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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 251/2005

Date of Order: 16-8-2010

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Amarddin S/o Shri Naseerddin Ji, aged about 61 years, resident of Ratan Sagar Well, Bikaner (Raj.), retired as a P.W.S., Lalgargh, North-West Railway, District Bikaner (Raj.).

.... Applicant

Mr. S.L. Jain, counsel for applicant.

VERSUS



1. Union of India through General Manager, North-West Railway, Jaipur (Raj.).
2. General Manager (P), North-West Railway, Jaipur (Raj.).
3. Divisional Personnel Officer, North-West Railway, Bikaner (Raj.).

.... Respondents.

Mr. Manoj Bhandari, counsel for respondents.

ORDER

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

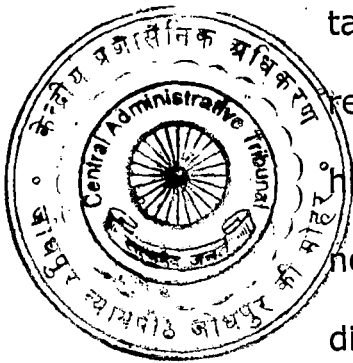
Shri Amarddin has filed the present O.A. in which he has challenged the orders dt 27.09.2001 (ann A-4) & dt 31.08.2001 (ann A-5). The applicant has sought the following reliefs:

- "(i). That this Hon'ble Tribunal may kindly be pleased to quash and set aside the order vide Annexure A/4 & A/5 dated 27.9.2001 & 31.8.2001 as far as relates to treating the intervening period from 01.01.2001 to 27.9.2001 as "dies-non".
- (ii). That this Hon'ble Tribunal may kindly be pleased to direct the respondents to treat the period from 01.01.2001 to 27.9.2001 as period spent on duty with all consequential benefits alongwith payment of wages for the said period with interest 18% per annum.

Yours

- (iii). That any other direction, or order may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iv). That allows the applicant with exemplary cost in favour of the applicant."

2. The factual matrix of the case is that the applicant resides at Bikaner, retired as P.W.S. from Lalgah, North-West Railway Bikaner on 31.07.2004. The respondent-3 retired applicant from 02.01.2001 (AN) vide letter dated 01.01.2001 (ann A-2). He appealed against order of compulsory retirement for restoration of his services vide letter dt 08.01.2001 (ann A-3). He moved an appeal / representation to respondents; on 27.9.2001 he was taken back in service in pursuance of review conducted by respondent-2 vide letter dt 04.9.2001 (ann A-5). The period for his absence from 01.01.2001 to 27.9.2001 is treated as 'dies non'. In case of Shri R.B. Saxena being similar in nature, the disputed period was treated as period spent on duty vide order dt. 04.12.2001 (ann A-6). It is a clear case of discrimination; no opportunity was given to him, no adverse entries are recorded in applicant's ACR. The applicant remained out of job due to illegal orders of respondent-3, he is entitled to get the intervening period regularized as period spent on duty with all consequential benefits. The applicant has sought relief to quash the order dated 27.9.2001 and 31.8.2001 (ann A-4, A-5) & prayed to treat period from 01.01.2001 to 27.9.2001 as spent on duty.



3. The respondents in reply have submitted that the competent authority has taken decision of applicant's premature retirement under rules 1802 (a) and 1803 of Indian Railway Establishment

Upon

Code Vol. II and para 620 (ii) of Pension Manual of 1950. His performance was assessed on the basis of scrutiny of entire service record, confidential reports of last 5 years. The O.A. is barred by limitation; the cause of action arose in 2001 and representation was filed in 2004. The delayed representation shall not give any cause of action to condone the delay. The present O.A. is grossly belated. The applicant has not filed M.A. for condonation of delay. The applicant filed OA in 2004, withdrew this in August 2005. Applicant's order of reinstatement was issued by office order dt 27.9.2001; the intervening period was treated as dies-non, he has not discharged any duties for the said period. No discrimination is shown to applicant as the case of Shri R.B. Saxena is different - not applicable in present context. No malafides on respondents' part are manifest as order of compulsory retirement was reviewed. The respondents have prayed to dismiss present OA on facts and legal grounds.



4 (a). Learned counsel for applicant in arguments has narrated that the applicant was working in the respondent-dept; he was compulsorily retired from service on 02.01.2001 after continued service of 30 years vide order dated 01.01.2001 (ann A-2). He preferred an appeal on 08.01.2001; the respondent-2 vide letter / communication dated 27.9.2001 (ann A-4) & dated 04.9.2001 (ann A-5); treated intervening period from 01.01.2001 to 27.9.2001 as dies-non. He has challenged the period of dies-non; he was working at Bikaner that time. The applicant filed OA 35/2004; then withdrew this vide order dated 11.8.2005. He filed present OA; no application was given for condonation of

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delay. No reasons assigned for terminating applicant's services & treating the period in between as dies-non. There is no material on record for compulsory retirement, the reasons for treating the period in question as dies-non should were to be communicated to him, the employer denied this right to him. The case of Shri R.B. Saxena is similar, he was taken back on duty, the period in dispute was treated as dies-non (ann A-6). In applicant's case, no notice was given; the discriminatory traits were adopted & right to natural justice was infringed. The applicant has quoted the citation of Shiv Shankar & another vs. UOI & ors. - (1985) SCC (L&S) 387 and the case of CAT, Jodhpur in OA 52/2002 dt. 12.08.2004. The case of UOI vs. M.K. Sarkar in (2010) 2 SCC 59 is also quoted. He has further relied on the case of Dr. Vijay Saxmi Sadho vs. Jagdish - JT 2001 (1) SC 382 & Maharashtra University of Health Sciences Represented by Deputy Registrar vs. Paryani Mukesh Jawaharlal & Ors. - 2007 AIR SCW 3946.



4(b). Learned counsel for respondents has pointed out to delay in filing the present OA. He has contended that without filing a Misc. Application, the delay cannot be condoned; (1998) 9 SCC 466. As the review committee has taken decision, court should not interfere. There is no personal or political victimisation of the applicant. In view of review committee's recommendations, applicant is taken back on service; proper & suitable reasons are given; the power to take back applicant rests with review committee; the period during which he was out of job, it was to be treated as dies-non. Thus, question of discrimination or bias cannot be raised. After review, the committee gave a concession

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and he was reinstated back in service. In support of his contentions, the respondents have quoted the citation of Ramesh Chand Sharma vs. Udham Singh Kamal & others – AIR 1999 SC 3837, the case of Union of India and Ors. vs. M.K. Sarkar – (2010) 2 SCC 59, OA 135/2003, M.A. Ravoof vs. Senior Divisional Signal Telecommunication Engineer and another – (1998) 9 SCC 466 and OA 135/2003 of CAT, Jodhpur.

5. The respondents in reply and arguments have stated that the present O.A. is grossly time barred. According to them, the cause of action had arisen in 2001 and the representation was filed in 2004, thus delayed representation could not be any ground to condone the delay. The applicant filed OA 35/2004 before CAT, Jodhpur but later vide order dt 11.08.2005 withdrew the same. The Tribunal gave liberty to the applicant to file a fresh O.A. in the same matter if he is so desires. The applicant has filed the present O.A. on 25.08.2005. It is submitted that cause of action in the present O.A. had arisen in 2001; the applicant did not file any M.A. for condonation of delay. Thus, as per respondents, the delay cannot be condoned. In support of their contention, the respondents have put a case of Ramesh Chand Sharma vs. Udham Singh Kamal & Ors. – AIR 1999 SC 3837. The applicant has not given any plausible ground so as to clarify that he filed the O.A. earlier and later withdrew as narrated above. His contention is that in the interest of justice, an opportunity to defend should be given to the applicant, thus, the present O.A. be admitted. It is contended on applicant's behalf that there is no third party right, thus he should be



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permitted to participate in further proceedings otherwise this would tantamount to denial of his civil rights. The respondents have quoted the case of Union of India and Ors. vs. M.K. Sarkar – (2010) 2 SCC 59 – as regards delay that starts from reckoning of date of accrual of cause of action. As per apex court's rulings mentioned above, there exists no ground for condonation of delay. No miscellaneous application is filed, therefore, without any such request, the inordinate delay in filing the present O.A. cannot be condoned. Thus, the present case cannot be heard on merits. The present O.A. is dismissed because of delayed filing of the present O.A. No order as to costs.




[V.K. Kapoor]
Administrative Member


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

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