

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No.529/2015

Reserved on:16.08.2021
Pronounced on:19.08.2021

**Hon'ble Mr. Dinesh Sharma, Member (A)
Hon'ble Mrs.Hina P. Shah, Member (J)**

Rewar Mal Bundel S/o Shri Ram Prasad, aged about 60 years,
R/o Ward No.7, Krishna Nagar, Bandikui, retired as Loco Pilot
(Passenger Driver) in Loco Shed, North Western Railway,
Bandikui.Applicant.

(By Advocate: Shri R.K.Sharma)

Versus

1. Union of India through the General Manager, North Western Zone, North Western Railway, Jaipur.
2. Chairman, Railway Board, Ministry of Railway, Rail Bhawan, Ramsina Road, New Delhi-110001.
3. The Divisional Railway Manager, North Western Railway, Power House Road, Jaipur.
4. Senior Divisional Mechanical Engineer (Power), D.R.M. Office, North Western Railway, Power House, Jaipur.
5. Senior Divisional Personal Officer, D.R.M. Office, North Western Railway, Power House Road, Jaipur.

...Respondents.

(By Advocate: Shri Anupam Agarwal)

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ORDER**Per: Dinesh Sharma, Member (A):**

In this OA, the applicant has prayed for regularizing the service of the applicant from 01.08.2008 to 30.03.2011, by quashing the impugned order dated 09.11.2011 (Annexure A/1) and order dated 24.01.2013 (Annexure A/2); to revise his pension and pensionary benefits accordingly; and to pay 24% interest on arrears. The Annexure A/1 is an order passed by Respondent No.3 following the orders of this Tribunal in OA No. 281/2009, and Annexure A/2 is information given to the applicant, under the RTI Act, in respect to his queries regarding himself and another employee (Shri Ram Singh Panwar) following their medical categorization. This is a second round of litigation before us with respect to treatment given to the applicant after his medical de-categorization in the year 2007 and his request for voluntary retirement following this de-categorization. The earlier OA (281/2009) was disposed of by this Tribunal's order dated 29.07.2011. The operating portion of this order (also reproduced in Annexure A/1) is reproduced below:-

"6. Having considered the rival submissions and upon perusal of the material available on record, although the prayer No.i) claimed by the applicant has been accepted by the respondents, except the date of voluntary retirement as per application dated 1.8.2008. but controversy remains whether

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the voluntary retirement from the post of Loco Pilot (Passenger Driver) should be effective as per the application of the applicant dated 1.8.2008 or not.

7. Be that as it may, since the applicant has illustrated cases of similarly situated employees before this Tribunal and respondents also referred circulars and orders which have been passed by the respondents, we deem it proper to direct the respondents to reconsider the case of the applicant on the question whether the applicant is entitled to seek voluntary retirement from the post of Loco Pilot (Passenger Driver) as per his application dated 1.8.2008 or any discrimination has been made while considering case of the applicant with the persons whose name has been mentioned in Ann. A/26 and whether it is permissible under the provisions of law and circulars issued by the respondents from time to time to retire the applicant and the persons whose names have been mentioned in Ann. A/26 and after having considered the case of the applicant to this effect shall pass appropriate order."

2. The applicant states that he is entitled for the salary of the post of Loco Pilot (Passenger Driver) from 12.08.2008 till he is voluntarily retired by order dated 28.03.2011. He has argued that posting him as Crew Controller (CCR), Loharu, after his medical decategorization was not on the recommendations of any screening committee, he had not joined that job and had asked for voluntary retirement in the year 2008 itself. He was temporarily allowed to work as CCR at Bandikui following his request, but this cannot be considered as absorption. Another person was posted at Loharu and the department had themselves expressed that the matter of the applicant was being revisited (ref Annexure A/8). After his approaching this

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Tribunal to get his request for voluntary retirement accepted, the department had themselves asked him to appear before a screening committee on 23.03.2011 (refer at Annexure. A/18). He has finally been allowed to retire as Loco Driver only by the order dated 28.03.2011 (Annexure A/19). The applicant has again quoted cases of few others (Shri Ram Lal and Shri Raj Singh Saxena) who were medically decategorized in the year 2007, but were allowed to retire voluntarily from the respective posts (from which they were medically decategorized) in the year 2009.

3. The respondents have filed a reply denying the claims of the applicant. It is stated that the matter regarding voluntary retirement is closed with the order of this Tribunal in the earlier OA (281/2009) and his raising further claims in this regard are barred by waiver and estoppel. The claim is also barred by the period of limitation (prescribed under the A.T. Act). The applicant was absorbed as Crew Controller after his medical decategorization but he refused to go there. His request to accommodate at Bandikuiwas also accepted and he did work as CCR for some time there. However, he has not worked anywhere after giving his earlier request for voluntary retirement and thus cannot be paid for this period of no work. The reply also denied anyone else being given voluntary retirement retrospectively. The reply states that not convening

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of screening committee before posting the applicant as CCR Loharoo is not a fatal error since the recommendations of the screening committee are only recommendatory in nature and under the rules of medical categorization, the department has the right to use the services of a medically decategorized employee wherever they find his services usable. The department had already rejected the earlier request of the applicant for voluntary retirement and asked him to join at Loharoo which he refused. Thus, his absence from duty is unlawful. Regarding other communications cited by the applicant (Annexure A/16) it is stated that these are internal communications of the respondent department and do not give any right to the applicant to claim salary for the period sought in the OA.

4. The applicant has filed a rejoinder reiterating his earlier claims and denying the denials of the respondents.

5. The matter was finally heard on 16.08.2021. The learned counsel for the applicant stressed the point that the applicant has been allowed voluntary retirement as Loco Driver and was called before a screening committee as a Loco Driver (Annexures A/18 and A/19). This itself amounts to accepting the claim of the applicant that he should be treated as Loco Driver till his voluntary retirement. Since the delay in accepting

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the request for voluntary retirement was a fault of the respondents, the applicants cannot be punished for it. The learned counsel for the respondents argued that the matter regarding the voluntary retirement was over with the earlier OA and now the matter is only with regard to the pay for the intervening period. This matter was left by the Tribunal, in our earlier decision, to be decided by the respondents in the light of instances of equality of treatment with other similarly placed persons and the rules. The impugned order is a very reasoned and speaking order and there has been no case of accepting a voluntary retirement from a back date or of paying for periods of not working. The OA is time-barred and is also barred by the principle of res-judicata in so far as it raises the same issue (about voluntary retirement) as was raised in the previous OA.

6. After going through the pleadings and hearing the arguments, it is clear that the only issue before us now is whether the applicant should be paid anything for the period 01.08.2008 to 30.03.2011. Treating the applicant as voluntary retired, from the date of his earlier request for voluntary retirement, would entitle him to get pension for this period. Though the applicant has only prayed for regularizing this period (without expressly mentioning how it should be regularized), his claim for getting monetary benefits along with interest means he implies regularization in a form that entitles

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him for these benefits. The impugned order (Annexure A/1) is sufficiently reasoned. As directed by us, it has stated the facts about the other 5 employees with whom the applicant had claimed parity of treatment and finds that none of them have been given retrospective retirement benefits. The order also finds that the applicant remained absent unauthorisedly during the period(for which he wants "regularization" now). The order categorically finds the request for voluntary retirement from 01.08.2008 unacceptable on all these grounds. Under these circumstances, we fail to understand under what laws/rules, the applicant is seeking "regularization" of the period in question. The applicant has nowhere stated that he has worked during this period. He had himself expressed unwillingness to join duties at Loharoo. After remaining absent for this period at his own will, he wants to be voluntarily retired from a back date so that he can be paid emoluments/pension for this period. The impugned order very clearly states why the voluntarily retirement cannot be given from a back date and also that it has not been given to anyone (contrary to what is claimed by the applicant). The fact that applicant has been given voluntary retirement, and he has received pension and retirement benefits following it , shows applicant's acquiescence with that order. The order of the voluntary retirement was accepted in the year 2011. The present OA which is filed in the year 2013 cannot be treated within the period of limitation

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prescribed under the Administrative Tribunals Act. Just because he has got further information about it through a reply to his application under the RTI Act in the year 2013, cannot lead to an extension of the period of limitation. The applicant has not even filed a petition for condonation of delay. We agree with the submission of the respondents that not only the applicant does not have any merit in his case, his application is also barred by time and also by the principles of waiver and estoppel since he has accepted the retirement order and pension from the year 2011. We also find that the impugned order (Ann. A/1) is a very reasoned and speaking order and it takes care of the issues which were left undecided by this Tribunal's earlier order dated 29.07.2011. We do not find that the applicant deserves any further payments by way of "regularisation" of the period of absence or by way of pension for this period. The O.A. is, therefore, dismissed. No costs.

(Hina P. Shah)
Member (J)

/kdr/

(Dinesh Sharma)
Member (A)