

CENTRL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

OA No. 519 of 2005

Patna, dated the 31<sup>st</sup> January, 2006

CORAM: The Hon'ble Mr. Justice P.K. Sinha, V.C.

Ramjee Prasad Deo, Ticket Collector working under the Chief Ticket Inspector, Katihar Divison, North East Frontier, Railway, Katihar.

Applicant

By Advocate: Shri M.M.P. Sinha

versus

1. The Union of India through the General Manager, North East Frontier Railway, Maligaon, District Kamrup, Assam.
2. The Divisional Railway Manager, North East Frontier Railway, Katihar.
3. The Divisional Railway Manager [P] North East Frontier Railway, Katihar.

Respondents

By Advocate: Shri A.A.Khan

ORDER

Justice P.K. Sinha, Vice-Chairman:-

Heard learned counsel for the applicant as well learned counsel for the respondents. In this matter, written statement has been filed and the matter is pending for hearing on admission on notice but, in the circumstances of the case, this application is being disposed of at the time of admission itself.



2. The facts, in short, are that the applicant by an order of the respondents was made to retire with effect from the afternoon of 30.6.2002 on the basis of the entries made in his Service-Book which, however, was challenged by the applicant vice O.A. No.404/2002 in which the Tribunal by order dated 4.2.2003 quashed the order of retirement of the applicant as that was not passed on the basis of date of birth as enumerated in the Matriculation certificate of the applicant. However, this Tribunal in that order [Annexure-A/2] also gave liberty to the respondents to verify the genuineness or otherwise of the Matriculation certificate that was produced in the Court as per which his date of birth should have been 5.7.1946 instead of 20.6.1942 as noted in the Service-Book. The respondents moved against that order in a writ petition [C.W.J.C.No.6414 of 2003] before the Hon'ble Patna High Court which was dismissed by an order dated 18.7.2003. The respondents thereafter moved the Apex Court in a petition for Special Leave to Appeal [Civil] bearing No.1866/2004 which also was dismissed by order dated 23.8.2004 [Annexure-A/4]. Thereafter, the respondents issued order dated 24.9.2004 reinstating the applicant to his former post. Therefore, on reinstatement of the applicant, the question as to whether he was to be paid his emoluments for the period before his reinstatement also came up for consideration and an office order was issued by the respondents dated 13.7.2005 treating the period from the date of his retirement up to the date of reinstatement as 'dies non'. Not having been paid his emoluments during that period, the applicant again has approached this Tribunal in the instant application for quashing the decision at Annexure-A/1 and for



directing the respondents to clear all his arrears and dues during the period 1.7.2002 to 26.9.2004 on the basis of average emoluments drawn by him during the six months preceding his forced superannuation, including Dearness Allowance, Dearness Pay, House Rent Allowance, etc.

3. The learned counsel for the applicant has submitted that in the written statement it has been mentioned that the period aforesaid was treated as 'dies non' in accordance with Rule 1805[1] and [2] of the Indian Railway Establishment Code and on consideration of the facts and circumstances of the case. The learned counsel for the applicant gave a printed copy of the aforesaid Rule which runs as follows:

"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...by the



authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or if the order of premature retirement is set aside by a Court of law.

[2] Where the order of premature retirement is set aside by a Court of law with specific directions in regard to regularisation 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 regularised in accordance with the directions of the Court."

4. From a reading of the proviso to sub-rule [1] it is clear that the intervening period has to be treated as period spent on duty for all purposes, including pay and allowances if the order of premature retirement has been set aside by a Court of law. Moreover, this Rule will apply if reinstatement is done against an order of retirement recorded under Rules 1802[a], 1803[a] and 1804[a], by review or otherwise, but this order of retirement obviously was not recorded under any of the aforesaid Rules. Therefore, the rule relied upon by the respondents does not justify their contention that the period could be declared as 'dies non' in the particular circumstances of the case.

5. In the case of J.N. Srivastava vs. Union of India; 1998 SCC [L&S] 1251, the Apex Court held the appellant to be entitled to full arrears of salary and other emoluments, including increments, in a situation where the applicant after filing of an



application for voluntary retirement had withdrawn that within the stipulated period which prayer was wrongly rejected by the authorities, on the ground that he was ready and willing to work, and it was also held that in such a situation the plea of "no work, no pay" would not apply.

6. The learned counsel for the applicant has also relied upon another decision of the Apex Court in the case of Daya Ram Dayal vs. State of Madhya Pradesh; 1997 SCC[L&S] 1797 in which case appellant's termination was declared invalid and he was held entitled to arrears of emoluments from the date of termination, as well all other consequential benefits in accordance with law.


7. The learned counsel for the respondents opposed this application and pointed out also the facts of the case which at this stage are not required to be considered as the facts of the case have been settled up to the decision of the Apex Court. Rule 1805 of the Indian Railway Establishment Code rather supports the contention of the applicant.

8. This application, in the circumstances, is allowed and the order at Annexure-A/1 so far considering the period aforesaid as 'dies non' is concerned is hereby set aside. The applicant is held entitled to his basic salary plus Dearness Allowance, Dearness Pay and House Rent Allowance as well other

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consequential benefits which he would have been entitled to if he had continued in service, with effect from 1.7.2002 to 26.9.2004. This should be calculated and paid to the applicant within three months of receipt of copy of this order. If this is not done within the stipulated period, then the amount will be payable with interest, simple, at the rate of 8 per cent per annum, to be calculated from the date of expiry of the aforesaid period of three months, till the arrear amount is paid. His period of absence may be regularised by grant of leave, particularly extra-ordinary leave.

9. The application stands disposed of. No costs.



[P.K.Sinha]  
Vice-Chairman

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