

12 ✓

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.No 1899/2002

Date of Decision 3.1.2003

Jagan Nath Applicant

Sh.B.S.Mainee ... Advocate for the Applicant

VERSUS

UOI through the Genl... Respondents
Manager (NR) and Ors.

Shri R.L.Dhawan Advocates for the Respondents

Coram:-

Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

1. To be referred to the Reporter or not ? Yes
2. Whether it needs to be circulated to other
Benches of the Tribunal? No


(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

13

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.1899/2002

Friday, this the 3rd day of January, 2003

Hon'ble Mrs. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Mr. Govindan S. Tampi, Member (A)

Shri Jagan Nath
s/o Shri Dalu Ram
Ex. Junior Engineer (C&V)
Under CDO, Northern Railway,
Rewari

..Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India through

1. The General Manager
Northern Railway
Baroda House, New Delhi
2. The Divisional Railway Manager
Northern Railway
Bikaner (Rajasthan)
3. The Divisional Personnel Officer
Northern Railway
Bikaner (Rajasthan)

..Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R (ORAL)

Hon'ble Mrs. Lakshmi Swaminathan:-

In this application, the applicant is aggrieved by the order issued by the respondents dated 22.1.2001 compulsorily retiring him from service under the provisions of the Railway Rules which are peri materia of F.R.56-J.

2. The applicant was initially appointed as Safaiwala on 31.9.1964 and was subsequently promoted until he became Junior Engineer (JE) in the pay grade of Rs.5000-8000/-. The applicant while working as JE was issued the aforesaid impugned order dated 22.1.2001. Against this order, he had filed a representation dated

12

9.2.2001 to the General Manager (P), Northern Railway, New Delhi submitting that there is no material or evidence to show that he is not rendering proper service and praying that the order may be set aside. The applicant was promoted as JE on 2.6.1998 and this is also one of the grounds urged by the learned counsel for applicant that, in the circumstances, the respondents could not have passed the order of compulsory retirement. By the impugned order, the applicant had been given three weeks' time for filing a representation which he did on 9.2.2001 followed by further appeals filed on 21.3.2001 and 4.7.2001. As he received no replies to these representations/appeals, he filed an application before this Tribunal (OA-3476/2001) which was disposed of on 2.1.2002. By this order, the Tribunal had disposed of the OA even without issuing notice to the respondents with a direction to them to consider the aforesaid appeals filed by the applicant and pass a reasoned and speaking order expeditiously and in any event within a period of two months from the date of receipt of a copy of the order.

3. We note from Annexure A-8 that the certified copy of Tribunal's order dated 2.1.2002 in OA-3476/2001 had been sent to the parties on 7.1.2002 and, therefore, it can be presumed that the respondents have also received the copy of the judgment, in any event, before the middle of January, 2002. In the circumstances, as ordered by the Tribunal, they ought to have passed the reasoned and speaking order on the representations/appeals submitted by the applicant within two months which they have failed

to do. According to the respondents, the appellate authority has passed the order on the aforesaid representations of the applicant on 14.8.2002 which was communicated by respondent No.2 to the applicant in his order dated 14.8.2002. In the meantime, another OA, i.e., the present OA has been filed by the applicant on 16.7.2002 and it is noticed that thereafter, the appellate authority has disposed of the representations/appeals submitted by the applicant by the aforesaid order dated 14.8.2002. The relevant portion of the order dated 14.8.2002 reads as follows:-

"In reference to above letter dt. 22.1.2001 Sh. Jagan Nath s/o Sh. Dalu Ram, JE-II/C&W pay Rs.5000-8000 (RP) under SSE/C&W/RE has been compulsory retired on 23.1.2001 review under IREC part-II para 1802 (A) 1803(A) and Rly. pension rule manual para 620.

The employee had submitted his representation against said compulsory retirement to GM (P) Hd.Qrs. Office, NDBH. On the rep. the competent authority (AGM) has set aside the order on 12.8.02 of compulsory retirement of Sh. Jagan Nath JE-II/C&W/RE of 22.1.01 and order to put back on duty and the period of compulsory retirement has been treated as "Dies Non"."

4. According to the learned counsel for respondents, the above impugned order is the so called detailed, speaking and reasoned order which was directed by the Tribunal to be passed by the appellate authority while disposing of OA-3476/2001. He has very vehemently submitted that the reasons for the appellate authority's order are available in the official records which he is prepared to show to the Court, but has categorically stated, cannot be shown to the applicant because they are

8.

highly confidential in nature. A plain reading of the respondents' letter dated 14.8.2002 shows that not only the time limit prescribed by the Tribunal has not at all been adhered to by the appellate authority, but he has also not cared to pass detailed, reasoned and speaking order in accordance with the provisions of Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968. It is also relevant to observe that not even a reference has been made to the aforesaid order of the Tribunal in OA-3476/2001, which is not denied, having not been received by the respondents and there is, therefore, no reason why they should not have complied with the Tribunal's directions both in letter and spirit, and also complied with the relevant Rules. Not only the directions of the Tribunal, but the rules have been given a go-by. We are not impressed with the submissions made by Shri R.L.Dhawan, learned counsel that at this stage he is prepared to produce the official records before the Tribunal, to show how the appellate authority's mind had worked and to discover for ourselves the reasons which weighed with him, which, however, he is not prepared to pen down in the speaking order, as directed by the Tribunal. He has also relied on the judgments of the Hon'ble Supreme Court in Union of India Versus K.V. Jankiraman (SCR 1991 (3) 790), Virendra Kumar Versus Avinash Chandra Chadha (1990 (3) SCC 472 and S.S.Rathore Versus State of Madhya Pradesh (SLJ 1990 (1) SC 98. His contention is that the respondents/appellate authority have a discretion to take a decision in the matters and that is all that is required and in spite of the Tribunal's order, there was no duty cast on the appellate

17

(5)

authority to pass a reasoned and speaking order besides the provisions of law, including the provisions of Rule 18 of the Railway Servants (Discipline & Appeal) Rules, 1968. He has also relied on certain instructions of the Railway Board, copy of which has not been submitted, which also will not assist him in the facts and circumstances of the case, as there is a violation of the Tribunal's order dated 2.10.2002 as well as the principles of natural justice in the present case.

5. In this view of the matter, the judgments of the Hon'ble Supreme Court in K.V. Jankiraman, Virendra Kumar and S.S.Rathore's case (supra) will not assist the respondents to act in the manner they have done. Further, we do not see any reasons why the competent authority should not have passed a detailed order with reasons, as these do not pertain to the security of the State for which the respondents' counsel pleads non-disclosure.

6. The Tribunal had dealt with an identical matter in the case of Girdhari Lal Versus Union of India & Another (OA-1224/2001) which was disposed of by this Bench by an oral order on 1.1.2003. Incidentally, it may also be mentioned that the learned counsel for the applicant and respondents in that case were also the same. In the facts and circumstances of the present case, we see no good grounds to defer from our previous reasoning and decision in Girdhari Lal's (supra).

7. During the hearing, learned counsel for respondents has submitted that the applicant is to retire

18

18

(5)

from service on superannuation with effect from the end of March, 2005. The appellate authority's order dated 14.8.2002 has set aside the earlier order passed by the competent authority, compulsorily retiring him from service w.e.f. 22.1.2001 and ordered him to be reinstated in service, treating the intervening period as dies non. The delay in passing the order by the appellate authority and reinstating the applicant cannot, in any way, be attributed to the applicant. It is also relevant to note that the delayed order passed by the respondents, in spite of the aforesaid order of the Tribunal and the relevant Rules applicable on the subject, cannot be taken advantage of by the respondents in denying the applicant the pay and allowances till his reinstatement which, in the circumstances of the case, could have been done much earlier.

8. The above facts are also mentioned in the context of another plea taken by Shri R.L.Dhawan, learned counsel that the applicant has not exhausted the statutory remedy in filing an appeal against the impugned order dated 14.8.2002. It is settled law that a statutory right of appeal given to the aggrieved party can be meaningful only when a reasoned and detailed order is passed in the first instance, which has not been done by the respondents, as already noticed above. By passing the delayed and non-speaking order, the respondents cannot, therefore, derive an unintended benefit by treating the intervening period between the date of compulsory retirement and date of reinstatement as dies-non for no reasons whatsoever which are apparent on the face of the

18,

19
(7)

record. In the circumstances, to expect the applicant to file an appeal against such an order, as contended by the learned counsel for respondents is untenable. We reiterate our reasons given in para 4 of our previous order dated 1.1.2003 in Girdhari Lal's case (supra). Therefore, the impugned order is liable to be quashed and set aside.

9. In the result, for the reasons given above, OA succeeds and is allowed with the following directions:-

- i) As the applicant has already been reinstated in service he shall be entitled to get the pay and allowances for the intervening period from the date of compulsory retirement to the date of reinstatement in service in accordance with law, rules and instructions; and
- ii) In the facts and circumstances of the case, cost of Rs.3000/- (Rupees Three Thousand only) is imposed against the respondents and in favour of the applicant.

(Govindan S.Tampi)
Member (A)

/s/nil/

Lakshmi Swaminathan
(Mrs.Lakshmi Swaminathan)
Vice Chairman (J)