

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH

ORIGINAL APPLICATION NO: 1378/95()

DATE OF DECISION: 3 /11/2000

Shri Palji Dhudhaji

Applicant.

Shri K.B.Talreja

Advocate for  
Applicant.

Versus

Union of India & Anr.

Respondents.

Shri S.C.Dhawan

Advocate for  
Respondents.

CORAM:

Hon'ble Shri S.L.Jain, Member(J)

Hon'ble Smt. Shanta Shastry, Member(A)

1. To be referred to the Reporter or not?
2. Whether it needs to be circulated to other Benches of the Tribunal?
3. Library.

} No

*Shanta F*  
(SHANTA SHASTRY)  
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH  
ORIGINAL APPLICATION NO:1378/95  
DATED THE 3<sup>rd</sup> DAY OF NOV. 2000

CORAM:HON'BLE SHRI S.L.JAIN, MEMBER(J)  
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Shri Palji Dhudhaji,  
Ex.Malaria Khalasi,  
Medical Department, under  
D.R.M./Bombay VT.

Resident of: Zopda No.9,  
Vidyut Loco Shed, C.Rly.,  
Ground, Shivdas Sapsi Marg,  
Bombay - 10.

... Applicant.

By Advocate Shri K.B.Talreja

V/s.

The Union of India  
Through the General Manager,  
Central Railway,  
Bombay VT., Bombay - 400 001.

The Divisional Railway Manager,  
Central Railway,  
Bombay V.T.,  
Bombay - 400 001.

... Respondents.

By Advocate Shri S.C.Dhawan.

( O R D E R )

Per Smt.Shanta Shastry, Member(A).

The Applicant in this OA has prayed to direct the respondents to pay the arrears of pay w.e.f. 1/1/91 (the date of retirement prematurely) to 24.12.92 i.e the date the applicant has been taken over on duty alongwith 18% interest thereon with all consequential benefits as per rules.

2. The applicant was initially appointed as Malaria Khalasi under the Chief Health Inspector, Medical Department of D.R.M. Bombay VT on 22/6/1973. The applicant's contention is that he

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was retired on 1/1/91 probably due to clerical mistake/loss of service record. He was not given any notice of retirement. No Gazette Notification to the effect was issued nor was his case processed for retirement two years prior to the date of superannuation as per Railway Board Rules. The applicant had represented to the respondents to treat his Date of Birth as 15/7/35 instead of 1/1/33. Though initially, the request was rejected, the applicants case was taken up by the National Railway Mazdoor Union and on their intervention, the respondents i.e. Senior Divisional Personnel Officer confirmed vide his letter dated 19/5/93 that his recorded date of birth is 15/7/35. The applicant has produced the service certificate granted by second respondents showing his date of birth as 15/7/35. This certificate is dated 31/7/93. Thereafter, the applicant was taken back on duty w.e.f. 24/12/92 vide order dated 23/12/92 of D.R.M.(B). Though he was taken back on duty, the interim period from 1/1/91 when he retired to 24/12/92 when he resumed the duty has not been treated as duty period. He has therefore not been paid the arrears of pay for the said period. The applicant has cited certain judgements in support of his claim for arrears for the aforesaid period and to treat the aforesaid period as duty period. He is relying on the case of Jayaprakash Gupta V/s. Union of India reported at 1988(2)ATJ-644. In this case, the Tribunal upheld the claim of the applicant for treating the impugned period as duty period with all consequential benefits.

3. It is the case of the respondents that since the applicant did not work during the period from 1/1/91 to 23/12/92, he cannot be paid any salary or arrears for this period. The applicant was retired on attaining the age of 58 years as per the

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available recorded date of birth w.e.f. 1/1/91. The applicant was aware of the said recorded date of birth and till the fag end of the service he made no attempt to get it corrected. The applicant made a belated application at the fag end of service for change in the recorded date of birth and it took some time for the respondents to examine his request and take a decision on the same. The change in date was ultimately agreed to and accordingly the applicant was taken back on duty w.e.f. 24/12/92. The respondents have denied that they had not followed guidelines with reference to the retirement as alleged by the applicant. The respondents have also denied that there was no non maintenance of service register of the applicant. As per the rules, the applicant is not entitled to treat the period between 1/1/91 to 24/12/92 as on duty as he has not performed any duty during the said period and therefore he is not entitled to any wages on the principle of 'no work no pay'.

4. We have heard the learned counsel for both the parties and have given careful consideration to the arguments advanced by them. We note that the applicant was retired on 1/1/91 as per the date of birth recorded in the service register <sup>i.e. h</sup> ~~was~~ 1/1/1933. It is only towards the fag end of his career that he applied for change and correction in the date of birth. Had his service book contained his date of birth as 15/7/1935, then where was the need for the applicant to represent to change the date of birth? It is therefore implied that his date of birth in the service book was 1/1/1933 based on which he was retired. No notice is necessary in such a case. The notification of retirement is to be issued within a week of retirement as per rules. Be that as it may the respondents took the decision to agree to the change

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and allowed the applicant to resume duty on 24/12/92. It is agreed that the applicant did not perform any duty between the intervening period from 1/1/91 to 23/12/92, but it is not his fault as he was not allowed to work during this period. Further, his application\* for change in date of birth was still pending with the respondents when he was retired. This being so, the applicant cannot be denied the pay during the intervening period. Whether the applicant applied initially or at the fag end of the career, the respondents have already granted the request of the applicant. If therefore the period from 1/1/91 till 24/12/92 when the matter of change of date of birth was under consideration of the respondents, cannot be treated as period not spent on duty, that would amount to break in service. It is not proper on the part of the respondents to frustrate the relief claimed by the applicant by passing an order which is partly unfavourable to him. The Judgement of the Principal Bench of the Tribunal dated 7/7/98 in OA-910/97 in the case of Jayaprakash Gupta V/s. Union of India supports the case of the applicant. There are similar other judgements also wherein it has been held that if non performance of duty during certain period is not attributable to the person concerned or if it is not due to his fault, then such period should be treated as on duty and the concerned person should be paid the arrears for the same. According to us therefore, the applicant is entitled to the arrears of pay for the intervening period from 1.1.1991 to 23/12/92. We, therefore, direct the respondents to pay the arrears of pay to the applicant for the intervening period from 1.1.1991 to 23.12.1992 with all consequential pensionary benefits. Interest at the rate of 12% shall be payable on the arrears of salary from the date it is payable till the date of

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actual payment. This may be done within a period of three months from the date of receipt of a copy of this Order.

5. In the result, the DA is allowed. We, however, do not order any costs.

*Shanta F*  
(SHANTA SHASTRY)  
MEMBER(A)

*S.L. Jain*  
(S.L.JAIN)  
MEMBER(J)