

7th June 2007

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAT

ORIGINAL APPLICATION NO. 1174 OF 1996

Shri A.M. Kanpurwala

Applicant(s)

Shri T.D. Ghaisas

Advocate for Applicant

Versus

Union of India & Others

.. Respondents

Shri S.C. Dhawan

Advocate for Respondents

CORAM

HON'BLE SHRT S.I. JATN .. MEMBER (A)
HON'BLE SHRI GOVINDAN S. TAMPI .. MEMBER (J)

(1) To be referred to the Reporter or not? *y*

(2) Whether it needs to be circulated to other
Benches of the Tribunal? *y*

(3) Library *y*

(SHRI GOVINDAN S. TAMPI)
MEMBER (A)

Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO. 1174 OF 1996

THURSDAY, THE 07TH DAY OF JUNE 2001

CORAM

HON'BLE SHRI S.L. JATN. MEMBER (J)
HON'BLE SHRI GOVINDAN S.TAMPI MEMBER (A)

A.M. Kanpurwala,
aged about 56 years,
occupation: Railway Service,
at present working as Chief
Permanent Way Inspector (Safety)
with his Headquarters as Bhusawal,
District Jalgaon
Maharashtra. Applicant

By Advocate Shri T.D. Ghaisas.

Versus

1. Union of India,
through the General Manager,
Central Railway, Mumbai CST,
Mumbai.
2. Senior Divisional Personnel Officer,
Central Railway,
Bhusawal division,
Bhusawal District Jalgaon,
Maharashtra. Respondents

By Advocate Shri S.C. Dhawan.

O R D E R (ORAL)

Hon'ble Shri Govindan S. Tampi Member (A)

The Applicant Shri A.M. Kanpurwala has come up
before this Tribunal in this OA challenging the order/
letter No. BSL.533.28.PWI Gr.I & TI dated 4.9.1995
issued by the respondents directing that the intervening

period from the date of compulsory retirement to the date of his reinstatement be treated as dies-non.

2. Heard learned counsel Shri Ghaisas for the applicant and Shri Dhawan for the respondents.

3. In this case, it is seen that the applicant, who was working with Indian Railways was served on 22.8.94 a letter bearing No. BSL/ P/576/EB/Review proposing to retire him compulsorily with effect from 13.9.94 and advising him to file representation if any relating to the proposed action. Further letter was issued on 13.9.94 stating that he would stand retired on 28.9.94. On his filing detailed representation against the order of compulsory retirement, his case was examined and by the impugned order dated 4.9.95 he was directed to be reinstated in service and the intervening period from the date of compulsory retirement till the date of reinstatement was treated as dies-non. The request of the applicant in this case was that he has been having extremely good record throughout his career and he was not penalised in any proceedings. As the respondents have taken a decision at General Manager level after considering his pleas that compulsory retirement was not warranted directing that intervening period be treated as dies-non, denying him the benefit of service for that period for all purposes which is harsh and deserved to be set aside.

4. In the reply filed on behalf of the respondents, it is submitted that the Committee set up for the purpose, reviewed the performance of the applicant along with others and had come to the decision that he should be retired in public interest, as he was fit enough to be retired. Decision for his compulsory retirement was accordingly taken. The applicant's representation to the General Manager was considered by a Committee of 3 SAG officers. As there was difference of opinion among them, a new committee was also constituted where also difference of opinion persisted. On the matter being put up to the General Manager, the latter decided to reinstate the applicant and exercised his powers under para 1805 of IREC which reads as follows:

"(1) If on a review of the case referred to in Rule 1802 (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 extraordinary 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 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, 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 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."

5. Shri Dhawan learned counsel for the respondents says the authority, who is vested with powers to review/consider the case of individual, who is retired prematurely has got four options and in this particular case, exercised the option to treat the period as dies non on the basis of materials placed before him. Once such a decision has been carefully taken, Tribunal cannot interfere with the same as if it was an Appellate Authority. What Shri Dawan indicates is that these

powers could be exercised by him on the basis of his subjective satisfaction and once it is done that exercise is not challengeable before the Tribunal.

6. We have carefully considered the matter and seen the records with specific reference to the guidelines for premature retirement and the findings of the review committee for the purpose. We see that both the Committees set up for the purpose of considering the applicant's representation, could not reach an unanimous decision and placed the matter before the General Manager, who has passed an order in file on 19th August, 1995 directing as below:

"4. His involvement in accidents has been cited as one of the reasons for premature retirement. I feel, this should be pursued in the normal course under the DAR.

I also note from records that there was no unanimity of views among the officers in the Review Committee. One of the officers, beset with doubts, has alternated his views between compulsory retirement and retention. The Review Committee also witnessed a change due to transfer of an officer.

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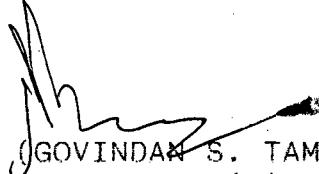
5. I do not, as such, feel inclined to confirm a major decision of compulsory retirement on a split verdict. Needs of fair play and justice demand that Shri Kanpurwala should at least be given the benefit of doubt. His appeal is, therefore, allowed subject to the following directions:

- 5.1 All adverse remarks recorded in his CRs during the last five years be communicated to him. He should also be administered suitable warning/counselling to improve his performance.
- 5.2 DAR Cases pending against him should be pursued.
- 5.3 The case be put up for review once against after expiry of one year.
- 5.4 The period from the date of compulsory retirement to reinstatement to be treated as dies non."

7. Evidently ~~this of the General Manager~~ ^{Adverse CRs} have not been actually communicated to the applicant, ^h instead a two line order has been issued to the applicant.

According to the learned counsel for the respondent, this is more than sufficient to meet the requirement of law. We regret, we are not convinced. In a case where the representation of an individual, who has put in 30 years of service against his premature retirement is being examined by more than one Committee who have gone into the matter could not reach a uniform decision and the General Manager, who is the senior most authority had decided to reinstate him, a short cut or face saving method is adopted for treating the intervening period as dies non. The applicant has been denied the benefit of Govt. service which would have accrued to him, as he would have been in service, but for the compulsory retirement, while the compulsory retirement has been set aside by the General Manager, the benefit of reinstatement has been saddled by a condition which will affect the applicant for all days to come. It would have only been fair on the part of the respondents to treat the intervening period as well as period spent on duty. The procedure adopted by the respondents was incorrect. The Tribunal is not ~~for~~ sitting in appeal against the order, but we definitely hold that what has been attempted is only a short cut method to deal with the individual's case, which was not the proper course to follow.

8. This application, in the circumstances succeeds and is accordingly allowed. The portion of the impugned order directing that the "intervening period from the date of compulsory retirement till reinstatement is to be treated as diesnon," is quashed and set aside and ordered to be treated as extraordinary leave with all consequential benefits arising therefrom. The respondents shall take necessary action to grant the applicant all benefits flowing thereby within a period of 3 months from the date of receipt of copy of this order. In the circumstances of the case, we also order payment of Rs.1000/- to the applicant towards costs.



(GOVINDAN S. TAMPI)
MEMBER (A)

8/8/15
(S.L. JAIN)
MEMBER (J)

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