IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
Jodhpur Bench: Jodhpur

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ORIGINAL APPLICATION NO: 52/2002

Date of decision: 12.8.2004

Krishan Kumar Sachdeo ... ...Petitioners

Mr. Y.K. Sharma ... .Advocate for the Petitioners

Versus

Union of India and Others ... ...Respondents.

Mr. Manoj Bhandari Advocate for Respondents.

CORAM:

Hon'ble Mr. J.K. Kaushik Judicial Member.

Hon'ble Mr. M.K. Misra, Administrative Member

1. **Whether Reporters of local papers may be allowed to see the judgement?** No
2. **To be referred to the Reporter or not?**
3. **Whether their Lordships wish to see the fair copy of the Judgement?** Yes
4. **Whether it needs to be circulated to other Benches of the Tribunal?**

(M.K. Misra)
Administrataive Member

(J.K. KAUSHIK)
Judicial Member.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 52/2002

DATE OF DECISION: 12.8.2004

Hon'ble Mr. J. K. Kaushik, Judicial Member
Hon'ble Mr. M.K. Misra, Administrative Member

Krishan Kumar Sachdeo, S/o Shri Sunder Kumar, aged 59 years, Head Goods Clerk, Scale Rs. 5000-8000, presently posted at Suratgarh, r/o II-E/45 Jai Narayan Vyas Colony, Bikaner, C/o Station Superintendent, Northern Railway, Suratgarh Jn.

: Applicant.

(By Advocate Mr.Y.K. Sharma, Counsel for the applicant)

versus

1. Union of India through the General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. General Manager (P), Northern Railway, H.Q Office, Baroda
   New Delhi.
3. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
4. Divisional Personnel Officer, Northern Railway, Bikaner Division, Bikaner.
5. Asstt. Personnel Officer, North West Railway, Bikaner.

: Respondents.

(By Advocate Mr.Manoj Bhandari: Counsel for respondents)

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal न्यायपीठ जोधपुर

ORDER

BY J. K. KAUSHIK, JUDICIAL MEMBER:

Shri Krishan Kumar Sachdeo has undertaken second journey to Tribunal and has inter alia filed this Original

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Application assailing the orders dated 8.3.2001, 23.3.2001 and 5.8.2002, Annexure A/1, A/2 and A/2A, respectively so far they relate to treat the interregnum period as dies non and has sought for treating the said period as spent on duty with all consequentional benefits amongst other reliefs.

2. With the consent of the learned counsel for both the parties, we heard the arguments for final disposal at the admission stage keeping in view the urgency of the matter and have carefully considered the pleadings and records of the same.

3. Filtering out the unnecessary details, the indubitable material facts, as deduced from the pleadings of the parties are that the applicant while holding the post of Head Goods Clerk at Suratgarh was ordered to be compulsorily retired from service under Rule 1802 (a) and 1803 (a) of Indian Railway Establishment Code Vol-II, vide order dated 15.6.2000. He submitted a representation (sic appeal) on dated 28.6.2000, against the aforesaid order of compulsory retirement. Finding no response he took recourse to the court of law and filed and Original Application No. 1702/2000 before Principal Bench of the Tribunal which came to be decided with a direction to the respondents to convene a representation committee and dispose of his representation in accordance with law.

4. The applicant was ordered to be reinstated in service vide order-dated 23.3.2001. However, the interregnum period was

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ordered to be treated as dies-non. He protested against the same but his request came to be turned down. The action of the respondents has been challenged on diverse ground enunciated in para 5 and its sub paras, which we shall deal a little later in this order.

5. As regards the variances, the respondents have averred that the intervening period has been treated as dies-non for which he shall not be given the salary because he has not discharged any duty. The decision has been taken after giving opportunity of hearing the applicant. The order has been passed in accordance with the directions of the Tribunal whereby a review committee passed the appropriate order. His request to treat the intervening period as spent on duty has been rejected by the Hqrs. The grounds enunciated in the Original Application have been generally denied.

6. The learned counsel for the applicant has reiterated the facts and grounds narrated in the pleadings of the applicant. He has submitted that the action of the respondents in passing the order of premature retirement was ex facie illegal and that is precise reason for reinstatement of the applicant. The applicant was not at all responsible for any delay or otherwise responsible in regard to review of the order of compulsory retirement. He cannot be made to suffer for the fault committed by the respondents. He has next contended that the respondents have prevented the applicant form performing his duties. It was also

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not a case where there was any dispute regarding fixation of seniority or of grant of promotion from a retrospective date. Thus the rule of no work no pay can have no application. The action of the respondents in treating the intervening period as dies-non has caused financial loss to him. He has placed heavy reliance on the decision of this bench of the Tribunal in case of **Tara Chand Pareek V. Union of India and Anr** passed in OA No. 250/2001 on dated 25.9.2002 and submitted that his case is similar and decision fully applied to his case. The applicant is therefore entitled for the same reliefs.

7. Per contra, the learned counsel for the respondents have strenuously opposed the contentions raised by the learned counsel for the applicant and reiterated the defence of the respondents set out in the reply as noticed above. Reliance has been placed on a judgment of Hon'ble Rajasthan High Court of Rajasthan Jodhpur passed in DB© WP NO. 4227/2002 **Union of India & ors Vs. CAT & ors.** and also Apex Court Judgement in the case of **S.G. Chandan vs. UOI and ors** [(1995) 31 ATC 711. He has also submitted that on the principle of no work no pay, the intervening period has been treated as dies-non. He has stressed that once the representation of the applicant has been rejected by the General manager, and that too after following the principles of natural justice and as per the direction of Hon'ble Tribunal in earlier O.A., his case has become

infructuous and no cause of action survives to him and the Original Application deserves to be dismissed.

8. We have considered the rival submissions put forth by the learned counsel for both parties. As far as the facts of the case are concerned there is hardly any quarrel. It is true that the applicant was compulsorily retired form service. On review, he has been reinstated in service. The only controversy is relating to the treatment of the interregnum period i.e. period from the date of compulsory retirement to the date of reinstatement i.e. 16.6.2000 to 25.3.2001.

9. At the very out set we would like to clear a misconception seems to be prevailing in the mind of the respondents; it is relating to the opportunity of hearing to the applicant prior to passing the order of dies-non which also said to be made as per the orders of Tribunal in the earlier OA. The earlier OA was only for challenge of order of compulsory retirement and how the intervening period would be treated could not have been contemplated unless the applicant was ordered to be reinstated. Thus the matter of treating the period as dies-non or otherwise is quite distinct, fresh and separate matter, having no direct relation to the earlier case, which also was not even decided on merits. Admittedly no opportunity of pre-decisional hearing was given to the applicant on the point of treating the intervening period as dies non or otherwise.

10. Now adverting to the crux of the controversy involved in the instant case, it is considered apposite to refer to the relevant rule dealing with the review against the order of compulsory retirement. The contents of the same are extracted as under:

> "1805 (1) If on a review of the case referred to in Rule 1802 (a), 1803(a) and 1804(a), either on representation from the railway servant retired prematurely or otherwise, it is decided to reinstate the railway servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or as leave of the kind due and admissible, including extra ordinary leave, or by treating it as dies non depending upon the facts and circumstances of the case:
>
> provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, of if the order of premature retirement is set aside by a Court
>
> (2) Where the order of premature retirement is set aside by a Court of law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the Court."

11. A bare perusal of the aforesaid provision reveals that the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or leave of the kind due and admissible, including extra-ordinary leave or by treating it as dies-non depending upon the facts and circumstances of the case. There is further a proviso that the period would be treated as spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the

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premature retirement itself was not justified in the circumstances.

12. The perusal of impugned orders indicates that the competent authority, to the applicant, has neither supplied the order, which has been passed by the competent authority, nor its copy has been made available for perusal of this Tribunal. We are thus required to adjudge the propriety of the same and give our findings only on the basis of material made available to us. The only reason forthcoming for reinstatement is that on recommendation of the Representation Committee, the competent authority has accorded his approval for reinstatement of the applicant. There is nothing more than this. We can aptly assert that there can be no iota of doubt that the order of reinstatement could be only the consequential order of nullification of order of premature retirement since both (i.e. order of premature retirement as well order of reinstatement cannot stand together) after all one cannot eat a cake and have it too. Unfortunately, we do not find any other justification for passing the order of premature retirement. It is also not the case of respondents that the applicant in any way contributed to the issuance or otherwise responsible for the episode. The natural inference would be that the order of compulsory retirement was not in consonance or in accordance with the rules in force and therefore there should not be any difficulty in reaching to a conclusion, which is rather inescapable, that the said order was

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not justified in the facts and circumstances of the case. If that be so, it is the mandate of the very rule 1805 supra, that the intervening period shall have to be treated as a period spent on duty for all purposes including the pay and allowances and the impugned order to the extent they provide treating the intervening period as dies-non can not be sustained in the eye of law.

13. Now looking the controversy from yet another angle and by applying the doctrine of legal fiction. An order can either be legal or illegal but for all times. It cannot happen that the same order is legal for some time as well as illegal for other time. In other words an order cannot be considered to be legal until the same is declared as illegal; may be by setting aside or quashing the same by the competent authority in appeal or otherwise by a Court of law, the same order cannot be treated as illegal or non-est after the date on which it was so declared. An order, which is illegal, is non-est in the eye of law from its very inception and it has no existence in the eye of law for all times. Applying this fiction of law the order of compulsory retirement by which the applicant was prematurely retired had no existence in the eye of law from the very date the same was issued. Therefore the applicant has to be given the treatment as if the order of compulsory retirement were never in existence. On this count also the impugned orders, in sofar they relate to the treatment

of the intervening period as dies-non cannot be justified and the grievances of the applicant are sustainable.

14. Now, we shall advert to the various judgement relied upon by the learned counsel for the parties. To start with, we would take the judgement in the case of D.B.© W.P. No. 4227/2002 and others supra, cited by the learned counsel for the respondents-

That was a judgement where para 228 of the Indian Railway Establishment Manual was under examination. The said para regulates the cases relating to the erroneous promotions wherein it has been provided that where a person could not enjoy his promotion to the higher grade on account of wrong assignment of relative seniority or for some other reason. He would be promoted from the due (retrospective) date on notional basis without the payment of actual arrears and the said para 228 has been held to be valid. As far as the law position is concerned it is true that para 228 of IREM has been held to be valid. It was in fact struck down by the Ernakulam Bench of this Tribunal in the case of **P Thangarajan vs. UOI and others** [(1992) 19 ATC 839]. The same has been came to be challenged before the Apex Court in the case of **Union of India and others vs. P Abraham and others** [CA 8904/94 decided on 13.08.97], which has upheld the validity of the offending clause,

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which was quashed by the Ernakulam Bench in the case of **Thangarajan** (supra). However, the facts in the instant case are different than the facts of the cases which where under examination by the Hon'ble High Court of Rajasthan, in as much as in the instant case, para 1805(1) of the IREC Vol.II is under consideration and it is not a case of erroneous promotion having consequences of notional promotion. Thus the same has absolutely no relevancy to the instant case and therefore the respondents can not get any support to their contentions from the same.

15. As regards the another judgement in the case of **S.G. Chandnani** (supra), relied upon by the learned counsel for the respondents- in that case the intervening period was treated as dies-non basically for the reason that the applicant was also at fault in prolonging her leave without any established genuine reason and therefore, the Government directed to treat her absence as dies-non. In the instant case, the facts are quite different and admittedly there was absolutely no fault on the part of the applicant. In this view of the matter, the said judgement also does not support the defence of the respondents even remotely.

16. As regards the case of **Tara Chand Pareek** (supra), which has been relied upon by the learned counsel for the

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applicant is concerned, in that case, no doubt reliance was placed on a Full Bench Judgement in the case of **Devilal vs. UOI and others** [ATJ 2002 (2) FB CAT 485] but the relevant rule was not brought to the notice of the Tribunal since the case of **Devilal** (supra) has been over-ruled by the High Court and therefore the same does not supports the contention of the learned counsel for the applicant and the same is to be treated as per incurium and cannot be cited as precedent besides the statutory rule was also not brought to the notice of the Tribunal which regulates the controversy involved.

17. We may also consider the controversy involved in the instant case from yet another angle. It may be pointed out that the premature retirement does not fall within the ambit of Art. 311 of the Constitution of India, in normal course. However, in case, the compulsory retirement is ordered as a measure of punishment, the same would attract and fall within the ambit of Art. 311 of the Constitution of India and it would be considered as a removal from service. This proposition of law has been laid down by a Constitution Bench of the Apex Court in the case of **Union of India vs. Tulsiram Patel** [AIR 1985 SC 1416 para 151]. In the instant case where we have to come to an inescapable conclusion that the compulsory retirement of the applicant was not at all justified, then the same could be considered as akin to a punishment order under Art. 311 of the

Constitution of India and that is the reason the same had to be nullified by the competent authority by ordering reinstatement of the applicant in service and if that be so, the law propounded by the Apex Court in **Union of India vs. K.V. Janakiraman** [AIR 1991 SC 2010]would have to be applied, wherein their Lordships of the Supreme Court have held in unequivocal terms that when one is exonerated in the disciplinary proceedings he would invariably paid the due arrears of salary and allowances until specific reasons are recorded therein to deny the same. In the instant case we do not find any reason forthcoming as to why the applicant has been denied the due salary and allowances which is natural consequence of treating the intervening period as dies-non. In this view of the matter, there can be no other option for us except to treat the action of the respondents so far as the impugned orders relating to declaring the intervening period as dies-non, as unjust, arbitrary, unfair and inoperative.

18. In the circumspect of the aforesaid discussion, we find that there is ample force in this O.A and the same stands allowed accordingly. The impugned orders dated 08.03.2001, (Annex. A/1) 23.03.2001(Annex.A/2) and 05.08.2002 (Annex. A2.A) in so far they related to declaring the intervening period i.e. from 16.06.2000 to 25.03.2001 as dies-non are hereby quashed and the respondents are directed to treat the said period as spent on duty for all purposes including the pay and allowances and the applicant would be entitled to all

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consequential benefits. This order shall be complied with within a period of three months from the date of receipt of a copy of this order. The parties are directed to bear their respective costs.

(M K Misra)
Administrative Member

(J K Kaushik)
Judicial Member

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