

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.667/2014.

Date of Decision: 03.06.2019.

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Anwar Mohammed Khan,
Aged about 61 years, Ex-Assistant Driver,
Central Railway, Kalyan.
R/at 12, Shreeram Wadi, House No.3280/1,
Bismillah House, Beside Royal Complex, at &
Post Ghoti, Tal. Igatpuri, Dist. Nasik 422 402. ... *Applicant*
(By Advocate Shri S.R. Atre)

VERSUS

1. The Union of India,
Through the General Manager,
Central Railway, Head Quarters Office,
Mumbai CST, Mumbai 400 001.
2. The Divisional Railway Manager,
Mumbai Division, Central Railway,
DRM's Office, Mumbai CST, Mumbai 400 001.
3. The Senior Divisional Electrical Engineer,
(TRS) O, Mumbai Division, Central Railway,
DRM's office, Mumbai CST,
Mumbai 400 001. ... *Respondents*

(By Advocate Shri S.C. Dhawan)

ORDER (Oral)
Per: R.N. Singh, Member (J)

Heard the learned counsels for the parties.

2. This case has a chequered history and background and the precise fact of the case has been noted by this Tribunal in its order/judgment dated 26.12.2011 in OA

No.59/2006 filed by the present applicant only (Annex. A-6). The Applicant has filed OA No.59/2006 seeking the following reliefs;

“8(a) To call for the record of the case from the respondents and after perusal of the same, quash and set aside the impugned orders dated 16.09.2003 and 30.11.2004 with all consequential benefits.

8.b) To direct the respondents to reinstate the applicant in service and to treat the period from 12.06.1986 onwards as duty for all purposes.

8.c) Cost of the Original Application be provided for.

8.d) Any other further orders as this Tribunal may deem fit, proper and necessary in the facts and circumstances of the case.”

3. In para 7 of the order/judgment dated 26.12.2011, this Tribunal has ordered as under:-

“....7. In so far as (c) above is concerned, that being not directly connected with the issue involved here, liberty is given to the applicant to separately file a representation and have his grievance redressed, failing which he could seek judicial intervention.”

4. Para 15 of the order/judgment dated 26.12.2011 in OA No.59/2006 reads as under:

“15. The OA is, therefore, disposed of with a direction to the Appellate Authority that the quantum of penalty be reconsidered (in view of half the charge having found untenable) and the decision communicated to the applicant. Time calendared for this purpose is three months from

the date of communication of this order."

5. Learned counsel for the applicant submits that in pursuance of the directions of this Tribunal in para 15 of the order/judgment dated 26.12.2011, the respondents vide order dated 02/03.04.2012 (Annex.A- 7) modified the penalty by reducing the penalty of removal from service imposed upon the applicant to that of compulsory retirement with 2/3rd pensionary benefits from the date of his removal from service (Annex.A-7).

6. Similarly, in view of the liberty granted by this Tribunal vide para 7 of the aforesaid order/judgment dated 26.12.2011 as noted above, the applicant preferred representation dated 06.02.2012 (Annex.A-8) followed by another representation dated 03.09.2013 (Annex. A-9) requesting the respondents to pay him subsistence allowance from June 1986 @ 75% on the revised pay fixation.

7. Learned counsel for the applicant submits that in spite of aforesaid representations dated 06.02.2012 and 03.09.2013, the respondents did not take any

remedial action and they have not passed any orders on such representations.

8. Aggrieved of the aforesaid, the applicant has filed the present OA seeking the following reliefs;

“8.a) This Hon'ble Tribunal be pleased to call for the record and proceedings of the present case and after examining the legality and propriety thereof, direct the respondents to disburse to the applicant, the difference in payment of appropriate Salary and Subsistence Allowance for the period from January, 1986 till 16th of September, 2003 as specifically pointed out by the applicant in the statement annexed to this Original Application at Annex.A-5, the difference amounting to about Rs.4,10,372/- along with an interest @ 18% p.a. till its realization.

8.b) Pass any such order and/or orders as this Hon'ble Tribunal deems fit proper in the facts and circumstances of the present case.

8.c) Costs of the application be provided for.”

9. In response to the notice issued by this Tribunal, the respondents have filed their reply and disputed the claim of the applicant by submitting therein that the claim made by the applicant is barred by limitation, delay and laches and therefore, the present OA is not maintainable. The applicant has filed rejoinder and has reiterated his averments made in the OA and has disputed the objections raised by the

respondents in the reply. The respondents have also relied upon the law laid down by the Hon'ble Apex Court in a number of cases including in:

- i) *Union of India Vs. M.K. Sarkar, (2010) 1 SCC (L&S) 1126.*
- ii) *S.S. Rathore Vs. State of M.P., 1989(2) ATC 521.*
- iii) *Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Jafer Academy, 2014 (1) AISLJ 20.*"

10. Besides the objection of limitation, the respondents have also submitted that the applicant was paid subsistence allowance @ of 50% of his last Basic Pay in accordance with the provisions of Rule 1342 and 1343 of IREC Vol.II read with Rule 5 of Railway Servants (Discipline and Appeal) Rules 1968. The respondents have further referred to various calculations and pay fixation of the applicant at various stages and also about the subsistence allowance during the applicant's suspension. Learned counsel for the respondents on the basis of such reply-affidavit further submits that all the admissible payments have already been made to the applicant and nothing remains due. However, he admits the fact that on the applicant's aforesaid two representations

dated 06.02.2012 and 03.09.2013, no order has been passed by the respondents.

11. We have gone through the pleadings on record and also considered the rival contentions. We are of the view that after various litigation, once this Tribunal has given liberty to the applicant vide order/judgment dated 26.12.2011 to make representation for redressal of his grievances regarding his claim for subsistence allowance as per his entitlement, allegedly denied to him and the applicant has made such representation, it has been incumbent upon the respondents to consider the said representations and pass a reasoned and speaking order in accordance with relevant rules and instructions on the subject which admittedly they have not done.

12. In the facts and circumstances, we dispose of the present OA without going in to the merits of the claim of the applicant with direction to Respondent No.2 i.e. DRM, Mumbai Division, Central Railway, DRM's Office, Mumbai to consider the pending representations dated 06.02.2012 (Annex. A-8) and 03.09.2013 (Annex.A-9) of the applicant

by passing a reasoned and speaking order in accordance with law, within a period of 90 days from the date of receipt of a certified copy of this order.

13. In the facts and circumstances, no order as to costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

dm.

JD
26/6/19

