

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO.806 of 1996

Dated this the 7<sup>th</sup> day of January, 2002

Coram: Hon'ble Mr. B.N. Bahadur - Member (A)  
Hon'ble Mr. S.L. Jain - Member (J)

Saheblal Ahmed,  
Retired Goods Driver,  
Solapur Division, Central Railways,  
R/o Railway Quarter No. RBI/10.296,  
Modi Khana, Solapur.  
(By Advocate Shri R.D. Deharia)

- Applicant

VERSUS

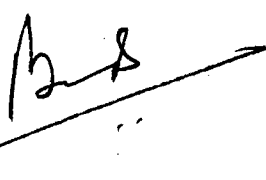
1. Union of India  
through the Secretary,  
Railway Board,  
Ministry of Railways,  
Rail Bhawan, New Delhi.
2. The General Manager,  
Central Railways,  
Headquarter Office,  
Mumbai, CST.
3. The Divisional Railway Manager,  
Central Railway, Modi Khana,  
Divisional Office, Solapur.
4. Divisional Personnel Office,  
Central Railway,  
Divisional Office, Solapur.  
(By Advocate Shri S.C. Dhawan)

- Respondents

O R D E R

By Hon'ble Mr. B.N. Bahadur - Member (A) -

The facts in this case, as brought forth by the applicant and as gleaned from the reply statement of the respondents are that the applicant was working in the Railways from 1962 and had reached the position of Goods Driver, before he finally retired. He states that he had submitted an application dated 6.2.1991



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retirement from the Railways which was accepted vide letter dated 12.3.1991 (Annexures A-3 and A-4). The retirement was sought w.e.f. 31.5.1991 as seen from Annexure-A-3. The applicant further states that vide letter dated 19.4.1991, however he informed respondent no.2 that the aforesaid application dated 6.2.1991 may be treated as withdrawn/cancelled. He underscores the fact that this letter was issued well before expiry of three months i.e. before 5.5.1991. The applicant was informed vide letter dated 31.5.1991 by respondent no.3, that his application seeking withdrawal/cancellation of request for voluntary retirement had been rejected and that he was to retire w.e.f. 31..5.1991. The applicant contends that he has been wrongfully retired from the Railway service and that settlement dues paid to him were received under protest.

2. Further details are cited in regard to the progress in the case and it is stated that he was informed of his re-employment vide letter dated 30.8.1994 that Railway Board had allowed him to withdraw his application for voluntary retirement and reinstate him in service and that a certain amount was to be paid towards the settlement of dues and interest and that the period in between will be treated as "dies non". Applicant ultimately rejoined service on 26.6.1995.

3. The applicant thereafter takes certain grounds in his application to state why he is aggrieved by the orders made. In fact he seeks the relief on two broad counts; the first one being

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that he be deemed to be continued in service from 1.6.1991 and entitled to back wages for the period which has been wrongfully treated as dies non. The applicant also seeks a direction to respondent no.3 to settle his retirement dues and monthly pension as described in Para 8, accordingly. The second aspect relates to the treatment of interim period.

4. The respondents have filed a written statement in reply, resisting the claim of applicant and first making a point that the Mumbai Bench has no jurisdiction to try the matter and that the jurisdiction lies with the Principal Bench at New Delhi. We find at the outset that this OA is filed on 6.8.1996 and that the applicant had finally retired from service on 31.5.1996. Also that he was a resident of Solapur in Maharashtra. Hence, the objection regarding jurisdiction raised by respondents is straightaway rejected. The respondents further give details about the facts of the case and also take the plea of the application being barred by limitation. It is confirmed that vide order dated 30.8.1994, that the Railway Board had decided to allow the applicant to withdraw his application for voluntary retirement and to reinstate him in service treating the intervening period from 1.6.1991 till the date of joining as dies non. Hence the application is hit by limitation it is contended.

5. The point is also made by the respondents that it is the right of the respondents i.e. the employer to reject a request for withdrawal of an application for voluntary retirement. It is

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Ans

further stated that the representation said to have been made to Railway Minister on 25.9.1991 was not received nor was any assurance given to the applicant at any point. The further facts about the offer of the Railway Board on certain conditions mentioned in the letter are then described in Para 10 onwards in the reply statement of the respondents emphasising that it had been decided to treat the period from 1.6.1991 to the date of joining as dies non and that the applicant had accepted these terms and conditions and thereafter he joined services on 28.6.1995. The applicant is therefore estopped from contending to the contrary and is bound by the said terms and conditions. The other part of the respondents' reply seeks to meet the point made in the application parawise, and denies all allegations made.

6. We have perused all papers in the case and have heard the learned counsel on both sides. The learned counsel for the applicant, Shri R.D. Deharia first set out facts of the case recapitulating the important dates and made the point that no show cause notice was sent to the applicant for treating the period in between as dies non and hence treating the period as dies non is legally wrong, being in violation of the principles of natural justice. The learned counsel then sought to depend on a large number of case law cited by him. These have been listed in a statement provided by the counsel and has been kept on record (as part of the synopsis provided by him) (Para 3 of the synopsis). He sought to seek support of these cases during his arguments.



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7. One set of the judgments cited refers to the well known ratio decided by the Hon'ble Supreme Court in more than one judgment to the effect that a person who has resigned/sought voluntary retirement is entitled to withdraw such a request before the date of its effect. The other judgments cited refer to other points and we have gone through them. We have especially considered the judgments made in the matter of Smt.S.G.Chandnani Vs.Union of India & others decided by this Bench of the Tribunal and reported at 1995 (2) ATJ 546.

8. Arguing the case on behalf of the respondents their learned counsel Shri S.C.Dhawan first recapitulated the background and facts and referred to the theory of waiver, in that certain conditions were made applicable when the applicant was taken back on work. He argued that the applicant implicitly agreed to such conditions by joining, and did not come up in any complaint. The learned counsel sought to draw the support of rules and argued that the rules per se have not been questioned. The representation in question, he argued, was made to the Railway Minister directly and at that stage the Tribunal was not moved by the applicant.

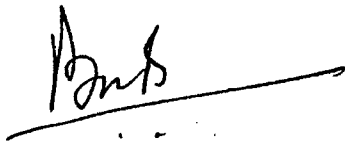
9. The learned counsel further took us over the conditions in the order dated 30.8.1994 (Annexure-A-9) and argued that by not challenging the order in regard to its terms and conditions and by the applicant's act of joining, he is now estopped from coming to the Tribunal. The point of limitation was also argued

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in this regard. It was stated that settlement dues were paid in June, 1991 and that as per the condition regarding applicant refunding certain dues, it was to be noted that the interest was paid by applicant only on 30.6.1995. The learned counsel also stated that the representation made by the applicant was not against the point of interim period being treated as dies non as was being brought out here. "Dies non" was not something ordered by way of punishment, he argued. On the case law cited, learned counsel Shri Dhawan argued that this was not the point in first question that these were not relevant to the case before us.

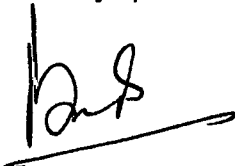
10. The first question that arises for consideration is whether the very act of retirement can be construed as wrongful and illegal and whether at this stage remedy as sought for can be provided considering the fact of limitation, delay and laches. On a perusal of the dates of application and date of request for withdrawal and in the background of the case law cited by the applicant i.e. Balram Gupta Vs. Union of India & another, 1987 (5) ATC 246 and other cases. There is no doubt that the applicant had the right to cancellation of his request for voluntary retirement. However in this regard the point regarding limitation, delay and laches cannot be ignored especially in the background of later developments regarding reinstatement of applicant. It may be recalled that the applicant's grievance started when he was retired w.e.f. 31.5.1991. He has come up to the Tribunal thereafter in August, 1996. Even if the applicant has a case in view of the settled law, as discussed above, the



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delay of five years cannot be condoned. The case in regard to this prayer is badly hit by the law of limitation and suffers from the malady of delay and laches. The relief asked for in regard to the applicant seeking the order of refusal of withdrawal of retirement notice as bad in law cannot therefore be provided in view of the request being badly hit by law of limitation/delay and laches.

11. Now we come to the second question i.e. regarding the treatment of the period between 31.5.1991 and 28.6.1995. The Railway Board's decision was communicated vide 30.8.1994 and it took some ten months for formalities/refund of money etc. before reinstatement. Now here the main stand taken by the respondents is that certain conditions were made applicable in the order dated 30.8.1994 and that these conditions have been accepted by the applicant. We find that in the aforesaid order of 30.8.1994, it is stated that the Railway Board's decision is "to allow you to withdraw your application of voluntary retirement and reinstate you in Railway service treating the intervening period from 1.6.1991 to your rejoining on reinstatement in Railway service as 'Dies Non'." In this context it is important to note that on the one hand it is a reinstatement which clearly comes by way of allowing the applicant to withdraw his application for voluntary retirement. There is thus a cause and effect relationship here. It is not as if there is reappointment on mercy petition or something of that sort.



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12. It must also be recalled that one of the arguments made by the learned counsel for applicant is that no show cause notice was given in regard to the treatment of period as dies non. It is true that in the cases cited, the applicants therein have been provided relief in regard to the issue of fresh show cause notice. We have considered the background of the present case and find that now in any case no purpose would be served in merely remanding the case for issue of fresh show cause notice. The stand of the Railways is before us through a written statement, and opportunity provided to applicants for rejoinder and arguments through counsel. Hence we will consider the total facts on merits rather than go in for providing a mere technical relief, which will only prolong the present litigation, through fresh litigation.

13. To come back now to the point as to how the period between 31.5.1991 and the date of joining on reinstatement is to be treated, we would assume that the period being treated as dies non implies that this period has not been counted for deciding pensionary benefits. If it is so then it definitely causes undue hardship to the applicant who has put in long years of service and in whose case the break in service has come about in the circumstances described above and not because of any misdemeanour on his part or for some such enquiry etc. Under the circumstances, it would be justifiable to order treatment of the interim period to be treated as extraordinary leave (without pay) without break in service. Further benefits as entitled according to this declaration will be available to the applicant.



14. In the light of the discussions above, the OA is disposed of with the following orders:

ORDER

The period between 31.5.1991 and date of reinstatement (28.6.1995) shall be treated as Extraordinary Leave without break in service. Benefits consequential to such treatment, as entitled as per rules, shall be made available to the applicant. The other reliefs sought by the applicant in this OA are hereby rejected. There will be no order as to costs.

*S.L. Jain*  
(S.L.Jain)  
Member (J)

*B.N. Bahadur*  
(B.N. Bahadur).  
Member (A)

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