

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 300/98
T.A. No.

199

DATE OF DECISION 25.4.2001

Manna Lal Jain

Petitioner

Mr. Rajesh Kapoor

Advocate for the Petitioner (s)

Versus

U.O.I & Ors.

Respondent

Mr. S. S. Hasan

Advocate for the Respondent (s)

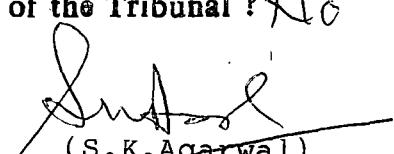
CORAM :

The Hon'ble Mr. S.K. Agarwal, Member (Judicial)

The Hon'ble Mr. A.P. Nagrath, Member (Administrative)

1. Whether Reporters of local papers may be allowed to see the Judgement? No
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal? No

(A.P. Nagrath)
Member (A).


(S.K. Agarwal)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
O.A.No.300/1998

Date of order: 25/4/2001

Manna Lal Jain, S/o Sh.Bhanwar Lal Jain, R/o House
No.2131, Mangal Kutir, Nehru Bazar, Jaipur.

...Applicant.

Vs.

1. Union of India through General Manager, W.Rly,
Churchgate, Bombay.
2. Chief Commercial Manager, Western Railway, Churchgate,
Bombay.
3. Divisional Railway Manager, W.Rly, Jaipur.

...Respondents.

Mr.Rajesh Kapoor - Counsel for applicant

Mr.S.S.Hasan - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.A.P.Nagrath, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A under Sec.19 of the Administrative Tribunals Act, 1985, the applicant makes a prayer to quash and set aside the order dated 20.6.95 (Annex.A2) by which the applicant has been denied 50% of the pay and allowances for the period 16.5.88 to 6.1.93 and to direct the respondents to pay the applicant 50% balance of pay and allowances for the aforesaid period with interest @ 18% per annum.

2. Facts of the case as stated by the applicant are that the applicant was appointed in railway service on 2.3.58 and was superannuated on 30.6.93. It is stated that the applicant was put under suspension 19.9.84 and was reinstated on 29.10.84. It is stated that a departmental enquiry was initiated against the applicant and punishment of compulsory retirement was imposed upon him and in pursuance of the same the applicant was retired compulsorily on 16.5.88. Against the

absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

Provided that if the govt servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the govt servant.

7) The amount determined under the proviso to sub-rule (2) or under sub-rule (4) shall not be less than the subsistence allowance and other allowances admissible under Rule 53."

17. Sub-section (1) provides that in case of reinstatement as a result of appeal/review, the competent authority shall make a specific order regarding the pay and allowances for the period of absence from duty and whether or not the said period shall be treated as a period spent on duty. Thus, it is very clear on perusal of the above rules that the authority reinstating the Govt servant after modifying the earlier penalty of compulsory retirement, has necessarily to pass an order regarding pay and allowances, as provided in sub-section (1) of FR 54.

18. In the instant case, the competent authority has passed the order in accordance with the Fundamental Rules and we do not find any infirmity/illegality in the order. Therefore, we do not find any basis to interfere in the aforesaid order and we have no option except to dismiss the O.A having no merit.

19. We, therefore, dismiss the O.A with no order as to

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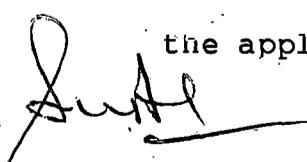
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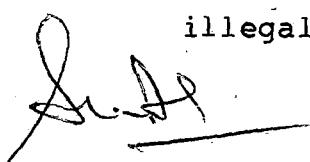
2. Facts of the case as stated by the applicant are that the applicant was appointed in railway service on 2.3.58 and was superannuated on 30.6.93. It is stated that the applicant was put under suspension 19.9.84 and was reinstated on 29.10.84. It is stated that a departmental enquiry was initiated against the applicant and punishment of compulsory retirement was imposed upon him and in pursuance of the same the applicant was retired compulsorily on 16.5.88. Against the



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said order, the applicant filed O.A No.317/88 which was allowed and the order of compulsory retirement was set aside vide order dated 24.4.91. The applicant remained on duty but again the applicant was imposed a penalty of compulsory retirement vide order dated 9.12.91. The applicant preferred an appeal which was rejected whereupon the applicant filed a revision which was partly allowed and order of compulsory retirement was substituted by punishment of deduction by 2 stages in the same time scale. Ultimately, the applicant was retired on 30.6.93. The applicant again filed O.A No.1/94 which was decided by the Tribunal vide order dated 16.12.94 by which the Tribunal held that the period from 1988 to 1993 should be considered as qualified service for the purpose of pension. It is further stated by the applicant that vide order dated 20.6.95, the respondents allowed the applicant only 50% of pay and allowances for the period 16.5.88 to 6.1.93 which is patently arbitrary, illegal and the action of the respondents to refuse the pay and allowances for the period 16.5.88 to 6.1.93 is without jurisdiction. Therefore, the applicant filed the O.A for the relief as above.

3. Reply has been filed. It is stated in the reply that the applicant filed this O.A on 20.5.98 by which he has challenged the order dated 20.6.95, therefore, the O.A filed by the applicant after 3 years of passing of the impugned order is barred by limitation and no reasonable explanation has been given by the applicant for condoning the delay in filing the O.A. It is stated in the reply that in pursuance of the Tribunal's order dated 16.12.94, a speaking order was passed by the competent authority keeping in view the facts and circumstances of the applicant, therefore, the order dated 20.6.95 is perfectly legal and valid and there is no illegality in passing the order. Therefore, it is stated that



the applicant has no case and the O.A is liable to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole record.

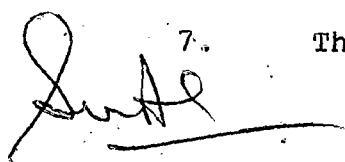
5. Admittedly, the applicant was given a penalty of compulsory retirement vide order dated 9.12.91 which was upheld by the appellate authority but in revision, the punishment was substituted by reduction of two stages in the same time scale. This Tribunal vide its order dated 16.12.94, gave the directions as under:

"In the result, the O.A is partly accepted. The order of revisionary authority is modified accordingly. The applicant will be entitled to get the complete period calculated as qualifying service and will get all retiral benefits. The retiral benefits should be decided within a period of 4 months from the date of the receipt of this order. If the pensionary benefits are not paid within the six months, the applicant shall be entitled to get the interest @ 12% per annum on the amount unpaid."

6. In pursuance of these directions, the impugned order dated 20.6.95 was passed as under:

"The employee in this case had scored out old fares from the tickets but did not write the revised fares creating doubt and suspicious. The punishment of Shri Jain was reduced only because the case was not fully free from doubt. Shri Jain was not wrongly absolved of the charges levelled against him. Keeping this in view he shall be paid 50% of the pay and allowances for the intervening period i.e. between compulsory retirement to reinstatement including suspension period."

7. The counsel for the applicant vehemently argued that the



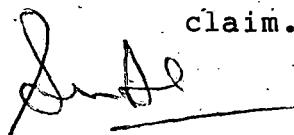
impugned order has been issued in contravention of the Fundamental Rules, therefore, the same is liable to be quashed. On the other hand, the learned counsel for the respondents argued that the impugned order is legal and the O.A is barred by limitation, as provided under Sec.21 of the Administrative Tribunals Act, 1985.

8. We have given anxious consideration to the rival contentions of both the parties and also perused the whole record.

9. Undisputedly, the applicant filed the O.A on 20.5.98 challenging the order dated 20.6.95. As per the provisions of Sec.21 of the Act, the O.A must have been filed within one year from the date of passing of the order or if any representation is filed then after 6 months if the representation has not been replied. The main purpose of limitation provided under Sec.21 of the Act is that the govt servant who has legitimate claim should immediately agitate for the same against the adverse order against him.

10. In Yashbir Singh & Ors Vs. UOI & Ors, AIR 1988 SC 662, it is well settled that any one who may feel aggrieved with an administrative order or decision affecting his right should act with due diligence and promptitude and not sleepover the matter. Raking of old matters after a long time is likely to result in administrative complications and difficulty and it would create insecurity and instability in the service which would affect the efficiency.

11. In Bhoor Singh Vs. UOI, AIR 1992 SC 1414, it was held that 'it is expected of a govt servant who has legitimate claim to approach the court for the relief he seeks within a reasonable period. The inordinate delay or latches itself a ground to refuse the relief irrespective of the merit of his claim.



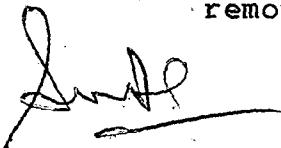
12. In Union of India Vs. Harnam Singh, 1993 SCC (L&S) 375, Hon'ble Supreme Court held that the law of limitation may operate harshly but it has to be applied with all its vigour and Courts/Tribunal cannot come to the aid of those who sleep over the right and allow the period of limitation to expire.

13. In U.T.Daman & Deav & Ors Vs. R.K.Valand, 1995(1) SCC (L&S) 205, Hon'ble Supreme Court held that the Tribunal fell in patent error in brushing aside the question of limitation by observing that the respondents has been making representation from time to time and as such the limitation would not come in his way.

14. In Ramesh Chandra Sharma Vs. Udhani Singh Kmal & Ors, 2000(1) SC SLJ, the applicant challenged the order of rejection of promotion dated 2.7.91 on 2.6.94 by way of O.A. The Tribunal allowed the relief but Hon'ble Supreme Court held that the O.A was time barred before the Tribunal and the Tribunal was not right in overlooking the statutory provisions as contained under Sec.21(1)(b) of the Act.

15. The applicant filed M.A No.165/98 alongwith the O.A for condoning the delay stating that due to illness the applicant could not pursue the O.A in time. But in support of his contention, he has not filed any document to the effect that the delay was due to his illness only. Reply to the M.A is also on record. In the reply to the M.A, it is denied by the respondents that due to illness of the applicant he could not file the O.A in time. The delay is approximately 2 years and the reason for the delay has not been properly explained therefore, we do not think it proper to condone the delay.

16. Even on merits, the applicant has no case. The fundamental Rules of the Govt of India prescribe in elaborate the procedure how the intervening period between the date of removal/dismissal/compulsory retirement to the date of



reinstatement in pursuance of order in appeal or review in disciplinary proceedings shall be treated and how the period of suspension shall be regularised. The provisions as contained in FR 54 are reproduced as under:

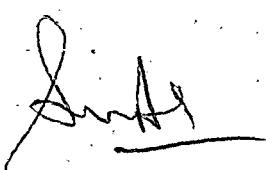
Fr.54(1) -When a govt servant who has been dismissed, removed or compulsorily retired is reinstated as a result of appeal or review or would have been so reinstated, (but for his retirement on superannuation while under suspension or not), the authority competent to order reinstatement shall consider and make a specific order-

(a) regarding the pay and allowances to be paid to the govt servant for the period of his absence from duty including the period of suspension preceding his dismissal, removal, or compulsory retirement, as the case may be; and

b) whether or not the said period shall be treated as a period spent on duty.

2. Where the authority competent to order reinstatement is of opinion that the govt servant who had been dismissed, removed or compulsorily retired has been fully exonerated, the govt servant shall, subject to the provisions of sub-rule(6) be paid the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be.

Provided that where such authority is of opinion that the termination of the proceedings instituted against the govt servant had been delayed due to reasons directly, attributable to the Govt it may, after giving him an opportunity to make his representation (within

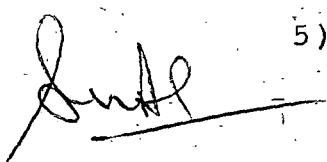


sixty days from the date on which the communication in this regard is served on him) and after considering the representation, if any, submitted by him direct, for reasons to be recorded in writing, that the govt servant shall, subject to the provisions of sub-rule (7) be paid for the period of such delay, only such amount (not being the whole) of such pay and allowances as it may determined.

3) In a case falling under sub-rule (2), the period of absence from duty including the period of suspension preceding dismissal, removal or compulsory retirement, as the case may be, shall be treated as a period spent on duty for all purposes.

4. In cases other than those covered by sub-rule (2) (including cases where the order of dismissal, removal or compulsory retirement from service is set aside by the appellate or reviewing authority solely on the ground of non-complainace with the requirements of clause (1) or clause (2) of Article 311 of the Constitution and no further enquiry is proposed to be held) the Govt servant shall, subject to the provisions of sub-rules (5) and (7), be paid such amount (not being the whole of the pay and allowances) to which he would have been entitled had he not been dismissed, removed or compulsorily retired, after giving notice to the govt servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice.

5) In a case falling under sub-rule (4) the period of

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absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement as the case may be, shall not be treated as a period spent on duty, unless the competent authority specifically directs that it shall be treated so for any specified purpose:

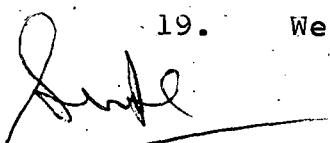
Provided that if the govt servant so desires such authority may direct that the period of absence from duty including the period of suspension preceding his dismissal, removal or compulsory retirement, as the case may be, shall be converted into leave of any kind due and admissible to the govt servant.

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17. Sub-section (1) provides that in case of reinstatement as a result of appeal/review, the competent authority shall make a specific order regarding the pay and allowances for the period of absence from duty and whether or not the said period shall be treated as a period spent on duty. Thus, it is very clear on perusal of the above rules that the authority reinstating the Govt servant after modifying the earlier penalty of compulsory retirement, has necessarily to pass an order regarding pay and allowances, as provided in sub-section (1) of FR 54.

18. In the instant case, the competent authority has passed the order in accordance with the Fundamental Rules and we do not find any infirmity/illegality in the order. Therefore, we do not find any basis to interfere in the aforesaid order and we have no option except to dismiss the O.A having no merit.

19. We, therefore, dismiss the O.A with no order as to



costs.

Member (A).

(A.P.Nagarath)

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Member (J).

(S.K.Agarwala)

