

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.  
O.A No.63/96

Date of order: 22.1.2001

C.M.Parashar, S/o Sh.R.L.Parashar, R/o 2-Cha-10,  
Aravali Vihar, Alwar.

...Applicant.

Vs.

1. Union of India through Secretary, Mini. of Communication, Deptt. of Posts, Dak Bhawan, New Delhi.
2. Chief Post Master General, Rajasthan Circle, Jaipur.
3. The Director, Postal Services, Jaipur Region, Jaipur.

...Respondents.

Applicant present in person

Mr.K.N.Shrimal - counsel for respondents.

CORAM:

Hon'ble Mr.A.K. Mishra, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

— ORDER —

PER HON'BLE A.K.MISHRA, JUDICIAL MEMBER.

Applicant had filed the O.A with the prayer that the notice dated 15.2.95, retiring him prematurely from service be declared bad in law and against the principles of natural justice and be quashed accordingly. The respondents be directed to reinstate the applicant on the post from which he was illegally and malafidely retired and he should be deemed to be continuing in service. The order of the respondents dated 28.7.95, rejecting the representation of the applicant be quashed and the applicant be awarded full salary, allowances and perquisites together with cost of litigation.

2. The applicant has also prayed for interim relief of immediate reinstatement in service. However, the same was not granted.

3. Notice of the O.A was given to the respondents who have filed their reply. It is alleged by the respondents that the applicant was prematurely retired vide order dated 10.6.90

Which was challenged by the applicant by filing an O.A before the Principal Bench of the Tribunal. The Principal Bench decided the O.A of the applicant on 2.1.95 and held that the impugned order warrants no interference and the O.A is therefore, dismissed. The interim order by which the applicant was continuing in service was also immediately vacated by the Tribunal. Thereafter, the applicant was given 3 months notice and consequently on conclusion of the notice period, he was prematurely retired from service. It is stated by the respondents that having challenged the order of premature retirement by filing an O.A earlier, the applicant cannot now challenge the same order by filing the present O.A. The impugned order passed on 15.2.95 (Annex.A2) is only an order in continuation of the previous order, giving 3 months notice time to the applicant. Therefore, the O.A has no merits and deserves to be dismissed.

4. The applicant had filed a detailed rejoinder and had also amended the O.A to which the reply was filed by the respondents. Again the applicant filed rejoinder.

5. The applicant had argued the case in person and the counsel for the respondents addressed the Tribunal on behalf of the respondents.

5. We have considered the rival contentions and pleadings of the parties and the facts of the case in detail.

6. The applicant had alleged that he was appointed on the post of Packer on 10.5.60 and thereafter promoted to various posts. It is alleged by the applicant that his candidature was considered by the respondents for further continuance in service in terms of Govt order on ~~the~~ applicant's completing 30 years of service or having attained the age of 50 or 55 years. The applicant was given a notice dated 11.6.90 for premature retirement which was received by him on 18.6.90. The applicant

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challenged the same by filing an O.A before the Principal Bench in which the order of premature retirement was stayed and the applicant continued in service. Thereafter, the O.A of the applicant was dismissed vide order dated 2.1.95. Thereafter the respondents in pursuance of the order of the Tribunal, issued a notice to the applicant on 15.2.95 giving further 3 months time and the applicant was retired from service w.e.f. 21.5.95. The applicant also alleged that after the notice period came to an end, respondent No.2 rejected the representation of the applicant on 28.7.95 which was filed against the show cause notice. Not only this, the applicant was granted arrears of pay and other benefits after notice period came to an end. Since the respondents had treated the applicant as continued in service, therefore, the notice dated 15.2.95, deserves to be quashed and the applicant deserves to be paid all the service benefits ~~from 21.5.95~~ till his natural date of superannuation.

7. The respondents have stated in the reply that the applicant cannot reagitate the matter which he had once agitated by filing an O.A before the Principal Bench of the Tribunal. The O.A of the applicant is barred by the principles of resjudicata. It is also stated by the respondents that no fresh notice was required to be given to the applicant. However, by an administrative mistake, a fresh notice of 3 months was given to the applicant but that does not confer any right on the applicant to claim continuance in service. It is also stated by the respondents that the orders <sup>were</sup> passed relating to grant of arrears, etc. for the period the applicant was in service due to stay order granted by the Tribunal, therefore, these orders and grant of arrears would not confer any right on the applicant for claiming continuance in service. The O.A has no merits and deserves to be dismissed.

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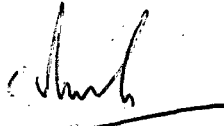
8. From the rival contentions, it is clear that the applicant was initially ordered to be prematurely retired from service ~~under~~ ~~vide~~ vide order dated 11.6.90. This order was challenged by the applicant by filing O.A in the Principal Bench which was dismissed vide order dated 2.1.95 and it was observed that "in the facts and circumstances of this case, the impugned order warrants no interference and this application, therefore, fails and is dismissed. The interim order granted <sup>and extended</sup> from time to time is vacated." In fact, after this order of the Tribunal the applicant should have been retired from service in pursuance of the earlier notice. However, a fresh 3 months notice was given to the applicant on 15.2.95 (Annx.A2) which has been challenged by the applicant. In our opinion, it is subject to satisfaction of the employer in respect of the utility of a govt servant for retaining him into service after he <sup>has</sup> attained the age of 50/55 and on completion of 30 years <sup>of qualifying</sup> of service. In this case, the service record of the applicant was considered by the respondents in detail in passing the earlier order which was upheld by the Tribunal and the second notice can only be treated as continuance of the first one. The order Annx.A6 dated 5.4.95 is in respect of crossing of Efficiency Bar by the applicant w.e.f. 1.3.95 and the arrears were ordered to be paid from that date till 28.2.95. Since the applicant continued in service firstly on account of stay granted by the Tribunal and secondly on account of notice given to the applicant by the respondents, the order releasing Efficiency Bar and consequent payment of arrears cannot be termed as granting any fresh right to the applicant for claiming continuance in government service.

9. It is argued by the applicant that the applicant had continued in service upto 1995, therefore, it was not

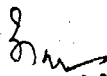
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necessary for the respondents to have prematurely retired the applicant for the remaining period of service of the applicant which was near about a year and few months. But we are not convinced on this point. If the applicant was found not fit to be retained in service then it is immaterial whether the period of service was only a year <sup>and a half</sup> or so on the date of his retirement. In our opinion, the O.A has no merits and the same deserves to be dismissed.

10. The O.A is, therefore, dismissed with no order as to costs.

  
(N.P. Nawani)

Member (A).

  
22/11/2001.  
(A.K. Mishra)

Member (J).