

Central Administrative Tribunal
Jodhpur Bench, Jodhpur

Date of order: 13.2.2001

1. O.A. NO. 147/99
2. M.A. NO. 105/99 in
3. O.A. NO. 147/99

Jagdish Prasad S/o Shri Ram Narain, aged about 58 years, R/o House No. 239, Gandhinagar, Narain Bhawan, Churu, last employed on the post of Head Clerk in the office of Loco Foreman, Churu, Northern Railway.

..... Applicant.

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner, Division Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner, Division Bikaner.
4. Chief Medical Superintendent, Divisional Railway Hospital, Lalgarh, Bikaner, Northern Railway.

..... Respondents.

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HON'BLE MR. A. K. MISRA, JUDICIAL MEMBER

HON'BLE MR. A. P. NAGRATH, ADMINISTRATIVE MEMBER

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Mr. J. K. Kaushik, Counsel for the applicant.

Mr. Manoj Bhandari, Counsel for the respondents.

.....

b/w

PER HON'BLE MR .A.K.MISRA :

The applicant had filed this OA with the prayer that the impugned order dated 22.4.96 (Annex.A/1), be modified by substituting the word "on medical grounds" in place of "voluntary retirement" and consider the case of his son for employment on compassionate grounds as per rules in force with all consequential benefits.

2. The applicant had also moved a N.A. with the prayer to condone the delay in moving the OA on the ground that as against the impugned order, he made a representation on 20.7.96 but due to his financial and physical conditions, he could not move the O.A. which could have been moved by him up to 20.1.98. Hence, the delay be condoned.

3. Notice of both the applications were given to the respondents who have filed their reply. It is stated by the respondents in their reply that the O.A. is hopelessly time barred. The grounds mentioned in the N.A. for condoning the delay, are not sufficient. The cause of action to the applicant arose on 22.4.96 when the order giving effect to his request for voluntary retirement was passed. It is also stated by the respondents that the applicant had sought voluntary retirement due to his ill-health. However, the respondents have not retired him on medical grounds and consequently, he is not entitled to the relief of seeking amendment in the retirement order with the words 'on medical grounds'. He is also not entitled to the relief of compassionate

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appointment of his son as he was not retired on medical grounds. The OA is devoid of merit and deserves to be dismissed.

4. We have heard the learned counsel for the parties and have gone through the case file.

5. The applicant had filed a MA seeking condonation of delay in moving the present application. We have considered the grounds taken in the application. In our opinion, the application is hopelessly time barred. The applicant was retired voluntarily as per his own request vide order dated 22.4.96. He could have moved application then agitating his grievance and for correction of the order retiring him voluntarily but he did not do so. Thereafter, he made a representation on 20.7.96, if such representation was not decided within six months, he should have filed the O.A. in the year 1997. But, he moved the present application in the month of April 1999 i.e. almost two years after the date he could have filed the O.A. The reasons explaining ⁱⁿ the delay ⁱⁿ condonation application are not convincing. Consequently, the delay in moving the O.A. cannot be condoned. The M.A. deserves to be rejected and is ~~hereby~~ rejected. On account of refusal of condonation of delay in filing the O.A., the O.A. deserves to be dismissed as time barred. However, the same is ~~considered~~ on merits as follows.

6. Vide application dated 1.2.96 (Annex.R/2), the applicant had prayed for voluntary retirement on the

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ground of his ill health by giving 90 days notice. Thereafter he moved another application on 12.2.96 (Annex. A/4), with the request that due to continuous ill-health he cannot wait for the expiry of 90 days of notice as given by him earlier, therefore, he be given voluntary retirement within twenty-four hours. Consequent thereto, Annex.A/1 dated 22.4.96 was passed retiring the applicant voluntarily as per his request. It is contended by the applicant that since the applicant was not keeping good health and was suffering from pain in Limbs and incapacity to work due to his ailment, he had sought voluntary retirement on medical ground. But, he was retired as if he had prayed for voluntary retirement. Therefore, the order retiring him voluntarily was suitably amended.

7. We have considered this contention of the applicant. In our opinion, the applicant was not retired on medical grounds. The Railway Doctor had not certified the applicant to be unfit to be retained in service due to ill-health, therefore, it cannot be concluded that applicant was retired on medical grounds. While seeking voluntary retirement, the applicant had narrated his incapacity to continue to serve because of ill health but that does not mean that applicant was so ill that he could not discharge his normal duties. This averment of the applicant is also not sufficient to conclude that he was seriously ill or was absolutely incapable of serving the Railways. Generally, while seeking voluntary retirement, the Government servant adduces reasons of ill-health but that does not necessarily mean that the concerned

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candidate is in fact suffering from such illness due to which he is in-capable of continuing in service. For retiring a Government servant on medical grounds, there is a procedure laid down. The candidate is examined by a Board of Doctors or Medical Officer and he opins whether the candidate is fit to discharge the duty, ^{or} fit to be given alternative job or totally unfit to be retained in service. In absence of any such certificate, it cannot be concluded that applicant was retired on medical grounds. In fact, he was retired at his own request for voluntary retirement, therefore, the applicant is not entitled to any relief as claimed by him.

8. In view of the above discussions, the applicant is not entitled to any relief. The O.A. deserves to be dismissed.

9. The O.A. and the M.A. are, therefore, dismissed. The parties are left to bear their own costs.

Unsp
(A.P.Nagrath)
Adm. Member

Omz
(A.K.Misra)
Judl.Member

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jrm

Rec'd by
W2
22.2.2001

Rec'd by
on 26/12
2001

Part II and III destroyed
in my presence on 21.3.07
under the supervision of
section officer (J) as per
order dated 19.12.02

Section officer (Record)