

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Decision : 25-9-2002

O.A. No. 250/2001.

Tara Chand Pareek son of Shri Omkar Mal aged 57 years, resident of Kirodiwal Sadan, Ward No. 21, Om Colony, Churu, O/A Section Engineer, Northern Railway, (CHURU).

... APPLICANT.

versus

1. Union of India, through its General Manager, Northern Railway, Head Quarters, Baroda House, New Delhi.
2. Senior Divisional Personnel Officer, Northern Railway, Divisional Office, Bikaner.

... RESPONDENTS.

Mr. G. K. Vyas, counsel for the applicant.
Mr. Vinit Mathur, counsel for the respondents.

CORAM

Hon'ble Mr. Gopal Singh, Administrative Member.
Hon'ble Mr. J. K. Kaushik, Judicial Member.

: O R D E R :

(per Hon'ble Mr. J. K. Kaushik)

Shri Tara Chand Pareek has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, for quashing the impugned order dated 19.06.2001 (Annexure A-1), to the extent ' his intervening period may be treated as 'dies non' and respondents be directed to afford all consequential benefits, thereof.

2. The facts of the case are that the applicant was ordered to be compulsorily retired from service by giving three months notice dated 04.09.2000 under Rule 1802, REC-I. He has submitted a detailed representation against the same, vide letter dated 11.09.2000. Thereafter he filed an OA No. 279/2000 and the same was disposed of vide

order dated 07.12.2000. A direction was given to the respondent No. 1 to consider the representation of the applicant in a period of three months from the date of receipt of a copy of the order.

3. Thereafter an order dated 19.06.2001 has been passed on his representation in the following terms :-

" As per recommendations of representation committee, the competent authority has accorded approval to reinstate Shri Tara Chand Pareek with further directions to treat the intervening period as "Dies non" vide letter No. 752-E/190-BKN/Confd./EIID/Pt.I, dated 8.5.2001.

Accordingly, Shri Tara Chand Pareek is re-instated on post of Office Supdt.II grade Rs. 5500-9000 on pay Rs. 6725/- at CDO/CUR and his intervening period may be treated as "Dies non".

It has been submitted that the consequent reinstatement in service clearly means, as if, the order of compulsory retirement was never passed against the applicant, ~~so~~ the applicant cannot be deprived of the due salary etc. for the intervening period and the intervening period cannot be treated as 'dies non'. The applicant filed the representation against the order of compulsory retirement, well in time, and they cannot treat the intervening period as 'dies non' at their sweet will. The OA has been filed on number of grounds i.e., the order of compulsory retirement was wrongly passed by the authorities and after considering his representation, he has been found fit for reinstatement but surprisingly the intervening period is ordered to be treated as dies non and the applicant has been deprived of his salary etc., the order of compulsory retirement is wrongly passed in respect of the applicant and they cannot declare the intervening period as 'dies non' ^{would} and he ~~can~~ be entitled to all the consequential benefits.

4. The respondents have filed a counter reply and have not disputed the factual aspect of the matter. It has been submitted that the competent authorities of the department have treated the intervening period to be 'dies non' as the applicant has not performed any function during this period, and this Hon'ble Tribunal would not like to intervene with the lawful orders passed by the competent authority of the department. This Tribunal only directed to consider the representation of the applicant and the same has been done after due application of the mind and, therefore, the intervening period has been rightly treated as 'dies non' on the principle of 'no work no pay'.

5. We have heard the learned counsel for the parties and carefully perused the record of the case.

6. The factual aspect in the matter remains undisputed. The applicant was ordered to be compulsory retired and on his representation he has been ordered to be reinstated in service. Learned counsel for the applicant, Shri S. K. Vyas, has submitted that there was no fault on his part and he was prevented to perform his duties. The applicant has been very much vigilant and consistently striving for getting justice and joint his duties. In fact the respondents have prevented the applicant to perform his duties by passing an unwarranted order of compulsory retirement and kept the applicant out of duties. They also delayed the decision on his representation and the applicant had to take up the matter with the Court of Law which could have been avoided. They have not given

any reason, as to why, the intervening period is being treated as 'dies non' despite the fact that there was no dereliction on the part of the applicant. The respondents cannot be allowed to take advantage of their own wrong and, therefore, the applicant is entitled to keep his due benefits, as if, an order of compulsory retirement was never in existence.

7. On the other hand, learned counsel for the respondents strenuously opposed the contention of the learned counsel for the applicant. It has been submitted that the impugned order was passed by the competent authority, after due application of mind, on the principle of 'no work no pay' and the action of the respondents is perfectly legal and valid.

8. We have given our anxious consideration to the rival contentions put forward on behalf of both the parties, and are of considered opinion that there has been no fault on the part of the applicant and the non performance of the duty is not attributable to the applicant and whatever fault/wrong, was, it was on the part of the respondents. Recently the Full Bench of this Tribunal in Devi Lal & Anrs vs. UOI, reported in AIR 2002(1) FB CAT 485 has held that if an employee has been wrongly denied the actual work on account of fault of the management, he cannot be denied the pay and allowances on the principle of 'no work no pay'.

9. We have no hesitation to follow the aforesaid

judgement ; rather we are bound by it and in this view of the matter, the OA deserves to be allowed and we pass the order as under :-

- The impugned order, so far, it relates to treating the intervening period from 04.09.2000 to 19.06.2001 as dies non, is concerned, is quashed. The applicant shall be entitled to all consequential benefits for the said period including the salary, seniority, continuity in service,etc.,. However, there shall be no order as to costs. *

JKK

(J. K. KAUSHIK)
Judicial Member

Gopal Singh

(GOPAL SINGH)
Administrative Member

Joshi