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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.326/94

Date of order: 16.7.96

Inder Singh Goar : Applicant

Vs.

Union of India & Anrs. : Respondents

Mr.P.D.Khanna : Counsel for applicant.

Mr.Manish Bhandari : Counsel for respondents

CORAM:

Hon'ble Mr.Gopal Krishna, Vice Chairman

Hon'ble Mr.O.P.Sharma, Administrative Member.

PER HON'BLE MR.GOPAL KRISHNA, VICE CHAIRMAN.

Applicant Inder Singh Goar in this application under Sec.19 of the Administrative Tribunals Act, 1985, has challenged order at Annex.A1 dated 5.5.1994 by which the intervening period i.e. from premature retirement to the date of reinstatement, is to be treated as 'leave due'.

2. The case of the applicant is that while he was serving as an Office Superintendent under Station Superintendent A-II, Ajmer, he was prematurely retired from service by respondent No.2 from 19.7.93, after payment of 3 months salary. The contention of the applicant is that he was neither given any charge sheet nor was any penalty imposed upon him during his service career and his record for the last 10 to 15 years was not adverse and therefore, the order of premature retirement was illegal. On a representation dated 10.8.93 to the Chief Personnel Officer, the order of premature retirement was withdrawn and the applicant was reinstated in service by an order dated 29.10.93 at Annex.A4. This order stated therein that the decision in regard to the intervening period between his premature retirement and reinstatement in service would be communicated to him shortly. The applicant being aggrieved by the order treating the aforesaid period as 'leave due' has assailed the same on the ground that it is tantamount to

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imposition of a penalty which could be imposed only after following the procedure prescribed by law. It has also urged that the action of the respondents is against the principles of equity, fair play and natural justice to retire an incumbent prematurely without any fault of his own, ^{and} without giving any salary to him for the intervening period.

3. On the contrary, the respondents have stated that treating the intervening period as 'leave due' is in no way a penalty and since the applicant has not physically worked for that period, the said period was rightly treated as 'leave due' and while doing so the continuity of the applicant's service remains undisturbed. The relevant portion of Rule 1805 of the Indian Railway Establishment Code Volume-II (First Reprint) 1990 reads 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 extraordinary leave, or by treating it as ~~disnon~~ 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 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."

4. We have heard the learned counsel for the parties and have gone through the record.

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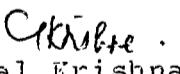
5. By order dated 29.10.93 at Annx.A4, the applicant was reinstated in service and in regard to intervening period between premature retirement and reinstatement in service decision was to be communicated to the applicant shortly. Subsequently by order dated 10.11.93, an order was passed whereby the intervening period from premature retirement to reinstatement was to be treated as 'leave due'. Thereafter, the applicant made a representation dated 23.11.93 to the DRM, Ajmer, to treat this period as spent on duty. After a careful examination of the representation by the competent authority, it was found that since the applicant had not performed duties during the intervening period i.e. from premature retirement to the date of reinstatement, the said period has been decided to be treated as leave due. The decision in regard to this period for being treated as 'leave due' was clearly within the four corners of the rule referred to above.

6. The learned counsel for the applicant cited 1980(1) SLR 414 (SC) Dharam Dev Mehta Vs. The Union of India & Ors and AIR 1984 SC 986, Baldev Raj, Ex-Constable Vs. State of Punjab, in support of his case. But the facts of these cases are entirely different from the facts and circumstances of the case in hand and in our view these authorities are no help to the applicant.

7. We find no good ground to interfere with the impugned order. The O.A is dismissed at the stage of admission. There shall be no order as to costs.


(O.P.Sharma)

Member (Adm).


(Gopal Krishna)

Vice Chairman.