

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH**

OA No. 346 of 2015

**Present: Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Swarup Kumar Mishra, Member (J)**

Antaryami Mahalik. Aged 60 years, S/O Late Bharat Mahalik,
At- Niladri Vihar, House no-S.2/40, Bhubaneswar-21 (Odisha)

.....Applicant

VERSUS

1. Chairman, Railway Board, Rail Bhawan, New Delhi-01
2. The General Manager, E.Co. Rly, Rail Sadan, C.S. Pur, Bhubaneswar-16
3. Sri R.K. Tandon, Ex- Chief Commercial Manager, E.Co. Rly, Rail Sadan, Bhubaneswar-16
4. Sri G.M. Tripathy, Chief Commercial Manager, E.Co. Rly, Rail Sadan, C.S. Pur, Bhubaneswar-16
5. Sri K.C. Pradhan, Ex Sr. DCM. E.Co. Rly, Khurda Road, Now, Dy. CCM, E.Co. Rly, Rail Sadan, C.S. Pur, Bhubaneswar-16
6. Sri L.V.S.S. Patrudu, Sr. Divisional Personnel Officer, E.Co. Rly, Khurda Rd, At/P.O. Jatni, Dist. Khordha (Odisha)
7. The Chief Personnel Officer, E.Co. Rly, Rail Sadan, C.S. Pur, Bhubaneswar-16
8. The Divisional Railway Manager, E.Co. Rly, Waltair at Vishakha patnam (A.P.)

.....Respondents

For the applicant : Applicant in Person

For the respondents: Mr. T. Rath, counsel

Heard & reserved on : 17.3.2020

Order on :26.05.2020

O R D E R

Per Mr.Gokul Chandra Pati, Member (A)

The applicant is aggrieved by the order dated 13.7.2011 (Annexure-1 of the OA) of the Chief Commercial Manager by which the applicant was reinstated from premature retirement under the rule 1802 of the Indian Railway Establishment Code (in short IREC), Vol- II without payment of any back wages for the period the applicant was under premature retirement by applying the principle of 'no work-no wages'. In fact the applicant has filed the OA in person with prayer for multiple reliefs, for which he amended the OA and vide order dated 18.4.2019 of this Tribunal, the applicant was directed to

delete all the prayers except the prayer relating to back wages at para 8(1) of the OA since he wanted not to press other prayers. Accordingly, the relief sought for in this OA after deletion as per order dated 18.4.2019, is as under:-

“ (1) Payment of back wages with increment of the intervening period with 18% interest from the date of premature retirement (dt. 22.5.2010) to restoration (dt. 18.7.2011).”

2. In respect of the relief prayed at para 8(1), the applicant has averred in the OA that he was prematurely retired w.e.f. 22.5.2010, but the said order of premature retirement was nullified by the appellate order dated 13.7.2011 (Annexure-1 of the OA) and accordingly he joined in service on 18.7.2011. But he was aggrieved since the order dated 13.7.2011 stated that for the period he was under premature retirement, no salary is payable by applying the principle of ‘no work, no wages’. It is stated that it amounts to penalty on the applicant for no fault, since he was available for work and when the order of premature retirement has lost its validity, he should have been deemed to be in service. It is also stated that although the appellate order stated that his reinstatement was with consequential benefit, he was not allowed the increment for the period from July 2010 to June 2012.

3. The applicant has also averred that in another similar case of Sri P.P. Mishra, who was also prematurely retired and reinstated by appellate order, was paid full back wages, which was denied to the applicant. Although he has represented to higher authorities about his grievances, but he has not received any reply. Hence in the OA, he alleged discrimination and victimization at the hand of the authorities.

4. Counter has been filed by the respondents, averring that the order at Annexure-1 was passed long back and the applicant was reinstated and continued in service till superannuation on 31.12.2014. The representations claimed in the OA to have been submitted are not available with the authorities. The issue of delay and limitation was raised in the Counter. The Counter has explained the sequence of events that led to the order of premature retirement under the rule 1802 of IREC (Annexure-R/2 of the Counter). Regarding the case of Late P. P. Mishra, it was averred in the Counter that the background of the case was different, since by the time the order of the reviewing authority was received, Sri Mishra had expired, for which he remained out of service on account of premature retirement order. In such background, the authority allowed back wages in favour of the Late P.P. Mishra.

5. Rejoinder was filed by the applicant. Regarding the issue of delay, the applicant averred in the Rejoinder that he has filed the M.P. for condoning delay. It was also stated that the authority has passed the order of ‘no work- no wages’ casually without going through the provisions of the IREC.

6. Heard the applicant who appeared in person. While reiterating the averments made in the OA, he cited the judgment of Hon’ble Apex Court in the case of UOI & Ors. vs. Jankiraman, ATJ 1992 (1) 371 in support of his claim for back wages as he was always willing to work but was prevented by the order of premature retirement which was set aside by the appellate authority. He also submitted that he has filed the MP No.623/15 for condoning delay in filing the OA.

7. Per contra, learned counsel for the respondents opposed the claim of back wages for the period 2010-11 which was decided by order dated 13.7.2011 (Annexure-1), on the ground of limitation and delay. The order at Annexure-1 of the reviewing authority was implemented and it was not challenged by the applicant within the stipulated time. Learned counsel also reiterated the grounds mentioned in the Counter and he also filed a brief written submission, enclosing a copy of the MA filed by the applicant for condoning delay in filing the OA. It is stated in the written submission by learned counsel for the respondents that the applicant in the MA has stated that he has filed consecutive representations which were not considered and such ground is not permissible in view of the judgment of Hon'ble Apex Court in the case of State of Tripura vs. Arabinda Chakraborty, (2014) 6 SCC 460 and in the case of SS Rathore vs. State of Madhya Pradesh, AIR 1990 SC 10. The averments in para 3(F) of the Counter were reiterated to oppose the OA.

8. We have considered the pleadings on record and the submissions by both the parties. Before proceeding further, it is necessary to consider the MA filed by the applicant for condoning the delay, which has been objected by the respondents. Only explanation given in the MA is that the applicant has submitted representations to the authorities, the latest being on 28.11.2014 before his superannuation, but no action was taken in the matter. One of the implication of 'no work - no wages' as per the order dated 13.7.2011 was that no increment was allowed to the applicant for the period in question as averred in para 4.18 of the OA, for which no reply was furnished in the Counter on the ground that the averment is not connected to the claim of back wages. But non-sanction of increment for the period in question would imply less salary on account of loss of increment if the same was not allowed for the period he was under premature retirement, which will affect his salary and retirement benefits and clearly, it will give rise to a continuing cause of action. Although the applicant did not mention about continuing cause of action due to less salary, but the implications of it are clear from the averment regarding increment in para 4.18 of the OA.

9. In the judgment in the case of State of Tripura vs. Arabinda Chakraborty, the dispute pertained to seniority and although the cause of action arose in 1975 when the seniority list was finalized, the respondent-employee did not take any action except submitting representations till 1979 when he filed the suit in the civil court. It was held by Hon'ble Apex Court that the suit was barred by limitation and the representations will not extend limitation unless the statute provides for the same. In the matters of seniority, the issue of delay is to be considered at the threshold since accepting belated claims can unsettle the settled position and can adversely affect third party interest. Further, in the cited case, no petition for condoning delay was filed. In the case of SS Rathore (supra), the issue was whether the limitation will be counted from the date of order of the disciplinary authority or from the date of order of the appellate authority. In this case, no such issue is involved and there is no doubt about the date of cause of action which is from the date of order at Annexure-1, which is sought to be condoned by filing the MA. Hence, the cited judgments are distinguishable and will not be helpful for the respondents' case.

10. In the specific circumstances as discussed above and considering the fact that it is a continuing cause of action due to implication of the decision on the back wages of the applicant on his future increments and retirement benefits, we allow the MA and condone the delay in filing the present OA.

11. Now considering merit of the OA, it is noticed that the reviewing authority has observed in the order dated 13.7.2011 (Annexure-1) as under:-

“ The order of Sr. DCM/KUR regarding premature retirement of the appellant appears to be arbitrary, absolutely deviated from the Board’s policy, in addition to infringing the natural justice and as such, it is hardly sustainable. Further, it is also felt that there is no proper application of mind either by the Sr. DCM/KUR or Sr. DPO/KUR while implementing the order of premature retirement.

Now in order to provide justice and fair opportunity to the appellant, it has been decided to restore Shri Mahalik in the Railway Service with immediate effect with all consequential benefit of pay & grade etc. with no back wages under the principle of ‘no work – no wages’.”

12. It is clear from the above findings of the reviewing/appellate authority in order dated 13.7.2011 that the order of premature retirement was contrary to the policy of the Railway Board and hence, it was unjustified and illegal. Under such a situation, the sub rule (1) of the rule 1805 of the IREC , Vol-II stipulates as under:-

“(1) If on a review of the case referred to in Rule 1802 (a), 1803 (a) and 1804 (a), either on representation from the railway servant retired prematurely or otherwise, it is decided to reinstate the railway servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or as leave of the kind due and admissible, including extra-ordinary leave, or by treating it as diesnon depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or if the order of premature retirement is set aside by a Court of law.”

Since the findings of the reviewing/appellate authority as per the order dated 13.7.2011 clearly reveal that the order of premature retirement of the applicant was unjustified in the facts and circumstances of the case as observed by the reviewing/appellate authority in the order and hence, the case of the applicant is fairly covered under the proviso to the sub rule (1) of the rule 1805 of the IREC Vol. II as extracted above, for which the applicant was entitled for the back wages claimed by him in the OA.

13. Learned counsel for the respondents in his written notes has cited the judgment in the case of FCI vs. Ram Kesh Yadav, 2007 (2) SCC (L&S) 559 to argue that the applicant cannot draw the benefit of the order dated 13.7.2011 and challenge the same at the same time. In the said case, the dispute pertained to the voluntary retirement offer by the FCI employee subject to condition that he would opt to retire voluntarily if his son is provided with employment on compassionate ground as per the scheme approved by FCI, under which the maximum age of the employee for consideration of compassionate appointment should have been 55 years. But in this case, the employee was more than 55 years of age for which his son was not eligible for

compassionate appointment. The FCI accepted the offer for voluntary retirement unconditionally, which was a wrong decision as observed in the cited judgment. It was held that having taken the wrong decision, FCI is bound to appoint the son of the employee under compassionate appointment although he did not qualify for the same as per the approved scheme. We are unable to understand how the judgment will be helpful for the respondents in the present case in view of the fact that the part of the order dated 13.7.2011 regarding back wages is contradictory to his findings about the order of premature retirement of the applicant in the light of the sub rule (1) of the rule 1805 of the IREC Vol. II. Moreover, the applicant has not challenged the order dated 13.7.2011 nullifying the premature retirement order, but challenged the part of the order regarding his back wages. We are of the view that there is no bar on the applicant to raise his grievance in respect of that part of the order, which is not as per the provisions of the rule 1805(1) of the IREC Vol. II as discussed elsewhere.

14. Under the facts and circumstances as discussed above, we find merit in the claim of the applicant for back wages for the period he was under premature retirement, which has implication for his retirement benefit. Hence, we allow the OA on merit in respect of the prayer in para 8(1) of the OA. The respondent are directed to treat the period for which the applicant was under premature retirement, which has been found to be unjustified and unsustainable by the reviewing authority vide order dated 13.7.2011 (Annexure-1 of the OA), as the period spent on duty for all purposes in accordance with the provisions of the Rule 1805(1) of the IREC Vol. II and allow all consequential benefits including the salary for the period in question and differential salary/retirement benefits as per the rules and disburse the same to the applicant within 3 (three) months from the date of receipt of a copy of this order.

15. The OA is allowed as above with no order as to cost.

(SWARUP KUMAR MISHRA)
MEMBER (J)

(GOKUL CHANDRA PATI)
MEMBER (A)

bks