

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELH

O.A. No.2618/93

New Delhi, dated the 19th May, 1995

Hon'ble Shri N.V. Krishnan, Vice Chairman (A)  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

Union of India- through

1. Genl. Manager,  
Northern Railway, Baroda House,  
New Delhi
2. Divnl. Railway Manager,  
State Entry Road,  
New Delhi.

(By Advocate Shri H.K. Gangwani ) ... Applicants

Vs.

1. Bikha Ram  
S/o Chandu Dattaram  
R/o Vill. Adirka  
Teh. Jind, Haryana
2. Sh. Diwan Chand  
H.C.S. Sr. Sub Judge,  
Jind, Haryana

... Respondents

(By Advocate Shri B.S. Mainee )

ORDER (ORAL)

( Hon'ble Shri N.V. Krishnan, Vice Chairman (A) )

The first respondent was serving in the Railways. He was removed from service by an order dated 17.4.1979. He filed a civil suit on 28.7.1981 in the Court of the Sub Judge-II Ind Class Jind in which a decision was rendered on 3-6-1983. It was held as follows:-

"From the foregoing discussion and findings on the above issue, it follows that the suit of the plaintiff succeeds and is liable to be decreed as prayed for. The suit is hereby decreed. A decree for declaration to the effect that the order dated 17.4.1979 passed by Shri Naran Chand, ACS, New Delhi, whereby the plaintiff (sic) removed from the service of the Railway is erroneous, unjust and illegal and is void ab initio and the same is not binding upon the plaintiff and the plaintiff be treated to be in the service of the Railway and that the plaintiff is entitled to receive all the arrears of pay and other allowance w.e.f. 17.4.1979, is hereby passed in

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favour of the plaintiff and against the Respondent. However, in the peculiar circumstance of the case, parties are left to bear their own costs, decree sheet be drawn accordingly and file be consigned to the record room."

2. Appeal was filed against this judgment by the applicants before the Additional District Judge, Jind and the same was dismissed by the Annexure R-1 order dated 16-5-1984.

3. The Execution proceedings were initiated by the first respondent in which an objection was raised by the applicant that the decree holder (i.e. the first respondent) had already retired in 1982. Dismissing this objection by the order dated 21.5.1985 (Annexure R-<sup>2</sup>~~1~~), it was held that there was no evidence from records in this behalf and no order of retirement was produced in evidence.

4. On the establishment of this Tribunal, the aforesaid execution proceedings were received on transfer by the Chandigarh Bench of the Tribunal. By its order dated 21.7.87 it held that the decree has to be <sup>trial</sup>exempted only by the <sup>trial</sup>executing court and hence the case file was transferred to that court.

5. It was then registered as civil suit 27 of 1987 in which decision was rendered on 3-5-1993 (Ann.A.1). Judgment was delivered on 3-5-1993 directing the judgment debtor (Applicants) to allow the decree holder (first respondent) to join service immediately and make payment of arrears in one month and in case this was not done, legal action would be taken against judgment debtor.

6. Against this judgment, applicants have filed this O.A. It is, however, stated in para-1 that the application

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10. The learned counsel for the applicant, has drawn our attention to the decree (page-22) which merely ordered, " that the suit of the plaintiff is decreed and to receive all the arrears of pay and other allowance w.e.f. 17.4.1979". Therefore, the decree holder could not have claimed reinstatement, <sup>in proceedings</sup> for <sup>ion</sup> executed. He further points out that, in any case, as the respondent No.1 had already retired from service from 31.5.1982, it cannot be construed that the decree issued after the decision in the civil suit on 2.6.83 ordered reinstatement.

11. On the contrary, the learned counsel for the respondents contends that, without challenging the order, and decree in the Civil Suit, the applicants cannot challenge <sup>the</sup> before this Tribunal, <sup>the</sup> Ann.A.1 order. He further states that the question of retirement had already been settled by the Execution Court by the Annexure R-2 order dated 21.5.1985 which has become final. In reply to our query, the learned counsel for the respondents conceded that no order of retirement is required <sup>to</sup> ~~to pass~~ on superannuation of an employee but that, in the circumstances of this case, an order of retirement was necessary because of the order dated 21.5.1985 (Annexure R-<sup>2</sup>~~A~~) referred to above.

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12. We have carefully considered the rival contentions.

13. The first question is whether the Execution Court had interpreted the decree properly. Neither the judgment of the Civil Court dated 3-6-1983 nor the decree drawn up required<sup>✓</sup> the judgment debtor to take back the decree holder in service. Therefore, the decree holder could not seek, in execution proceeding an order of reinstatement. In the circumstances, the execution Court had totally misdirect<sup>ed</sup> itself in giving a direction in this regard.

14. The learned counsel for the respondents contended the Annexure R-<sup>24</sup>~~1~~ order dated 21.5.85 holding that retirement has not been established is final as it has not been challenged in appeal. Therefore, no relief can be given to the applicants on the basis that the first respondent had already retired.

15. In our view, the order dated 21.5.85 is void as it is against the law. Limitation in respect of such an order does not arise until, on the basis of that order some action is threatened. We notice that the impugned<sup>✓</sup> order<sup>Ann. A.1</sup> relies on the Ann R.<sup>24</sup>~~1~~ order regarding retirement and in the last para legal action is threatened against the applicant<sup>s</sup>, if they did not allow the decree holder, to join duties. The applicants can, at this stage, commence proceedings. Therefore, ~~this~~ objection of the respondent<sup>✓</sup> ~~found~~ has, ~~therefore~~, no force.

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16. In our view, the decree holder (respondent No.1) should be deemed to be in service from 17.4.79 (i.e. the date he was removed from service) and that he should be paid salary from that date. The *further* implication was, that if on the date of judgment, the decree holder had not superannuated, he was also to be taken in service. Otherwise, there was no direction in this regard. Therefore, in terms of the decree, the first respondent was only entitled to the salary from the period 17.4.1979 till his retirement which had taken place before the date of judgment in the civil suit.

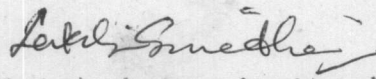
17. The learned counsel for the respondents pleaded that the date of superannuation may be left open for decision because of his contention that the respondent No.1 had not superannuated on 31.5.1982. We are unable to agree. This issue was specifically raised in the Execution Court. There is nothing on record to show that the respondent No.1 took the plea that his date of retirement was not 31.5.1982. Therefore, respondent No.1 cannot raise that issue now, as it is barred by constructive *res judicata*.

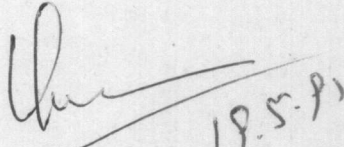
18. In the circumstances, we allow this application by quashing that part of the Ann.A-1 judgment which directs or implies that the first respondent had not retired from service and that he is entitled to reinstatement. We declare that he had retired on 31-5-1982 and is not entitled to

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reinstatement thereafter. The applicants shall pay the first respondent pay and allowance for the period 17.4.79 to 31.5.1982, if not already paid. The learned counsel for the applicants states that an amount of Rs 63,150/- has already been paid. This matter is to be settled between the parties. In case the first respondent has any grievance in respect of the quantum paid, it is open to him to make a representation within two months from the date of receipt of this order and in case such a representation is made it shall be disposed of, <sup>u by</sup> the applicants, in accordance with law, within two months therefrom. In the circumstances there will be no order as to costs.

  
(Lakshmi Swaminathan)  
Member (J)

  
19.5.81  
(N.V. Krishnan )  
Vice Chairman (A)

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