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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.1079/2003

New Delhi, this 15th the day of January, 2004

Hon'ble Shri S.K. Naik, Member (A)

Khazan Singh
M-110, Rishi Nagar
Delhi-110034

.. Applicant

(Shri C.B.Pillai, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Financial Advisor & Chief Accounts Officer
Kashmere Gate, Delhi
3. Chief Administrative Officer (Constn.)
Hqrs. Office, Kashmere Gate, Delhi

(Shri R.L.Dhawan, Advocate)

.. Respondents

O R D E R

The applicant - Shri Khazan Singh - was a regular employee of the Northern Railway. He proceeded on deputation as Head Clerk to the Indian Railway Construction Company Limited (IRCON, for short) on 15.6.1983. On completion of a period of three years, he was absorbed therein w.e.f. 1.5.1986. His resignation, however, was formally accepted for permanent absorption by the respondents-Department on 12.1.1988. On the acceptance of his resignation w.e.f. 1.5.1986, the applicant was entitled to pension and other retiral benefits upto April, 1986, for which he submitted his claim/papers on 26.7.1989. However, the documents/claim submitted by him were misplaced forcing the applicant to approach the Pension Adalat. The respondents subsequently declared the service records to have been lost on 15.12.1994 and he was asked to submit duplicate

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papers for settlement of his dues. The same were submitted by him on 17.2.1995 before the General Manager and after a period of two years on 1.1.1997, his pension was fixed without indicating any basis for the calculation. The applicant also alleges that his pay had not been properly fixed as he was not given the second stagnation increment which was due from 1.4.1985. He has further stated that even though the respondents have paid Rs.55458/- as interest towards delayed payment of gratuity, still a substantial amount is due to him from the respondents. He has further claimed that no interest has been paid to him on the delayed payment of his other retiral benefits, such as leave encashment. Finally, he also claims that computation of pension has also not been paid to him and the same should be granted to him along with interest.

2. Counsel for the applicant has centered his argument primarily on the ground that the applicant is not to be blamed for the inordinate and unexplained delay with regard to his pension and retiral benefits. If the Department misplaced the records and subsequently declared it to have been lost, they would be duty bound to pay interest for the delay, which they have not done. The counsel, therefore, has concentrated his argument that the Tribunal issue a directive to the respondents to pay him interest on all items of delayed payment on which they have not paid any interest so far.

3. Counsel for the respondents has very strongly rebutted the claim of the applicant. Raising a preliminary objection, he has contended that the applicant has sought plural remedies not connected with

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or arising out of each other through this OA. Drawing my attention to para 8 of the OA, he has stated that direction has been sought for re-fixing his pay with regard to second stagnation increment w.e.f. 1.4.1985 in the pre-revised scale as also sanction, payment of pension and other benefits in the revised scale as on 12.1.1988 when his retirement was accepted by the respondents. He has, therefore, argued that the application is not maintainable under Rule 10 of C.A.T. (Procedure) Rules, 1987. Further, the counsel objects to the maintainability of the application on grounds of limitation. The application having been filed after the expiry of more than fifteen years, he claims that the case of the applicant is clearly barred by limitation. In support of his contention, he has cited the case of Ratan Chandra Samanta & others v. Union of India & others, JT 1993 (3) SC 418 in which the Hon'ble Supreme Court has held that "delay deprives a person of the remedy available in law, a person who has lost his remedy by lapse of time, loses his right as well".

4. On the merits of the case, the counsel has contended that the case of the applicant was not a case of normal retirement. The applicant while in the service of the respondents had proceeded on deputation with a Corporation and had resigned from the service after serving a period of three years of deputation with them. He himself submitted the pension papers on 26.7.1989 as per his own admission even though the retiral benefits were due from 1.5.1986. The applicant also continued to serve with the IRCON and subsequently finally retired from service in 1991. When the applicant himself has delayed the submission of the pension papers by a few

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years, the counsel contends that the unfortunate incident of his papers having got misplaced subsequently and declared lost should not be taken to be any deliberate action on the part of the respondents, as they initiated disciplinary proceedings against the delinquent official and punished him for the dereliction.

5. Counsel has also contended that for a DCRG amount of Rs.35475/-, the applicant has already been paid an interest of Rs. 55458/- which is as per rules. With regard to the other retiral benefits, such as pension, leave encashment, etc., the applicant having received the same without any protest or murmur clearly he now cannot agitate the point at this belated stage. The contention that the GPF amount which has been paid to him also should bear interest for the delayed period, the counsel contends that the same has no merit as the applicant for the delayed years has also received the interest on the GPF amount, which in the normal course he would not have received from the Government, had the amount been paid at the time of his retirement. The counsel has further contended that it is not the case that the Department alone is to be blamed for the delay, but when the applicant was asked to re-submit his pension papers, he did not cooperate in the matter which also caused undue delay. With regard to the payment of commutation pension, the counsel has contended that under the rules, if there has been a delay of more than a one year, the commutation can be allowed only if the pensioner has submitted his medical certificate. In the instant case, despite repeated advise, the applicant has refused to submit a medical certificate and, therefore, he is being paid the full pension. Once he submits his medical

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certificate the pension can still be commuted, as it will only result in reduction in his full pension and on this count, therefore, the counsel contends that the rights of the applicant have not been affected. The counsel for respondents states that the case cited by the learned counsel for applicant in Union of India & others v. D. K. Goel, 3CSLJ 1995 (2) 69 is not applicable to the case of the applicant, as the facts of the case in hand are different.

6. I have heard the learned counsel appearing for the parties at length and perused the records of the case. While I agree that this is a peculiar case in which undoubtedly there has been a delay on the part of the respondents, as the records got misplaced, at the same time the peculiar feature of the case is that while the applicant continued on deputation, his resignation was accepted with a back date. The applicant submitted his pension papers quite late and, therefore, could not claim interest for the delay. However, the respondents could be apportioned the blame for the delay subsequent to the filing of the papers by the applicant, which they have explained by admitting that the delay was on account of the misplacement of the record for which disciplinary action was initiated against the delinquent official, who has also since been punished. Counsel for the respondents, no doubt, has tried his level best to justify this as a mitigating circumstance and argued that no interest would be payable unless the rules so prescribe. I am however not in full agreement with his view. Taking, however, into consideration that this is not a normal case and the chequered background of the case, I feel that the ends of justice would be met if

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the applicant is paid interest at the rate of 5% per annum on benefits due to him other than on the gratuity amount for which interest as per rules stands paid. The amount of interest would be calculated from the date commencing one month after the resubmission of the claim by the applicant.

7. I order accordingly and dispose of the applicant in these terms. No order as to costs.

S. K. NAIK
(S. K. NAIK)
MEMBER (A)

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