

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19648 of 2014
Date of Decision:-30.3.2016.

Harichand

.....Petitioner

Versus

Union of India and others

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURYA KANT
HON'BLE MR. JUSTICE P.B. BAJANTHRI**

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr. Umesh Narang, Advocate for the petitioner.

Mr. G.S. Bal, Senior Advocate with
Mr. Lakhwinder Bir Singh, Advocate for
respondent Nos.1 and 2.

SURYA KANT, J. (ORAL)

1.) The petitioner has laid challenge to the order dated 11.8.2010 passed by the Railway Authorities rejecting his claim for the grant of pension, as well as the order dated 11.12.2012 whereby the Central Administrative Tribunal, Chandigarh Bench has turned down his Original Application against the above stated order.

2.) The facts may be noticed briefly. The petitioner joined Northern Railway on 28.4.1950 and after serving for 26 years he is said to have got 'voluntary retirement' w.e.f. 7.4.1976. It appears that

the Pension Scheme was introduced on 16.11.1957 effective from 1.4.1957 but the petitioner failed to exercise the option within the stipulated period. It further appears that the pension claim was raised by the petitioner at a highly belated stage somewhere in the year 2007 and finally it was rejected on 11.08.2010. The Tribunal has declined to interfere with the impugned order on the premise that the Provident Fund was disbursed to the petitioner on 8.1.1977 and if he was inclined to opt for Pension Scheme, at best he could raise the issue at that time. Secondly, he had earlier also filed an Original Application for grant of *ex-gratia* amount and his claim was turned down on 18.7.2007. No claim regarding pension was raised in that Original Application, hence, the second petition was barred by constructive *res-judicata*. The Tribunal also viewed that his claim is barred by limitation.

3.) The respondents have filed an affidavit-cum-reply dated 9.5.2015 pointing out that at the time of voluntary retirement, the petitioner was 46 years old only and since he was not entitled to seek 'voluntary retirement', he was treated to have 'resigned' from service under para 311 of the Railway Pension Rules, 1950. It is further explained that the petitioner did not qualify for pension or to seek voluntary retirement with pension for which he was required either to have completed 30 years of service or 55 years of age as per para 620 and 622 of the Pension Scheme. The petitioner fulfilled none of these conditions.

4.) We have heard learned counsel for the parties and gone through the record.

5.) In view of the embargo created under the Scheme of voluntary retirement, namely, either 30 years of service or 55 years of age, no exception can be made to the decision taken by the Authorities in treating that the petitioner is deemed to have resigned from service. He is thus not entitled to claim pension for want of fulfillment of eligibility conditions.

6.) Faced with this, learned counsel for the petitioner submits that the arrears of Provident Fund amounting to ₹ 3,448/- were offered to the petitioner vide cheque dated 21.3.2012 only and that too after filing of the Original Application.

7.) Learned Senior counsel for the Railways, on the other hand, submits that there were some recoveries to be effected from the petitioner and after deducting the same, the balance amount was paid. We, however, find no justification for the inordinate delay in releasing the aforesaid amount as the recoveries ought to have been effected soon after the petitioner was permitted to resign/voluntarily retire. The respondents are thus liable to pay interest to the petitioner on the delayed payment of Rs.3,448/-. Having regard to the fact that he is 82 years old, we award interest @ 12% per annum to the petitioner which shall be payable w.e.f. 1.1.1977 till 28.2.2012. The arrears of interest shall be paid to the petitioner along with principal amount within a period of three months subject to the

petitioner returning the original cheque by way of Registered Post/Speed Post to the Authorities.

8.) At this juncture, counsel for the petitioner has raised a new claim regarding *ex-gratia* pension which is said to have been made admissible to all those Railway employees who retired before 1.1.1986 and have rendered 20 years continuous service. Since such a claim was not subject-matter of consideration before the Tribunal and has also not been raised in the writ petition, it is not expedient to express any views on the petitioner's entitlement except to direct the respondent-Authorities to consider the claim of the petitioner regarding *ex-gratia* pension under the above stated new Scheme within a period of four months and if found entitled to, release the same. However, if there is any legal impediment against the grant of such benefit, a reasoned order be passed. The petitioner shall be at liberty to lay challenge to such order before an appropriate Forum.

**(SURYA KANT)
JUDGE**

**(P.B. BAJANTHRI)
JUDGE**

March 30, 2016.

sandeep sethi