

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

OA 335/2002

DATE OF ORDER: 5.8.2003

R.S. Lavania son of Late Shri Raghunandan Prasad Lavania, aged about 60 years, resident of 16 PET Colony, Jagner Road, Agra (UP). Retired from the post of Station Manager, Bayana Junction, Bayana (Rajasthan).

... Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager(Establishment), Western Railway, Kota Division, (Rajasthan).
3. Sr. Divisional Operations Manager, Western Railway, Kota Division (Rajasthan).

.... Respondents.

Mr. R.D. Tripathi, Proxy counsel for
MR. Rajendra Prasad, Counsel for the applicant.
Mr. S. S. Hassan, Counsel for the respondents.

CORAM:

Hon'ble Mr. M.L. Chauhan, Member (Judicial)
Hon'ble Mr. A.K. Bhandari, Member (Administrative)

ORDER (ORAL)

The applicant ^{who} ~~is~~ ^{of} aggrieved with the order dated 25.7.2001 (Annexure A/1) whereby penalty of compulsory retirement w.e.f. 18.7.2001 was imposed upon him, has filed this OA praying for the following reliefs:-

- "(i) to declare that the NIF dt. 18.7.2001 has not come into effect till 31.8.2001 i.e. the date of applicant's superannuation for want of communication to the applicant
- (ii) to set aside/quash the order dated 25.7.2001 (Annexure A/1) as served upon the applicant on 2.8.2001.
- (iii) to direct the respondents to treat the applicant in service till 31.8.2001 and pay him all pay allowances and other consequential benefits for the period 19.7.2001 to 31.8.2001.
- (iv) to direct the respondents to refix the pension of applicant accordi gly treating him superannuated on 31.8.2001.
- (v) Any other order/direction which is deemed fit and proper in the facts and circumstances of this case may be passed in favour of the applicant."

42

2. Notices of this application was given to the respondents who have filed reply.

3. We have heard the learned counsel for the parties.

4. The learned counsel for the applicant stated that order of compulsorily retiring the applicant w.e.f. 18.7.2001 was never served upon him as required under Rule 26 of the Railway Servants (Discipline & Appeal) Rules, which clearly states that every order, notice and other process made or issued under these rules shall be served in person on the Railway servant concerned or communicated to him by Registered Post.

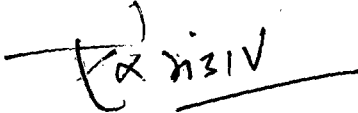
The contention of the learned counsel for the applicant is that at the relevant time, the applicant was undergoing treatment in Jagjeevan Ram Hospital, Bombay. This fact was within the knowledge of the respondents. Despite this, they never served the impugned order on the applicant on the aforesaid address. The learned counsel for the applicant further argued that he is not challenging the validity of the impugned order dated 18.7.2003 whereby he has been compulsorily retired. His grievance is that this order will come into effect only when the said ^{order} was served upon the applicant, and in fact till date, the said order has not been served upon him. It is further averred that in normal course, the date of superannuation of the applicant was 31.8.2001 and as such, the applicant shall be deemed to have retired only on 31.8.2001. From the perusal of the Railway Servants (Discipline & Appeal) Rules, 1968, it transpires that there is remedy of appeal available to the applicant, which he has not exhausted. The contention of the learned counsel for the applicant is that since the copy of the impugned order was not served upon the applicant and period of appeal prescribed under the rules has already expired, the applicant could not file the appeal in the meanwhile.

5. Since the statutory remedy is available to the applicant, which he has not exhausted, at this stage we are of the view that in case the applicant prefers an appeal before the Appellate Authority within the period of one month from today, the Appellate Authority shall entertain the same and decide the appeal on merit by passing speaking order.

12

6. With these observations, the OA is disposed of with the direction to the Appellate Authority to entertain the appeal of the applicant if it is filed within one month from today and pass a speaking and reasoned order within two months from the date of receipt of such appeal.

7. The OA is accordingly disposed of with no order as to costs.



(A.K. BHANDARI)
MEMBER (A)



(M.L. CHAUHAN)
MEMBER (J)