

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

Original Application No.135/2003

Date of decision: 23-3-2010

Coram:

Hon'ble Justice Mr.S.M.M. Alam, Judicial Member

Hon'ble Mr. V.K. Kapoor, Administrative Member

Jogendra Pal Verma, S/o Shri Hari Ram Ji Verma, by caste Verma, aged 60 years, Ex-Goods Supervisor, Northern Western Railway, Lalgah, R/o Street No.1 Rampura Basti, Near Kabir Ashram, Lalgah (Bikaner).

: Applicant.

Mr. Nitin Trivedi : Counsel for the applicant.

Versus

1. Union of India through General Manager, Northern Western Railway, Headquarter Building, Jaipur.
2. The Divisional Railway Manager, Northern Western Railway, DRM's Office, Bikaner.
3. The Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.

: Respondents.

Mr. Kamal Dave : Counsel for the respondents.

ORDER

Per Mr. V.K. Kapoor, Administrative Member.

Shri Jogendra Pal Verma has filed the present OA against orders of respondent no.3 dt 17.7.2002 (Ann.A-1) & 28.01.2003 (Ann.A-

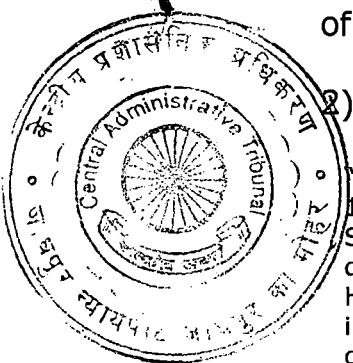
2). The applicant has sought the reliefs that are as follows:-

(a) That by an order or direction in the appropriate nature, the impugned orders dated 17th July, 2002 (Ann.A-1); 28th Jan, 2003 (Ann.A-2) passed by the respondent No.3 Senior Divisional Personnel Officer, Northern Western Railway, Bikaner and the order dated 27th Nov, 2001 (Ann.A/3) passed by then General Manager (P), Northern Railway, Headquarter's office, Baroda House, New Delhi so far as it relate to treating the intervening period from 16th June, 2000 to 14th Dec, 2001 as "dies non" may kindly be quashed and set-aside and accordingly, the applicant may kindly be provided all the consequential benefits for the said period including the salary, seniority, continuity in service and retiral benefits, etc.

(b) That the respondents may kindly be directed to pay the arrears of the salary to the applicant alongwith simple interest.

(c) That any other order or direction which this Hon'ble Tribunal deem fit and proper, in the facts and circumstances of the case, may kindly be passed in favour of applicant.

(d) That the cost of original application may kindly be awarded in favour of applicant."



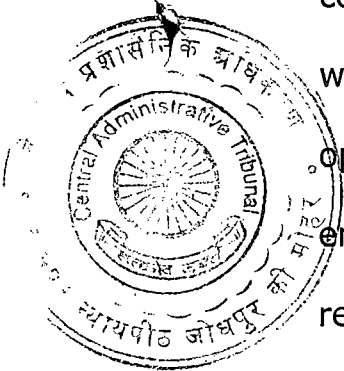
2. The case in brief is that the applicant entered service under the respondents as goods clerk on 24.02.1963 and subsequently promoted as goods supervisor in the pay scale of Rs.5500-9000. Vide order dt 15.6.2000, issued by respondent 3, the applicant was compulsorily retired. He preferred an appeal dt 29.6.2000 to the General Manager (P), Northern Railway Baroda House, New Delhi. He filed an O.A.130/2001 before the Tribunal; this O.A was decided on 04.6.2001 directing the respondents therein to dispose of his representation dt 29.6.2000. The General Manager (P), Northern Railway Headquarter, New Delhi passed an order on 27.11.2001 by which applicant was reinstated in service in pay scale of Rs.5500-9000, the intervening period from 16.6.2000 to 14.12.2001 was treated as 'dies non'. The respdt 3 passed an order dt 14.12.2001 by which the applicant was taken back in service and was posted at Lalgah station. Applicant preferred review/appeal before respdt 1 with a request that he is entitled to back wages; this appeal was rejected vide order dt 17.7.2002. The respondents have preferred D.B. writ petition (Civil) 375/2005 before the Hon'ble High Court of Rajasthan at Jodhpur. The Hon'ble High Court vide judgment dt 24.01.2005 set aside the order dt 12.02.2004 passed by this Tribunal remitted back the O.A for fresh hearing. Thus the O.A was restored to its original number vide order dt 05.9.2006 passed in M.A.31/2005. The applicant has contended that 'no work no pay' formula cannot be applicable in his case, he has prayed that the impugned orders be set aside & the applicant be provided all the consequential benefits for the said period including salary, seniority continuity in service and retiral benefits etc.



3. The respondents, in their reply have contended that it was decided by the competent authority not to retain the applicant in service. Vide letter dt 15.6.2000 that was made applicable from 16.6.2000, against which applicant preferred an appeal. Before any order was passed on his appeal, he filed O.A.135/2001. The Tribunal vide its order dt 4.6.2001 directed the respondents to dispose of the appeal. The respondents vide order dt 27.11.2001, reinstated the applicant, who was taken back on duty vide office letter dt 14.12.2001. It is further averred that the applicant had a bad track record, he was removed from service but later taken back on duty as per order dt 14.12.2001. It is averred that the applicant was awarded many punishments in his entire service career. He was not on duty from 16.6.2000 to 14.12.2001, the intervening period was treated as 'dies non' which is just & proper.

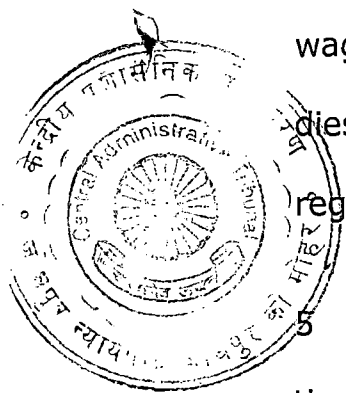
4(a) Learned counsel for applicant has stated in arguments that applicant was in the service of railways, he was compulsorily retired from service vide order dt 15.6.2000. Applicant's case was considered at senior level, he was reinstated & intervening period was treated as 'dies non'. As per applicant, he is not afforded an opportunity of being heard, no notice was given to him; thus, he is entitled for back wages and previous service benefits etc. He has relied on citation of M.A. Ravoo vs. Senior Divisional Signal Telecommunication Engineer & Anr. (1998) 9 SCC 466.

4(b). Learned counsel for respondents in arguments has stated that the applicant had a bad record in service, so he was retired compulsorily. The case was sent to his senior officers, who after giving serious thought reinstated him on service. During the



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intervening period from 16.6.2000 to 14.12.2001, he was not given wages as he did not perform duties. The order is clear in itself, it is not discriminatory. Initially his appeal was dismissed; later he was taken on duty; it is not a case of disciplinary action, but of compulsory retirement. The citation submitted by applicant viz. (1998) 9 SCC 466 is not applicable in this matter. The intervening period in which he did not work, was treated as 'dies non'. Applicant's case to be taken back on duty was decided exclusively on recommendations of the representative committee as per clause 222 IREM. As per railway Board's circular dt 15.11.1979, respondents are to conform to judgment & scheme; the Tribunal is a statutory body, can't proceed beyond rules. The representative committee is not empowered to grant back wages. If a person has not served, he cannot be given back wages, the case of M.A. Ravoof vs. Senior Divisional Signal Telecommunication Engineer & Anr. (1998) 9 SCC 466 applies in this matter. The letter of Railway Board, dt 15 Nov, 1979 gives powers to representative committee, but this committee does not have powers to give back wages to applicant, this period could be converted into leave or dies-non. The respondent has also relied upon (1998) 9 SCC 468 in regard to termination of an employees & giving back wages.



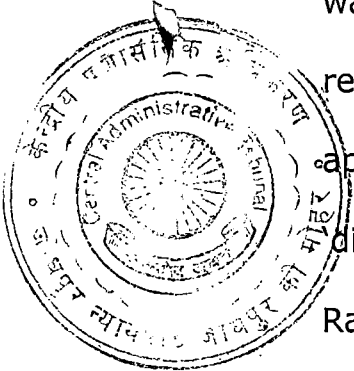
5 It is not in dispute that the applicant entered into service in the Railways as goods clerk on 24.02.1963 and later reached the category of goods supervisor in the pay scale of Rs.5500-9000. The applicant was compulsorily retired on 15.6.2000. In the process, he moved to the Tribunal by filing O.A.30/2001, which was disposed of on 04.6.2001 directing the respondents to dispose

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of his representation dt 29.6.2000. The respondents vide order dt 27.11.2001 reinstated him in service in the pay scale of Rs.5500-9000; he was posted at Lalgah station and intervening period from 16.6.2000 to 14.12.2001 was treated as 'dies non'. The applicant moved in between to various authorities for the intervening period from 16.6.2000 to 14.12.2001 to be treated as on duty & consequential benefits should also be given to him.

6. The applicant entered into service as goods clerk on 24 Feb, 1963, he was promoted later as goods supervisor in the pay scale of Rs.5500-9000; he was given compulsory retirement vide order dt 15 June, 2000 passed by respdt 2. He appealed before respdt 1 which was rejected. The respondent 1 passed an order dt 27 Nov, 2001 by which applicant was reinstated in grade Rs.5500-9000. The applicant was not given salary/wages etc between 16 June, 2000 to 14 Dec, 2001, the period during which he was not in service; was called as dies-non. The applicant appealed against this order for getting back wages for the period in question which was rejected. The order of applicant's restatement was passed by representative committee of railways; by order dt 14.12.2001, applicant was reinstated but the intervening period was treated as dies non'. The instructions 15.11.1979 are given in the circular of Railway deptt, para 3 of procedure & guidelines, speaks about compulsory retirement of an employee. In the procedure given for representations, applicant's case was considered after giving due thought. In case the retirement is on political ground or personal victimization, the intervening period would be treated as on duty with full pay and allowances. It would not be appropriate to treat

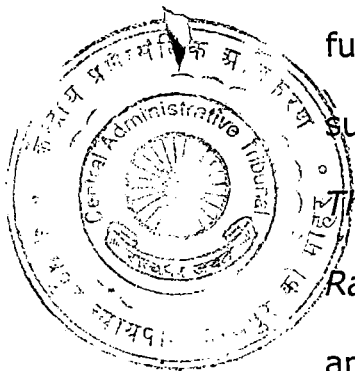
upon



this period during which the employee had not worked as duty pay. This period may either to be treated as leave due or admissible as dies-non. The competent authority has treated this period in dispute as 'dies non' i.e. 'no work, no pay'.

7. A railway employee can be prematurely retired, the review committee shall be constituted on each zonal railway administration reason whether officer/employee censured should be retired from service in public interest. For this various yardsticks are given to retire an employee who has completed 30 years of service or crossed 50 years of age. The procedure in these instructions, mention of giving notice is there & after his representation an action would be taken. There is provision of compulsory notice for a period of 'not less than three months', as per rule 5 of Railway Board's confidential letter/circular dt 15.11.1979.

8. Learned counsel for the applicant has contended that he should be given show cause notice prior to sending him on retirement; thus he is deprived of the opportunity clause. It is further contended that rules of natural justice are violated; in support of his contentions, he has relied on the citation *Ragunath Thakur vs State of Bihar & Ors*, (1989) 1 SCC 229; and *Ramaswamy & Ors. vs. UOI & Ors.* (1989) 10 ATC 80. Because of applicant's bad service record etc, he was given compulsory retirement by the representative committee of railways; decision was taken after due thought. The case law put for by respondent- *M.C.D. vs. Praveen Kumar Jain & Ors.* (1998) 9 SCC 468 would apply in present case because of defaults of concerned employee/staff. The decision as regards retirement etc of staff is

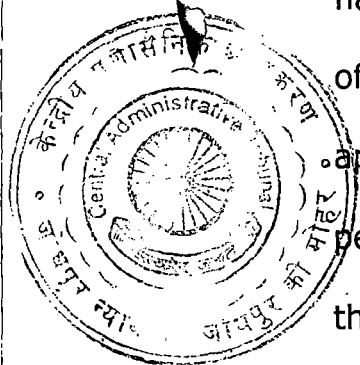


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to be taken in an overall purview, his acts of omissions or commissions are also to be looked into. The citation of *M.A. Ravoof vs. Dr. DSTE & Anr.* (1998) 9 SCC 466 squarely applies in present context; this pertains to matter of compulsory retirement, not being one of political or personal victimization, it would not be appropriate to allow him full salary for intervening period. The action of respdts does not become dilute for non-issuance of notice prior to his retirement. This is noteworthy that on application's representation, action was taken & he was reinstated; thus rules of natural justice were adhered to. This is a different story that the intervening period in dispute is considered as that of 'dies-non'.

9. Because of bad service record of the applicant, he was retired compulsorily, thus the case law put forth of CAT, Madaras Bench *S.N. Ramawami & Ors. vs. UOI & Ors.* (1989) 10 ATC 80 would not apply in the present case. By way of quoting the citation *Raghunath Thakur vs. State of Bihar & Ors* (1989) 1 SCC 229, the applicant wants to clarify that it is an elementary principle of natural justice that parties affected by any order should have right of being heard & making representation against the order. The applicant after being heard was taken back in service; as regards period in dispute, applicant's representation was heeded to but there was no scope in the case as he did not work on job during that period, so the principle of 'no work, no pay' was accepted.

10. Now, the question remains about the intervening period i.e. from 16.6.2000 to 14.12.2001, treated as non-duty period by the representative committee of railways. After serious thought, the committee has treated this period as that of 'dies-non' Applicant's

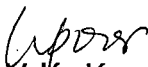



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retirement is not due to political reasons or personal vendetta; the representative committee comprising of senior railway officers showered mercy on him by taking him back on job, even though his previous service record was bad. As the applicant has not worked during the period in question, he should not be given wages for this period; there is no break in service; this action on respondents' part can't be termed as stringent one. In view of his previous service record, the action for taking him back in service and treating the period in question as dies-non is just & proper.



11. In view of observations & deliberations made above, no interference is called for in the orders dt 17.07.2002 (Ann.A-1) & 28.01.2003 (Ann.A-2). Resultantly, the present OA is dismissed with no order as to costs.


[V.K. Kapoor]
Administrative Member.


[Justice S.M.M. Alam]
Judicial Member.

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