

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1224/2001

New Delhi this the 1st day of January, 2003

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

Girdhari Lal
Ex.Head Clerk
Under Assistant Engineer(II),
Northern Railway, Hanuman Garh..

...Applicant

(By Advocate Shri B.S.Mainee)

VERSUS

1. Union of India through
General Manager,
Northern Railway, Baroda
House, New Delhi.

2. The Divisional Railway Manager,
Northern Railway, Bikaner.

.. Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R (ORAL)

(Hon'ble Smt.Lakshmi Swaminathan, Vice Chairman (J)

The Tribunal had earlier issued order dated 15.5.2001 in the present application and disposed of the OA at the admission stage with a direction to the respondents to dispose of applicant's representation/appeal dated 13.9.2000 by means of a detailed speaking and reasoned order in accordance with rules and instructions on the subject under intimation to applicant within two months from the date of receipt of a copy of the order. Thereafter, the applicant had filed MA 2471/2001 which was disposed of by Tribunal's order dated 29.4.2002 reviving the OA with a further direction to the respondents to file counter to the OA. In the order dated 29.4.2002, the Tribunal had noted that the respondents have filed MA 889/2001 for extension of time but on

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perusal of the same, it was found that no satisfactory reasons have been given for extension of time. It was further observed that it was also found that no action has been taken by the respondents to dispose of the aforesaid representation filed by the petitioner. Hence, the OA was ordered to be revived.

2. The brief relevant facts of the case are that when the applicant had filed this OA on 6.2.2001 (refiled on 11.5.2001) he has impugned the order dated 4.9.2000 compulsorily retiring him from service under FR 56 (j) against which he had submitted his appeal on 13.9.2000 which was still pending with the respondents. It is noticed that the application has been filed about five months later in the Tribunal and accordingly by the order dated 15.5.2001, the OA was disposed of at the admission stage with the aforesaid directions, namely, that the respondents should pass a detail, speaking and reasoned order in accordance with rules and instructions within two months from the date of receipt of a copy of the order. It was further stated in the order that if any grievance still survives, it will be open to the applicant to revive the present OA through an M.A. after impugning the orders passed by the respondents pursuant to the aforesaid directions. It is in these circumstances MA 2471/2001 had been filed by the applicant and the OA has been revived.

3. In the meantime, the learned counsel for the respondents has submitted that MA 889/2002 praying for extension of time to implement the Tribunal's order dated

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15.5.2001 has been filed on 19.4.2002. This MA has been filed nearly nine months after the expiry of the period stipulated in the Tribunal's order dated 15.5.2001 by the respondents to comply with the directions. It is also relevant to note that no reasons have been given for condonation of delay excepting the submissions of the learned counsel that the file had to travel from one officer to another Officer, including Headquarters, which can hardly be considered as sufficient reasons. In any case, as noted by the Tribunal in the previous order dated 29.4.2002, we reiterate the view that there are no satisfactory reasons to give extension of time as prayed for in the MA which has been filed belatedly.

4. In the counter affidavit filed by the respondents on 29.10.2002 in pursuance of the Tribunal's order dated 29.4.2002, they have conveyed the order of the appellate authority dated 7.6.2002 which reads as under:-

" It has been decided that the intervening period from the date of compulsory retirement to the date of reinstatement should be treated as dies-non "

Thereafter, there is a sentence that "therefore Shri Girdhari Lal Kalra ex Hd.Clerk under AEN/HMH is reinstated in service and on re-instatement he is posted under PW1/HMW against vacancy".

The above order apparently is ^{the B-} so called "detailed, speaking and reasoned order which was directed by the

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by the Tribunal to be passed by the appellate authority while disposing of OA 1224/2001 on 15.5.2001. A plain reading of the respondents' letter dated 7.6.2002 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 a detailed, speaking and reasoned order which is also not in accordance with the provisions of Rule 18 of the Railway Servants (Discipline and Appeal) Rules, 1968. It is also relevant to observe that not even a reference has been given in the appellate authority's order to the appeal preferred by the applicant dated 13.9.2000 which was also specifically referred to in the Tribunal's order dated 15.5.2001. We are not impressed by the submissions made by Shri R.L.Dhawan, learned counsel that at this stage, he is prepared to produce the official records to show how the appellate authority has passed the "speaking order." The appellate authority was required to pass a speaking order which on the face of it should have given the reasons which ought to have been communicated to the applicant. This has not been done. In the facts and circumstances of the case, not only the appellate authority has not cared to follow the relevant law, rules and instructions on the subject but has also not complied with the specific directions of the Tribunal dated 15.5.2001. In other words, the speaking order should have been passed well within the time limit given therein. The appellate authority has passed the order dated 7.6.2002 more than ten

months after the expiry of the period within which ~~one~~ he was directed to pass the speaking and reasoned order. By the respondents' passing the belated order on 7.6.2002 which is also contrary to the directions in Tribunal's order dated 15.5.2001, the date of reinstatement of the applicant has also been consequently delayed. This delay cannot be attributed to the applicant. Further, no reasons have been given in the decision taken by the competent authority to treat the intervening period from the date of compulsory retirement to the date of reinstatement as dies-non. A plea has been taken by the learned counsel for the respondents that the applicant should file an appeal, if he is aggrieved by the order treating the intervening period as dies-non, under Rule 18 (4) of the Railway Servants(Discipline and Appeal) Rules, 1968. He relies on the judgement of the Hon'ble Supreme Court in S.S.Rathore Vs. State of MP (AIR 1990 SC 10)

6. During the hearing, learned counsel for the applicant has submitted that the applicant's date of birth is 12.1.1943. Hence, he will be retiring from service on superannuation on 31.1.2003. He has also submitted that in the above circumstances, ^{no purpose} ~~he~~ would be served by ~~no purpose~~ filing an appeal against that decision. Besides as no reasons whatsoever have been given by the appellate authority against which a proper appeal can be filed, we see no merit in the submissions made by the learned counsel for the respondents. In the facts and circumstances of the

case, it is also relevant to note that even the appeal submitted by the applicant dated 13.9.2000 was not disposed of by the respondents still 7.6.2002. The applicant is to retire on 31.1.2003. Under Section 20 of the Administrative Tribunal Act 1985, the Tribunal shall not "ordinarily" admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances. In this case, the OA has not been admitted. In the light of what has been stated above, the appellate authority's order dated 7.6.2002 is liable to be quashed and set aside so far as the decision to treat ~~ing~~ the intervening period from the date of compulsory retirement of the applicant i.e. 5.9.2000 to the date of his reinstatement on 13.6.2002 as dies-non is concerned. As the respondents have also not implemented the above order of the Tribunal dated 15.5.2001 in proper spirit or within the time allowed, we do not consider the decision of the authority without giving any reasons, to treat the intervening period as dies-non as either reasonable or legal. For these reasons, this part of the order dated 7.6.2002 is liable to be quashed and set aside.

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

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As the applicant has already been reinstated in service, he shall be entitled to 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.

(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)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)