

1/2
#16

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 34/2005

Dr
[25-8-05]

Date of decision: 25-8-2005

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

Hon'ble Mr. G R Patwardhan, Administrative Member.

Prabhu Ram S/o Shri Pema Ram Ji, aged about 61 years, resident of village and post- Dhirera station, via Jamsar, Dist. Bikaner (Raj) retired as a PWS Dhirera Station, North Western Railway, Dhirera Distt. Bikaner (Rajasthan.)

: Applicant.

Rep. By Mr. Y K Sharma : Counsel for the applicant.

VERSUS

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

: Respondents.

Rep. By Mr. N K Khandelwal: Counsel for the respondents.

ORDER.

Per Mr. J K Kaushik, Judicial Member.

Shri Prabhu Ram has assailed the validity of the orders dated 27.09.2001 and the order dated 27.04.2004 (Annex. A/1 & A/2), respectively, with a further prayer for a mandate to the respondent to treat the period from 01.01.2001 to 27.09.2001 as spent on duty with all consequential benefits along with interest on arrears of due amounts at the rate of 18% per annum.

2. The pleadings are complete and both the learned counsel for the parties have agreed for leading their arguments for final disposal of this case. We have accordingly, heard both the learned counsel for the parties and have carefully perused the pleadings and records of this case. The respondents have also produced

2

-2-

I/8

some of the records as well as the ACR dossier in respect of the applicant.

3. Leaving aside the variances in facts the material facts considered necessary for resolving the controversy involved in the instant case are that the applicant has been in service of the respondents and he was pre-maturely retired from service from the post of PWS. During the year 2001, the applicant was working on the post of PWS Lalgarh. The order dated 01.01.2001, came to be issued vide which the applicant was retired by invoking rules 1802 (a) and 1803 (a) of IREC Vol. II read with para 620 (ii) of Manual of Railway Pension Rules, 1950. The applicant preferred a representation to the competent authority against the order of premature retirement. A review was conducted in the matter and the applicant was ordered to be reinstated on the post of PWS Lalgarh vide order dated 27.09.2001. In the same order it has been mentioned that the intervening period from the date of compulsory retirement till the date of reinstatement shall be treated as 'dies non'. Against this portion of the order the applicant preferred a representation to the higher authorities and the same came to be upheld vide order dated 27.04.2004 (Annex. A/2). The Original application has been filed on numerous grounds mentioned in para 5 and its sub paras.



4. The respondents have contested the case and have filed an exhaustive reply wherein a preliminary objection has been taken regarding the limitation. It has been averred that the order Annex. A/1 and Annex. A/2 are consequential orders and the applicant has not chosen to challenge the original order. The defence as set out

in the reply of the respondents is that the review committee assessed the applicant's performance on the basis of scrutiny of his entire record and found that he has outlived his utility and was not found fit for being retained in service. His representation was considered by the headquarters office. The competent authority, has accorded his approval for reinstatement in service with a direction that the intervening period be treated as 'dies-non'. Rule 1802 (a) clearly empowers the appointing authority to retire any government service on fulfilling certain conditions. Rule 1805 (i) provides that on review, if it is decided to reinstate a railway servant in service, the authority ordering re-instatement may regulate the intervening period by treating the date of premature retirement to 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 each case. In the instant case, the same had been treated as dies non. The grounds mentioned in the O.A had generally been denied.



5. Both the learned counsel have reiterated the facts and grounds indicated in their respective pleadings. The learned counsel for the applicant has cited one of the decisions of this Bench of the Tribunal **Krishan Kumar Sachdeo vs. Union of India and others** [2004 (3) ATJ 74] to which one of us (J K Kaushik) as a party and has submitted that the controversy involved in that case was almost identical to the one involved in the instant case. The learned counsel therefore contended that the does not remain res-integra. On the other hand the learned counsel for the respondents submitted that he would be submitting the relevant file, wherein the

2

-4-

10

decision has been taken to reinstate the applicant and that would unfold the truth and the case of applicant may be dissimilar.

6. We have considered the rival submissions put forth on behalf of the both the parties and also waded through the judgement in **Krishan Kumar Sachdeo** (supra) as well as the records which have been made available by the learned counsel for the respondents. Before advertng to the merits of the case, we would clear the peripheral issue relating to the preliminary objection of limitation. Firstly, the respondents themselves admitted that Annex. A/2 has been issued in consequence to the main order. Annex. A/2 is of date 27.04.2004 and therefore this O.A is well within the limitation. As regards the objection of the respondents that the applicant has not chosen to challenge the main order and he had challenged only the consequential orders, is concerned we find that once the applicant has been issued only the Annex. A/1 and A/2 and no other order had been issued to him, how he would be expected to challenge the so called original order. In any case, the contents of the original order have been incorporated in Annex. A/1, against which his representation came to be rejected vide Annex. A/2 and both these orders are under challenge. Therefore the preliminary objection raised on behalf of the respondents cannot be accepted and the preliminary objection stands repelled. Therefore, there is no obstruction to decide this case on merits.

7. Now advertng to the merits of this case, from the perusal of the records we find only the final decision as per Annex. R/1 dated 04.09.2001 is there and the recommendations of the review committee or of the competent authority is not there. We therefore



- 5 -

J K Kaushik

find that the facts of the case in **Krishan Kumar Sachdeo** (supra) and the facts of the instant case are similar and the controversy involved is also the same. Therefore, the said decision squarely applies on all fours to the controversy involved in the instant case. We can only assert at this juncture that independent of the aforesaid authority, if we were to examine the matter afresh, we could have reached to the same conclusion. In this view of the matter we are refraining from narrating the discussions afresh and direct to treat the discussions made in **Krishan Kumar Sachdeo** (supra) as part and parcel of this order. We have therefore no hesitation in applying the aforesaid decision and deciding this case on similar lines.



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 27.09.2001 (Annex. A/1) and 27.04.2004 (annex. A/2) insofar they relate to declaring the intervening period from 01.01.2001 to 27.09.2001 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 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.

(G.R.Patwardhan)
Administrative Member.

(J K Kaushik)
Judicial Member.

R/10P4
20/8/05

Rt2
119/05

Part ~~1~~ destroyed
in my presence on 12/1/14
under the supervision of
section officer (1) as per
order dated 18/1/13

[Signature]
Section officer (Record)
12/1/14