

(2008) 08 DEL CK 0263

In the Delhi High Court

Case No : Writ Petition (C) No. 807 of 2008 and CM No. 1587 of 2008

Bishan Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-08-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80

Citation : (2008) 152 DLT 582 : (2008) 119 FLR 629

Hon'ble Judges : Veena Birbal, J; Manmohan Sarin, J

Bench : Division Bench

Advocate : Arvind Sharma, for the Appellant; Jairaj Mudgal, for Respondentss
Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Veena Birbal, J.—Petitioner has challenged the order dated 6.12.2007 passed by the Central Administrative Tribunal, Principal Bench, New Delhi ("the Tribunal") in OA No. 488/2007 by which prayer of the petitioner seeking direction to respondents to produce his service record and to grant him pension/service benefit has been rejected.

2. Petitioner has alleged that he was engaged as fitter/Khalasi by respondents in Group D, Class C on 14.4.1953. As per him, he was engaged in running department at Loco Shed, Moradabad in 1969-70 where he worked upto 1971. Petitioner has further alleged that he fell ill in 1971 and had taken treatment in Railway Hospital from where he was referred to AIIMS.

There he remained admitted for 20 days and was further advised to take rest for 90 days. Petitioner has alleged that after his recovery he reported for duty but was not allowed to join. Thereafter from time to time he approached respondents for joining the duty but was not allowed. Ultimately he was told that he had completed the age of superannuation on 10.7.94. He has made several representations to the respondents but of no result. However he received an

order dated 11.7.2002 and in response to same petitioner submitted required information on 29.7.2002. Petitioner has allegedly made representations dated 12.8.2002, 28.8.2002, 1.10.2002. On 9.10.2002 Divisional Manager, Railway, Moradabad wrote a letter to EP Branch, Work Branch, Moradabad with a copy to petitioner wherein complete details including the record of service of the petitioner was asked for taking further action in the matter. On 22.11.2002 petitioner sent a legal notice to respondents u/s 80 CPC through the counsel claiming all service benefits including pension. Thereafter respondents vide letter dated 12.7.2003 informed the petitioner that since his service details were not available, no further action in the matter was possible.

Aggrieved with inaction on the part of the respondents petitioner filed OA NO. 3722/2003 before the Tribunal which was disposed of vide order dated 2.1.2004 with a direction to respondents to take final decision with regard to petitioner's retiral benefits within two months of the date of the receipt of the order.

Petitioner has alleged that he submitted necessary proof before the concerned authorities in support of his claim. Respondents rejected his claim vide order dated 28.5.2004. Again feeling aggrieved by the said order he filed another OA 1995/04 before the Tribunal, Principal Bench, New Delhi. The said petition was disposed of by the tribunal vide order dated 4.9.2005 with the direction to respondents to re-examine petitioner's claim by verifying particulars from staff register. The claim of the petitioner was again rejected by the respondents vide order dated 4.12.2005 on the ground that no proof of his having worked with the respondents had been found in the staff register.

Petitioner again challenged the said order dated 4.12.2005 by filing OA No. 539/2006 before the Tribunal. Tribunal vide its order dated 4.8.06 quashed the order of the respondents and remanded back the matter for verifying the working period for determining the claim for pensionary benefits. Even on re-examination his claim was rejected vide order dated 22.12.2006. Aggrieved with the same he again filed OA No. 488/07 before the Tribunal which was also dismissed vide the impugned order dated 6.12.2007. Hence the present petition.

3. Learned Counsel for petitioner contended that he had filed O.A. No. 488/2007 so that necessary documents pertaining to service of petitioner from 14.4.1953 to 1970 pertaining to his employment be produced before Tribunal. It is contended that no order was passed by the Tribunal in this regard. It is contended that petitioner had filed necessary documents i.e. his P.F. account number and employee ticket number to substantiate his claim for retiral benefits and pension. Despite that same are not considered by respondents and no relief has been granted to petitioner about retiral benefits and pension. It is submitted that petitioner be not allowed to suffer due to negligence and failure on the part of the respondents Railway by not tracing his record.

4. On the other hand respondents contended that records have been duly verified. Nothing has been found in the records which could even remotely

suggest that petitioner had worked with respondents from 1953 to 1970 as is alleged by him. It is contended that name of petitioner was not found even in the staff register. It is contended that he has been repeatedly filing O.As. which is an abuse of process of law and the petition deserves to be dismissed with heavy costs.

5. We have heard counsel for the parties and perused the record.

6. There is nothing on record to substantiate the contention of petitioner that efforts were made by him from 1971 upto 2002 for joining duties or for grant of pension/service benefits as is alleged by him. The silence for a period of about 31 years is very material. Petitioner has also not filed any document either before the respondents or the Tribunal or before this Court to substantiate his plea that he had fallen sick in 1971 or had taken treatment from Railway Hospital/AIIMS.

7. Perusal of record also shows that in response to notice dated 27.11.2002 of petitioner wherein he had asked for the pay from 1971 till retirement and retiral benefits/pension, respondents informed vide letter dated 17.7.2003 that service details were not available as such further action in the matter was not possible. Thereafter his case was repeatedly examined by respondents on the directions given by the Tribunal from time to time while disposing of different O.As. in this regard. On the direction of Tribunal in O.A. No. 3122/2003, respondents made inquiries from C&W Controller, Khurja and SSE/Loco/MB where the petitioner had allegedly worked but no such service record was available. Respondents had also asked the petitioner to submit any record if he has or proof of his service. Ultimately, due to lack of evidence respondents rejected his claim vide order dated 28.5.2004. While rejecting his claim, respondents also observed that as per him he was not allowed to join duty in 1971 wherein he has approached for pensionary benefits only in 2002. Respondents also found that even P.F. number and ticket number submitted by the petitioner were not found to have been issued by the office of the respondents.

8. On re-examination in view of directions in O.A. No. 1995/2004, the records were verified by respondents from 1971 but no proof was found in the staff register as such the claim of the petitioner was rejected vide order dated 14.12.2005.

Again the records between the years 1953 to 1971 were inspected in view of orders in O.A. No. 539/2006 of Tribunal and claim of petitioner was rejected vide order dated 22.11.2006 of respondents.

9. One of the grounds urged by petitioner is that the Tribunal should have summoned and perused the record before passing the impugned order. We have examined the records i.e. Service Register pertaining to the period for which he has alleged having worked in Moradabad office. The name of the petitioner is not found there.

10. The case of petitioner has been examined repeatedly by the respondents and every time speaking order is passed by the respondents. After verifying the records respondents have stated that no documents had been found on the basis of which it could be ascertained that the petitioner had worked with it. The Tribunal has also observed that the petitioner has not produced any such record either before it to substantiate that he had ever worked with the respondents. The alleged documents showing P.F. number 611930 and Ticket No. 32056 for 1958-59 and Ticket No. 32586 (1960) alleged to have been issued by respondents have been examined by the respondents and the same have been found to be not issued by the respondents office. The observation of the Tribunal is that the case is false and fabricated one.

11. As already noted, there is nothing on record to show that petitioner ever approached the respondents prior to 2002 for the relief as prayed now. Apart from unexplained delay of 30 years in approaching the authorities, the case also involves disputed questions of facts which cannot be gone into in exercise of writ jurisdiction. The petitioner has not been able to place any credible evidence either before the respondents or before the Tribunal or before this Court to substantiate his stand that he was in the employment of Railways. We find no error of jurisdiction or infirmity in the impugned order which calls for interference by this Court in the exercise of writ jurisdiction. Petition is, therefore, liable to be dismissed and is dismissed.