

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Madhuresh Prasad

AND

The Hon'ble Justice Supratim Bhattacharya

W.P.C.T 336 of 2024

Union of India & Ors.

Vs.

Ashim Kumar Saha

For the petitioners : Pinaki Ranjan Chakraborti
Tanushree Ghosh

For the : Mrs. Juin Dutta Chakraborty
Respondent/Applicant : Mr. Bidan Modak

Heard on : 27.01.2025

Judgment on : 27.01.2025

MADHURESH PRASAD, J.:

1. We have heard learned counsel for the petitioner and the learned counsel representing the respondent.
2. The learned counsel for the respondent has opposed the prayer made in the writ petition assailing the order passed in O.A. 927 of 2023 on 23rd April, 2024. She has submitted that the authorities have approached this Court without due diligence and

only when an issue has occurred requiring compliance with the order passed by the Tribunal.

3. The learned counsel for the writ petitioner on the other hand submits that insignificant delay, if at all has occurred, in view of the decision making process for filing the present writ petition involving many authorities.
4. After considering the said submissions we have gone through the order of the learned Tribunal impugned in the present writ petition. The petitioner claimed that he stood voluntarily retired from the services of the respondent's organization on 1st July, 2022. He was being denied the consequential benefits arising there from. Petitioner's claim was rejected by way of three communications dated 22nd May, 2023, 27th June, 2023 and 28th June, 2023 issued by the authorities.
5. It is submitted that once the petitioner was allowed to retire voluntarily the benefits arising from the same could not be denied to the petitioner.
6. Upon hearing the submission we have gone through the order passed by the Learned Tribunal. We find that in view of the fact that the respondents therein had failed to file their counter reply in spite of repeated adjournments the Tribunal has allowed the Original Application. The order of the Tribunal, however, does not manifest consideration of the three communications noted above

or any final decision thereupon. The Tribunal's order, relevant extract reads as follows:

"5. A copy of the Memorandum No. ESB/DTS/SHM/OP-8/VE/AKS dated 28.06.2022 is available on record which is reproduced below:

"Acceptance of the Competent Authority Sr. DOM/KGP towards the Voluntary Exit w.e.f 01/07/2022 from Rly Service of Sri AShim Kumar Saha SS/SHM, Emp No. 50714101782 working under SMR/SHM is hereby communicated for information to all concerned. Hence his service stands terminated from 01/07/2022."

From the aforesaid memorandum, it is clear that the applicant Shri Ashim Kumar Saha has been granted voluntary exit from the Railway with effect from 01.07.2022. The applicant is an ex-serviceman who has been re-employed in the South Eastern Railway from the Defence Forces. He has already been granted voluntary retirement with effect from 01.07.2022. Vide the aforesaid order dated 28.06.2022, there is therefore no reason whatsoever for the respondents to delay in releasing all post retirement benefits such as gratuity, leave salary, CGIS to which a retired railway employee is entitled to. Further, the communication dated 22.05.2023 along with its enclosure, i.e. letter dated 27.06.2023 and the communication dated 28.06.2023 which has been forwarded to the applicant is meaningless since the applicant has already been granted voluntary exit.

An extract from the Pension Fund Regulatory and Development Authority Notification dated 10th August, 2017 reads as under:

"(I) In regulation 2, in sub-regulation (1), the following new clauses shall be added after sub-clause (j)-

(k) "Exit" for the purpose of this regulation shall mean closure of individual pension

account of the subscriber under National Pension System, upon and on the date of happening of any of the following events, as may be applicable:

(i) a subscriber having superannuated/retired from employment as per the terms of such employment;

(ii) a subscriber having attained the age of sixty years, and where so specifically permitted has not exercised a choice in writing to continue to remain subscribed to such system, till such further period as is permissible, with or without making contributions;

(iii) death of the subscriber before attaining the age of superannuation, or the age of sixty years, or in cases where an option has been exercised by subscriber to continue to remain subscribed to a certain permissible time period, death before expiry of such period;

(iv) voluntary closure of the account by the subscriber, in cases where so permitted and on the date on which such closure is effected in the system;

Provided that a subscriber shall be deemed to have exited from National Pension System, in accordance with sub-clause (i) to (iv) notwithstanding that no claims have been received by or on behalf of the subscriber or such claims having being received are pending settlement.

Provided further that where a subscriber cases to be in employment other than retirement or superannuation, it shall not be treated as exit and he shall have the option to continue his individual pension account, if available under new employment or as voluntarily available to citizens,

unless the subscriber prefers a claim as provided under these regulations for withdrawal of benefits.

(1) The expression “defer” of “deferment” wherever used in these regulations shall mean the postponement or deferment of claim for receiving benefits admissible to a subscriber upon exit from National Pension System.”

6. Before parting, we would like to express our extreme displeasure on the failure of the respondents to submit their counter reply to this Original Application despite having been given several opportunities to do so. We find that the respondents have neither submitted their counter reply, nor have they released the pensionary benefits due to the applicant. We are of the view that the respondents have been extremely callous in their approach to a pensioner and in particular to an ex-serviceman. Such insensitive behaviour towards an ex-serviceman cannot be condoned.

7. The Original Application is allowed. There will be no order as to costs.”

7. From the order passed by the Tribunal, we find that the same does not manifest any consideration of the three communications nor does it specify the relief, if any, granted to the petitioner. We, therefore, consider it appropriate that the Tribunal should reconsider the matter and, therefore, we remand the matter for reconsideration to the Tribunal.
8. The writ petitioner would be under an obligation to file their counter reply within four weeks from date to facilitate such

consideration. The applicant before the Tribunal thereafter would be at liberty to file a reply, if so required.

9. The Tribunal should proceed to consider the Original Application expeditiously and without granting any undue adjournments in the matter to facilitate such consideration.
10. We observe that the earlier order dated 23rd April, 2024 passed by the Tribunal shall not stand in the way of fresh consideration.
11. The writ petition is disposed of in these terms.
12. Urgent Photostat certified copies of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(MADHURESH PRASAD, J.)

(SUPRATIM BHATTACHARYA, J.)