was not available with them and therefore, he is not entitled for family pension. Even the disposal of the representation of late Shri Thul cannot extend the period of limitation for seeking the relief mentioned in the present OA;

3(q). in case of *C.Jacob Vs. Director of Geology and Mining and Another reported in (2008) 10 SCC 115 decided on 03.10.2008*, the Apex Court view was to avoid directing the Department to consider the stale claim of the applicant and that when the Department has no record older than 20 years, burden of proof lies on the applicant to prove the case. Therefore, in the present case, the burden of proof lies on the applicant to prove authenticity of his claim and the documents relied upon by him;

3(r). since no satisfactory cause has been pleaded in the application for condonation of

delay, it should be dismissed. Based on the claim of late Shri Thul himself at the time of filing of the present OA on 14.02.2014, he was 83 years old, so by the claimed date of his retirement on 27.01.1977, his age at that time works out to 49 years which is not the date of superannuation as per the service rules of the respondents. Also he himself waited for 34 years to verify his service record;

3(s). during pendency of the present OA, the applicant in the present OA i.e. late Shri Thul expired and now the name of Smt. Annapurna S. Thul has been brought on record;

3(t). the order of the Tribunal dated 15.02.2017 was challenged by the respondents in the High Court through Writ Petition No.139/2018 on 06.01.2018, and that order of the Tribunal was stayed by the High Court vide order of 19.01.2018. The Writ Petition has been finally decided on 12.09.2018 by setting aside the order of Tribunal dated 15.02.2017 and remanding the matter back to the Tribunal for fresh consideration;

3(u). as directed by the Tribunal in its order dated 15.02.2017, the respondents have made rigorous efforts to reconstruct service record of late Shri Thul. For this purpose, a Two

Members Committee of Senior Officers was appointed to collect papers / documents pertaining to service record of late Shri Thul.

After the detailed efforts, the Committee has submitted a report on 21.07.2017 recording therein a finding that not only there is no service record available of late Shri Thul but the present applicant, who claims to be a widow of late Shri Thul is not a legally wedded wife of late Shri Thul. Based on the statement of the present applicant herself (Smt. Annapurna S. Thul), she admitted that she is the second wife of late Shri Thul. The first wife Usha Tai suffered from serious ailments and without divorcing her, late Shri Sitaram Thul married her (the present applicant);

2(v). genuineness of Medical Attendance Identity Card, family declaration and Railway passes was also scrutinized and it was found that they were not genuine and authentic. Therefore, based on proper observation and scrutiny, the Committee has concluded that these claimed documents are bogus and are not acceptable (copy of the Committee report is at Annex R-1);

3(w). this report of the Inquiry Committee

was made also available to the present applicant on 14.08.2017 (Annex R-2). Since the present OA has been filed by late Shri Thul after 37 years of his claimed retirement, before adjudicating on the merit of the OA, the Tribunal has to first adjudicate on application for condonation of delay filed by the applicant, which is liable to be dismissed. Since the applicant has failed to prove any facts or claims based on authentic documents, she is not entitled to grant of any family pension. Therefore, the OA should be dismissed.

4. Analysis and conclusions :-

I have perused the OA memo and its Annexes, reply and sur-rejoinder filed by the respondents and the rejoinder filed by the applicant including the three case laws submitted by the respondents. I have also considered the arguments advanced before me by the counsels for both the parties on 25.03.2019. On careful consideration of all the material on record, factual position in the case emerges as follows :-

4(a). The applicant has filed MA No.2028/2014 for condonation of delay. However, this MA is only related to the delay in filing of the

present OA on 14.02.2014 challenging the impugned order dated 30.10.2012. The applicant has claimed that there is delay of only four months in filing of the present OA and the applicant late Shri Thul being 85 years old could not contact his counsel immediately. Therefore, this should be condoned. This justification submitted by the applicant in the MA is not at all satisfactory and it cannot be accepted. Therefore, this MA stands dismissed.

4(b). On careful consideration of the case record, it reveals that the part of claim of the applicant is correct that late Shri Thul had actually applied on 06.09.2011 (copy Annex at A-6, page 12) for pension claiming to be retired employee of the respondents but the impugned order i.e. the reply sent by the Divisional Railway Manager (P), Central Railway on 30.10.2012 is about rejecting the claim for family pension in view of non-availability of settlement record of 1977.

To this extent, the reply of the respondents was sent carelessly, it ought to have been prepared carefully. It seems to have happened because of use of the pre-printed photocopied format for processing cases of family pension.

4(c). The claim of the applicant about the Railway Board letter of 18.07.2008 is not correct because it was issued to expedite finalization of pension papers of the employees, who are likely to retire in near future.

4(d). The applicant has claimed that he submitted details of his family members on 16.07.1990 for getting post-retirement complimentary passes. In the OA, no submissions / averments have been made that late Shri Thul had ever submitted details of his family members for his service record. Therefore, it is clear that the details of family members of late Shri Thul were never submitted by him to the respondents during his period of claimed service with the respondents. Thus the details of his family members were not brought on service record of the respondents for retiral benefits, etc. Therefore, obviously late Shri Thul was not entitled for pension or other retiral benefits.

4(e). Some details of his family members seem to have been submitted by late Shri Thul on 03.07.1991 for post-retirement complimentary passes (Annex A-3) and Medical Attendance Identity Card for family and dependents (Annex

A-4 and A-5). But they were not the details submitted by him for his retiral benefits. Also as claimed by the respondents, these relied upon documents do not seem to be authentic and genuine because on the copy (Annex at A-3) there is overwriting about the date of appointment, about the last pay drawn and date of birth of wife and children and there is no date mentioned when these cards were issued.

From these facts it gets clearly established that no family details had been submitted by late Shri Thul to the respondents when he was in service and the above referred documents i.e. Medical Attendance Identity Card and the form for issuing post retirement complimentary passes are of doubtful nature, they seem to be totally fake and unreliable. The contentions of the respondents in this regard are correct.

4(f). In the OA, about the age of late Shri Thul when he entered the service and at the time of claimed retirement on 27.01.1977 are only of imaginary nature. It has been claimed that late Shri Thul might have either voluntarily retired or superannuated. But these are totally vague statements based on

guess work and therefore, they cannot be relied upon.

4(g). The claim of the applicant that late Shri Thul was also covered under pension scheme is also not based on any evidence. Also nothing has been stated as to whether he had exercised the option to be covered under pension scheme or to continue under Contributory Provident Fund Scheme of the Railways. As explained by the respondents none of the claims of the applicant related to last pay drawn, date of birth of late Shri Thul and age of late Shri Thul at the time of filing of the present OA and mentioned in other averments seems to be factually correct. Therefore, no evidenciary value can be attached to them.

4(h). As directed by the Tribunal in its order dated 15.02.2017 in earlier OA No.2168/2014, the respondents have made all sincere efforts to collect details about service record of late Shri Thul and reconstruct it. However, the Committee of officers who made these rigorous efforts have not succeeded in collecting any evidence of service of late Shri Thul with the Railways. From the report of the Committee (page 54 to 57), it is also revealed that late Shri Thul

had first married to Smt. Usha Tai. As submitted by the present applicant herself (Smt. Annapurna Sitaram Thul) before the Committee of Officers that Shri Thul had married her without taking divorce from Smt. Usha Tai. Thus, the marriage of Shri Thul with the present applicant was illegal and void.

The facts narrated in the report of the Senior Officers are thus acceptable.

4(i). From all these facts, it is clear that no service record of late Shri Thul is available with the respondents about his claimed service, date of retirement etc. Therefore, in such situation, the onus of proving authenticity and genuineness of the claim is on the applicant which he had totally failed to.

Here it is also necessary to mention that even the earlier application submitted by late Shri Thul to the respondents on 06.09.2011 was after a period of 34 years as he himself had claimed to have retired on 27.01.1977. Even this request was hopelessly time-barred and his claim for pension was a totally stale claim which did not deserve any consideration at all. But even then on direction to this Tribunal, the respondents sent the reply on

30.10.2012 and based on subsequent direction of the Tribunal, the respondents have made sincere and rigorous efforts for reconstructing service record of late Shri Thul but have not found any trace of his service record. Therefore, viewed in this perspective, the claim for pension by late Shri Thul and for family pension of the present applicant is a stale claim and cannot be entertained or allowed.

4(j). As relied upon by the respondents, the Apex Court view in the case of **C. Jacob** (supra) is that a stale case can be rejected on the ground of delay alone without examining merits and reply given to the individual does not give fresh right to cause of action. In view of this case law also, the claim of the applicant is of no consequence. Similarly, as held by the Apex Court in the case of **Union of India and others Vs. M.K.Sarkar, Civil Appeal No.8151/2009 decided on 08.12.2009**, when the respondent did not exercise option available when he retired, he was not entitled to exercise the option after expiry of validity period of option i.e. after 22 years. Since late Shri Thul did not submit his family details and did not seek pension at the time of

his claimed retirement, after almost 42 years of service now he cannot make any claim for pension and similarly, the present applicant Smt. Annapurna S. Thul also is not entitled for any family pension.

4(k). As revealed by the discussion above, the present case seems to be a totally fake story without *bona fide* intention and without any evidence to support the claim. It seems to be only an attempt to exploit the respondents by playing chicanery and attempting to be too clever by half. Therefore, the OA being totally devoid of merit deserves dismissal.

5. **Decision :-**

MA No.2028/2014 filed for condonation of delay is dismissed. The OA stands dismissed because of unjustified long delay and on merits.

(Dr. Bhagwan Sahai)
Member (Administrative)

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