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[OPEN COURT]

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 04th DAY OF OCTOBER 2012)

Present

HON'BLE DR. K.B.S. RAJAN, MEMBER (J)
HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

ORIGINAL APPLICATION NO. 520 OF 2008

(U/S 19, Administrative Tribunal Act, 1985)

Suresh Kumar Shukla S/o Sri Laxman Prasad Shukla, R/o Deogarh Road, Lalitpur.

.....Applicant

VERSUS

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager (Commercial), North Central Railway, Jhansi.
3. Senior Divisional Electrical Engineer/Operating, North-Central Railway, Jhansi.

.....Respondents

Advocates for the applicants:-

Shri B. Tiwari

Advocate for the Respondents:-

Shri U. P. Tiwari.

ORDER

DELIVERED BY:-

(HON'BLE DR. K.B.S. RAJAN MEMBER-J)

A claim pertaining to the year of 2000 is sought to be pressed into service through this O.A. The applicant, initially appointed as Khalasi and rose to the grade of Khalasi helper absented himself for a substantial period, which absence he

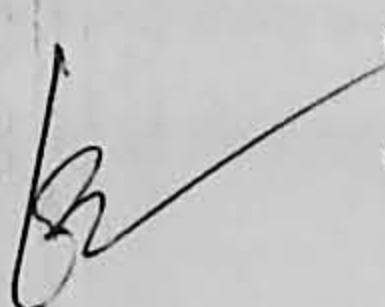
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justifies stating that he was ill, and had purportedly reported for duty with certain medical certificate on 12-07-2005, whereas on the basis of an inquiry conducted against him, he stood compulsorily retired as early as on 16-10-2000. It is the contention of the applicant that the information as to the afore said compulsory retirement was never communicated and that he could get the same through RTI, vide order dated 03-09-2007 at Annexure A-2. According to the contention of the applicant, he had filed a Revision Petition to the General Manager, NCR in which he had raised the issue of non supply of copy of the order of Compulsory retirement and had also referred to certain Railway Board letters of 1970 and 1971 whereby the order of compulsory retirement became non effective against the applicant. Again, according to the applicant, no charge sheet had been issued to him. There is no limitation period as per the Rules to file Revision Petition. Thus, he had moved this OA seeking the following reliefs:-

"(i) *To issue an order or direction setting aside the orders dated 03.09.2006, 29.08.2007 and 12.06.2006 passed by Senior Divisional Commercial Manager, North Central Railway, Jhansi and Divisional Railway Manager, North Central Railway, Jhansi respectively (Anexure Nos. A-2 and A-1 to the compilation-I respectively).*

(ii) *to issue an order or direction setting aside the order dated 16.10.2000 passed by ADETRO, Jhansi contained in Annexure I to the counter Affidavit.*



(v)

(iii) *To grant all the consequential relief which the applicant is entitled for.*

(iv). *to grant any other relief which Hon'ble Court may deem fit and proper under the circumstance of the case.*

(v). *To award cost".*

2. Respondents have contested the OA. Question of limitation has been raised by the respondents stating that the applicant has approached the Tribunal after 10 years of his absence from duty and 7 years from the order of compulsory retirement.

3. As regards merit, the respondents have stated that the applicant was absent from 18-06-1997 from his place of work without sanction of proper leave and no information had been given by him during his absence. He was issued with a major penalty chargesheet on 18-08-1999. The applicant did not attend the inquiry and thus the proceedings continued ex parte. They had sent notices and proceedings of inquiry through Registered letter to the applicant in addition to pasting the same on the Notice Board of the Office. Notices sent were returned undelivered, with the postal remarks "Receiver refused to take letters and hence returned to the sender." The procedure as outlined in the Railway Servants (Discipline and Appeal) Rules has been religiously complied with. As such, in view of the inordinate delay as also on merit the OA is liable to be dismissed. In support

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of their case, the respondents have annexed a few orders of the Tribunal of identical cases.

4. At the time of argument, it was the counsel for the respondents who was present and the applicant was not represented by any counsel or party in person. In fact, the counsel who had been engaged by the applicant having become government counsel, notice to the applicant in this regard was sent to him as early as 11-04-2011 and the notice sent did not return undelivered. Hence, service of notice is deemed complete. Though one Shri D. Tiwari appeared on behalf of the applicant earlier and sought adjournment, none was present on the date of hearing. Hence, invoking the provisions of Rule 15 of the CAT (Procedure) Rules, 1987, counsel for the respondents has been heard and on the basis of the available pleadings the case considered.

5. Counsel for the respondents submitted that the OA is pathetically time barred. The claim of the applicant for quashing of the order of compulsory retirement passed as early as on 16-10-2000 cannot be considered at this distance of time. Even otherwise, as on merit, the applicant having absented himself without proper leave application and leave sanction he was proceeded with and due to his non participation, the proceedings were conducted ex parte and on the basis of the inquiry report, the applicant was visited with the penalty of Compulsory Retirement by order dated 16-10-2000. Thereafter, it was in

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2007 that the applicant chose to make the revision petition.

6. Arguments have been heard. In fact, as regards delay condonation, the applicant had moved a Misc. Application for condonation of delay and the respondents have filed objection to the same. The non receipt of the penalty advice etc., and obtaining information through RTI would have been proper justification if only the respondents had not sent due communication to the applicant. It is the case of the respondents that all notices etc., of the proceedings were not only sent by Registered post but also pasted in the Notice Board and the notices returned undelivered with the postal remarks "Receiver refused to take letters and hence returned to the sender." The respondents have also stated in para 13 of the counter that the penalty advice is deemed to have been served to the employee as applicant has repeatedly refused to receive the letter sent by the Railway Administration from time to time including final penalty advice. Further, the letters were also pasted on the notice Board of the office of work in the presence of two witnesses of the employee. Thus, the service of notices, penalty advice and other communication are deemed complete due to refusal by the applicant to receive the notices etc., sent by the respondents. Further, pasting on the Notice Board is also one of the recognized modes of service under certain circumstances.

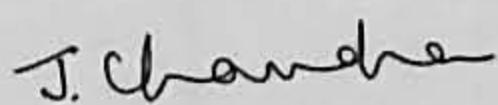
7. The Tribunal is of the concrete opinion that there does not appear to be any genuine attempt on the part of the applicant

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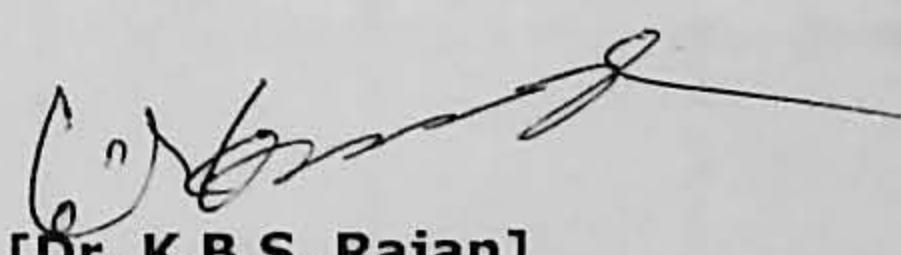
to pursue his case promptly. For, even if the applicant were unwell and could report for duty in 2005, when he was given to understand that he was compulsorily retired, he ought to have taken up the matter forthwith seriously and obtained copies of the documents. There is no point in waiting till August, 2007 to apply through R.T.I. The claim of the applicant is to the extent of quashing the order of 2000. Obviously, it is a stale claim. The applicant has not supported his contention that he was unwell or was under treatment, save mentioning that with medical certificate he had approached the authorities for resuming duties in 2005. No serious attempt has been made by the applicant in obtaining all the documents and making the same available to the Tribunal. It appears that even the obtaining of the information under RTI and challenging the information so given is only to tide over limitation part which he cannot be permitted. Fresh cause of action cannot be presumed when the authorities have only communicated their decision taken in 2000. Thus, on account of limitation, the case fails and is therefore, dismissed.

8. No costs.



[Jayati Chandra]
Member-A

/Dev/



[Dr. K.B.S. Rajan]
Member-J