

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO.2942/2003

New Delhi, this the 9th day of November, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri Sumat Prasad Jain,
S/o Late Lala Ram Lal Jain,
Retired LDC of the O/o Director of Accounts (Postal)
Delhi, R/o 2303 Dharampura Dariba Kalan,
Delhi - 110 006
(By Advocate : Shri Sant Lal)

... Applicant

Versus

1. The Union of India, through the
Secretary, M.O. Communications,
Deptt. Of Posts, Dak Bhavan,
New Delhi- 110 001

2. The Chief Postmaster General,
Delhi Circle, Meghdoot Bhavan,
New Delhi - 110 001

3. The Director of Accounts (Postal),
Civil Lines,
Delhi - 110 054

(By Advocate : Shri N.K. Aggarwal)

... Respondents

ORDER

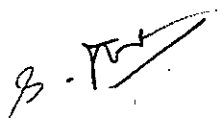
By Sarweshwar Jha, A.M. :

This OA has been filed with prayers that the respondents be directed to make payment of pension, gratuity and other retiral benefits including the amount of GPF applicant expeditiously and also the arrears of pension, while quashing the impugned order dated 28.1.2003 (Annexure A/1).

2. The applicant, who had joined the services of the respondents as an LDC w.e.f. 10.6.1954 and has claimed having rendered services of more than 20 years, was compulsorily retired w.e.f. 7.1.1981 vide order dated 7.1.1981 (A/2). His grievance is that he has not been paid pension and other retiral benefits so far as admissible to him under

the relevant rules/instructions on the subject. He has also not been paid the balance standing at his credit in the GPF Account.

3. On perusal of the facts as submitted by the applicant, it is observed that he remained unwell for a very long period and could not pursue the matter for that reason. He submitted his application in this regard to the respondent No.3 on 10.5.2000 making a request for payment of GPF, pension and other retiral benefits and followed it up with a reminder dated 18.7.2000. He has, however, not received any reply to his application so far. He was asked to submit medical certificate, etc., which, it appears, have not been submitted by him. He has instead submitted a reply dated 29.11.2000 (A/5). He seems to have argued that he was not required to submit the requisite documents, as he had not sought reinstatement. He has made a reference to a letter addressed by the respondent No.3 to the Medical Superintendent of Dr. RML Hospital, New Delhi dated 14.3.2001 for his medical examination by a medical board directing him to appear before the same. He appeared before the Board on 12.4.2001, 19.4.2001 and 8.5.2001. The medical report has not been made available to him; it is reported to have been submitted to the concerned Office. He has received a letter from the Office of respondent No.3 dated 23.11.2001 intimating him that his claim for the said benefit has been rejected by the competent authority treating the case as too old to settle. He has also been informed that his claim has been rejected by the Office of respondent No.2 vide letter dated 5.2.2002. The applicant is reported to have approached the Pension Adalat in this regard, but the outcome of the same is not known to him. He has received the impugned letter dated 28.1.2003 from the Office of the Chief Post Master General, Delhi Circle intimating him that his claim cannot be entertained at such a belated stage (A/1). He seems to have served a legal notice dated 3.3.2003 on the respondents through his counsel. While he has not received any reply to the said legal notice, he has come to learn that instructions have been issued to Respondent No.3 in September, 2003 to arrange payment of GPF and to review/re-examine his case for payment of pension and gratuity etc. admissible on compulsory retirement. Accordingly, he was provided with requisite form to be filled by

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him for payment of GPF (Annexure A/10) and the same was filled by him and submitted to the Office of the said respondent. He is still awaiting the payment. Hence this OA.

4. In support of his claim, he has cited the decisions of the Hon'ble Supreme Court in the case of **S.K. Mastan Bee Vs. General Manager, SC Railways & Another** {2003 (1) SC SLJ 136 } in which the Hon'ble Supreme Court has allowed family pension with arrears in favour of the petitioner in the said case.

5. The respondents in their reply have, at the outset, submitted that the applicant was compulsorily retired from Govt. service w.e.f. 7.1.1981. According to them, the applicant or his family members or his neighbours never disclosed his whereabouts and that the persons who were deputed to deliver the letters to him were insulted and abused by his family members and they did not talk about him despite several visits. Resultantly, the letters addressed to him were always returned by the Postman with the remarks 'Not Accepted' or 'Mr. Jain not available'. On the question of delay, inviting reference to rule 68 of CCS (Pension) Rules, 1972, which provides – "is applicable only when there is no delay on the part of the pensioners", the respondents have maintained that the pensioner himself was responsible and did not apply for getting the benefits as admitted by him in para 4.3 of the OA. The respondents have, therefore, pleaded that the OA be dismissed on that account alone.

6. Elaborating the facts as relevant to the OA, the respondents have claimed that he deliberately flouted the official orders and that he remained absent from duties since 1975 without any leave, permission or information. He never approached the DA (P) Delhi to know about the position of his services. A number of letters/reminders were sent to him, but he never accepted them. According to them, this behaviour on the part of the applicant was an act of intentional misconduct. They have further argued that the story of madness as narrated by the applicant is pure concoction and after-thought. Applying for

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pensionary benefits after a lapse of 20 years allegedly on account of his mental unsoundness due to kidnapping of his son in 1974 has been found to be not trustworthy by the respondents. They have submitted that the applicant has no answer to their query as to why any of his family members could not apply for the said benefits.

7. It appears that the respondents, finding no response from the applicant to their various communications and after finding the applicant absent for 20 years, took the decision to compulsorily retire him from Govt. service w.e.f. 7.1.1981 after following the relevant Service Rules. It also appears that the applicant did not submit the necessary papers regarding pensionary benefits nor did he apply for payment of balance of GPF till 10.5.2000. It also transpires from the submissions made by the respondents that the applicant failed to furnish any proof of his unsound mind. The respondents have annexed the relevant papers to their reply supporting their submissions and the same have been perused. It appears that the applicant was completely non-responsive to the communications sent to him. It defies any logic that he should have been absent for 20 years due to madness or insanity.

8. On perusal of the rejoinder filed by the applicant to the reply of the respondents, it is observed that he has raised questions of technicality, like, the concerned authority (Respondents) having not mentioned anything with regard to the nature of action taken by them for preparation of pension papers and their completion as prescribed under CCS (Pension) Rules, 1972 after the disciplinary authority had issued the order dated 7.1.1981 imposing the penalty of compulsory retirement. The applicant has also alleged that the enquiry was conducted in one day, i.e., on 6.2.1980, the date on which one SW was examined and the listed documents were taken on record. The applicant seems to have placed responsibility at the doors of the respondents for ensuring completion of his pension papers and have completely absolved himself of any responsibility in getting the same issued. The applicant has rather claimed that the respondents cannot take away the

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right for payment of his retiral/retirement benefits. He has also alleged that the order imposing penalty of compulsory retirement dated 7.1.1981 has been issued back dated, which is not permissible. It has been argued that the enquiry and the enquiry report have been referred to only to mislead the Tribunal, as the same has nothing to do with the payment of his rightful claim for terminal/retirement benefits as also his GPF balance. He has claimed that he had submitted the relevant forms relating to the settlement of his GPF account. He has also de-linked the question of payment of terminal/retiral benefits from the need to produce fitness certificate. According to him, long illness could be no ground for asking any pensioner to go in for medical examination for his fitness.

9. The learned counsel for the respondents has, however, laid emphasis on the fact that it was the responsibility of the applicant to have filled the necessary pension and other retirement benefits-related forms in order to enable the respondents to proceed with finalization of his pensionary benefits. According to them, this requirement was never fulfilled by the applicant.

10. The learned counsel for the respondents has also cited the decisions of the Hon'ble Supreme Court in the following cases to support his plea for rejecting his case:

- i) AIR 1992 SC 1414 – Bhoop Singh vs Union of India & Others decided by the Hon'ble Supreme Court on 29.4.1992 in which it has been held that "Inordinate and unexplained delay or laches by itself is a ground to refuse relief to the petitioner, irrespective of the merit of the claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that behalf."
- ii) JT 1994 (3) S.C. 126 – Ex. Capt. Harish Uppal v Union of India & Ors decided by the Hon'ble Supreme Court on 30.3.1994, in which it has been held that "parties should pursue their rights and remedies promptly and not sleep over their rights. If they choose to sleep over their rights and remedies for an inordinately long time, the Court may well choose to decline to interfere in its discretionary jurisdiction under Article 226 of the Constitution of India – Petition dismissed."

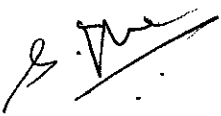
The learned counsel for the applicant has cited the above cases to drive home the point that inordinate delay on the part of the applicant in not taking up his grievance with the respondents and long silence on his part in this regard will lead to ceasing of his right to relief and consideration. Going by the decisions of the Hon'ble Supreme Court on matters in which the applicants/petitioners had kept silent on their cases for such a long period in which cases the applicants/petitioners ceased to have any claim to the relief sought by them, while the applicant does not appear to be having any case, as he remained absent for 20 years when finally he was compulsorily retired vide the orders of the respondents dated 7.1.1981, and he having approached this Tribunal in the year 2003, keeping in view the fact that the matter relates to pensionary benefits to which an employee has an inherent claim, it would be appropriate that the respondents apply their mind to whether the communications which they had sent to him and to which he did not respond to also included papers relating to pensionary benefits to be duly completed by the applicant. If these communications did include such papers, the applicant will have no justification in claiming the same at this stage after having kept silent for as long a period as 20 years.

11 On closer examination of the facts of the matter as submitted by the applicant as well as the respondents, it is observed that essentially the applicant remained absent for 20 years. During the said period, he did not respond to the communications as sent to him by the respondents. They, after having followed the due process of enquiry and as provided for under the rules, imposed a penalty of compulsory retirement on him. They, however, did not take appropriate steps to inform the applicant as to the availability/admissibility or otherwise of the pensionary/retiral benefits to him under the relevant rules. There is also no specific mention as to what medical report was given on him by the Medical Board as constituted in Dr. RML Hospital. There is only a reference to the fact that the applicant failed to establish that he was absent for 20 years on the ground that he was mentally unsound. The whole thing appears to be somewhat intriguing. The respondents should have clarified very specifically the findings/opinion of the Medical Board on the subject. While the matter relating to the enquiry and the penalty of compulsory retirement having been imposed on him after following the due process of investigation/enquiry is not a subject in the prayer as made by the applicant in the OA., I am not convinced/satisfied with

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the arguments as advanced by the applicant as to why he did not complete the necessary papers in this regard. Though it is the responsibility of the respondents to pay pension to the retiring employees, an employee cannot run away from his responsibility to submit the necessary pension papers duly signed by him. Accusing each other of not following the required procedure in the matter would not really help. While it is difficult to understand why the matter relating to pensionary benefits to which the applicant has laid claim could not be pursued by any of his family members while he was absent due to mental unsoundness, from these papers it is also not clear whether pension-related papers were sent to the applicant at his address and to which he did not respond. The respondents have made a general reference to the communications sent to the applicant having come back undelivered for one reason or the other. Even otherwise, dealing with such a case after a long silence of long 20 years on the part of the applicant can hardly be imagined rational, as the facts relevant to the case would not be readily available. The applicant will, therefore, in such a case, have to suffer for dis-interest/indifference shown by him to his own case for whatever reasons – whether due to mental unsoundness or any other intentional reason.

12. However, the respondents could be asked to check whether they had actually sent the pension/retirement benefits related papers to the applicant. They will also need to see whether the form meant for refund of GPF amount was received by them duly signed by the applicant and, if so, what action was taken by them. The mere fact that the applicant has been compulsorily retired as a result of his having remained absent unauthorizedly for the reason as mentioned in the order of the respondents dated 7.1.1981 (Annexure A/2) would not relieve the respondents of their responsibility to apprise the applicant of the reasons why he cannot be paid pensionary benefits, if otherwise admissible to him. In fact, it will be necessary on their part to have apprised him as to why his claim for pensionary benefits cannot be considered at this stage instead of merely saying that it cannot be entertained at such a belated stage. While it has been noted that the applicant

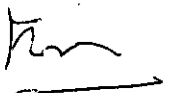


was non-responsive to the communications addressed to him by the respondents leading to his compulsory retirement from service, it would be just and reasonable to apply a positive mind to the fact whether the applicant is otherwise eligible for pensionary benefits and to see whether the relevant papers on the subject are available so as to finalize the same.

13. Under these circumstances, and after having heard the learned counsel for the parties, I, therefore, consider it appropriate to dispose of the OA with a direction to the respondents to give one more application of their mind to the prayer made by the applicant and to see whether the same could be considered on the basis of the papers available with them in regard to the service rendered by him before he was compulsorily retired, as admissible under the relevant rules on the subject. It would be proper that the respondents give an opportunity of personal hearing to the applicant in order to facilitate resolution of the matter. The respondents are further directed to complete the exercise within a period of six months from the date of receipt of a copy of this order and to inform the applicant appropriately. No costs.



(Sarweshwar Jha)
Member (A)



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