

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

Original Application No.021/0919/2018 & M.A.273/2019

Date of C.A.V. : 29.07.2019

Date of Order : 05 08.2019

Between :

L.Hanumanthu, S/o Laxmaiah,
Aged 60 years, Ex.R.R.Cook,
B.D.C.R. S.C.Railway,
R/o H.No.3-139, Pegadapalli Village,
Tandur Mandal, Adilabad District.

...Applicant

And

1. The Union of India, rep. by its General Manager, South Central Railway, 3rd Floor, Rail Nilayam, Secunderabad.
2. The Chief Operation Manager (COM), South Central Railway, Rail Nilayam, Secunderabad.
3. The Additional Divisional Railway Manager (O) Appellate Authority, Administration, South Central Railway, DRM Office, Secunderabad.
4. The Senior Divisional Personnel Officer, South Central Railway, Secunderabad Division, DRM Office, Secunderabad.
5. The Senior Divisional Finance Manager, South Central Railway, Sanchalan Bhavan, DRM Office, Secunderabad.
6. The Divisional Railway Manager, APO/M/SC, Personnel Branch, South Central Railway, 4th Floor, Sanchalan Bhavan, Secunderabad. ... Respondents.

Counsel for the Applicant ... Mr.Ch.Satyanarayana, Advocate

Counsel for the Respondents ... Mr.S.M.Patnaik, S.C. for Rly.

CORAM:

Hon'ble Mrs. Naini Jayaseelan ... **Member (Admn.)**

ORDER

{As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.)}

The applicant was initially appointed as a casual labourer on 29.05.1978 in the Railway Department and was later promoted as R.R.Cook on 19.06.1978. While working in Secunderabad, a charge sheet for major penalty was issued to the applicant. Charges were proved during the inquiry. Thereafter, the applicant was imposed with a punishment of compulsory retirement w.e.f. 26.02.2008. Since his pension and other attendant benefits were not released, he filed **OA.1320/2016** before this Tribunal seeking the following relief :

"To declare the action of the respondents in not sanction and releasing the retirement benefits and other attendant benefits due to the applicant is illegal, arbitrary, unreasonable and violation of principles of natural justice and consequently direct the respondents to sanction and release the retirement benefits and other attendant benefits to the applicant forthwith and to pass such other order or orders as the Hon'ble Tribunal may deem fit and proper in the circumstances of the case."

2. This Tribunal disposed of the said OA vide order dated 12.02.2016 with a direction to the respondents to settle the pensionary benefits and arrears of pay to the applicant preferably within four weeks from the date of receipt of a copy of the order. Thereafter the respondents paid the applicant's pension due amounting to Rs.7,28,504/- which was credited to the account of the applicant on 02.04.2016.

3. After receipt of the said pension, he filed an **OA.701/2016** for sanction and release of pension from the date of his retirement i.e. 26.02.2008 along with interest. This OA was withdrawn on 11.06.2018, since the applicant had sought specific permission to withdraw the OA with liberty to file a fresh OA. The present OA which is the third OA filed by the applicant on 25.09.2018 in which the main relief sought is for the payment of interest @Rs.2/- per month from 26.02.2008 and 02.04.2016.

4. In the reply statement the Respondents – Railway Department had submitted that although the applicant had been compulsorily retired w.e.f. 26.02.2008, he had submitted his pension papers only in 2013 (which includes his pension booklets, bank mandate, photographs and other required documents) i.e. after a lapse of 5 years and hence the delay in release of pension and pensionary benefits is entirely attributable to the applicant and not to the respondent department. This is also confirmed from the reply statement (page-10) wherein the department had replied to the applicant's request for payment of interest stating that since the applicant had submitted his documents after a lapse of more than 5 years he is not eligible for any interest on pension or gratuity. More over under the Railway Servants (Pension) Rules, there is no rule to pay interest on pension. The applicant's representation dated 23.06.2016 has been replied vide letter of S.C.Railway dated 04.11.2016 (Anx-R-IV).

5. Learned counsel for the respondents submits that the present OA is hit by principle of “constructive resjudicata” as he made the same prayer in his earlier OA.1320/2015 as well as in the second OA i.e. 701/2016, which he withdrew. Constructive resjudicata defines as under :

“In simple term constructive res judicata is an extension of res judicata principles serving the same purpose of preventing the multiplicity of proceedings. Whereas res judicata basically prohibits suit which has already been decided by a competent court, constructive res judicata prohibits raising issues which ought to be raised in the previous suit.”

6. The learned counsel for the applicant has cited the judgement of the Cuttack Bench of this Tribunal in OA.260/681/2016. However, in the above mentioned case, the delay was entirely attributable to the department and is therefore not applicable to the present case. In the instant case the delay cannot be attributable to the department as the applicant took considerable time in submitting his pension papers as mentioned in para-3 above.

7. Learned counsel for the respondents reiterates that the present OA is hit by the principle of “constructive resjudicata” that while the applicant had made the prayer for pension and other attendant benefits in the earlier OA.1320/2015, but the Tribunal did not grant any consequential benefits including interest as per the order dated 12.02.2016. Subsequently the applicant filed the second OA.701/2016 in which he again prayed for pension and consequential benefits which was withdrawn as per order dated 11.06.2018. Learned counsel for the respondents relied upon the judgement of Jodhpur Bench of C.A.T. in O.A 290/00259/2013 dated 29.03.2019, wherein the applicant prayed to reconsider

his case for regularization, the Tribunal held as under :

“While the matter was finally decided, the applicant had foregone his claim for regularization and only prayed that his adhoc services need not be terminated.”

The Jodhpur Bench of the Tribunal further observed that the applicant has foregone the said prayer which cannot be reopened by way of present OA and he cannot re-agitate the same cause of action again.

8. In the above case too, the prayer in the original OA was for regularization and in the second OA the prayer which has foregone by him cannot be reopened now in the present OA.

9. In view of the fact that the present OA is hit by the principle of “constructive resjudicata”, the OA is not maintainable and is accordingly dismissed. M.A.No.273/2019 stands disposed of. There shall be no order as to costs.

**(NAINI JAYASEELAN)
MEMBER(ADMN.)**

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