

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 864 of 2002

Jabalpur, this the 10<sup>th</sup> day of April 2003.

Hon'ble Mr. R.K. Upadhyaya - Member (Admnv.)  
Hon'ble Mr. A.K. Bhatnagar - Member (Judicial)

T.C. Dongre, aged about 63 years,  
son of Late Shri Chinkya Dongre,  
By occupation - Pensioner, r/o  
Ganesh Talai, Opposite Sattar Cycle Service,  
Ganeshganj, Khandwa.

APPLICANT

(By Advocate - Shri J.P. Pandey)

VERSUS

1. Union of India through the General Manager, Central Railway, Bombay.
2. The Divisional Railway Manager, Central Railway, Bhusawal.
3. The Divisional Commercial Manager, DRM Office, Central Railway, Bhusawal.
4. The Divisional Railway Manager, Central Railway, Bhopal.

(By Advocate - Shri M.N. Banerjee)

O R D E R

By R.K.Upadhyaya, Member (Admnv.)-

The applicant has filed this application seeking quashing of orders dated 20.2.2002, 20.8.2002 and 29.8.2002 (Annexures A-3, A-5 and A-6 respectively). The order dated 20.2.2002 has been passed by the respondents giving effect to the order of this Tribunal dated 29.11.2001 in OA 773/1997, whereas the impugned orders dated 20.8.2002 and 29.8.2002 relate to pension and other benefits in conformity with the order of the Tribunal.

2. It is stated by the applicant that he was prematurely retired on attaining the age of 55 years under Rules 1802 to 1804 of Indian Railway Establishment Code with effect from 12.4.1995. The applicant further states that "he was again retired as a measure of penalty under Rule 18 and 19 of Railway Servants (Discipline and Appeal) Rules, 1968". On appeal, the

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applicant was reinstated in service vide order dated 15.5.1996 on the condition of refunding an amount of Rs.24,794/- as part of pensionary benefit received by him. The applicant, after depositing the amount, was allowed to join his duties on 12.2.1997. He was again served with another order dated 20.4.1995 on 19.2.1997. The claim of the applicant is that he attained the age of superannuation on 28.2.1997. Since he was again 'retired' on 19.2.1997 with a view to avoid payment of arrears of salary, the applicant had challenged the second order in OA 773/1997 and by an order dated 29.11.2001 this Tribunal passed the following order-

"4. In view of above discussions, the order of compulsory retirement would not be valid. The order of premature retirement will only be valid and accordingly so ordered. The applicant shall also be entitled for the interest at the rate as admissible to the GPF from time to time on all his retiral benefits for delayed payment reckoned six months after the date he was premature retired. However the applicant shall not be entitled for the interest on the retiral amount as paid to him based on the order of his premature retirement and for the period the said amount was kept with him. Let this order be complied with within three months from today failing which the applicant shall also be entitled to penal interest at the rate of six percent till the amounts are actually paid to him".

2.1 According to the applicant, after the second order of retirement has been quashed and the first order of retirement was withdrawn by the respondents, he should be treated on duty till the date of attaining his age of superannuation. In the circumstances, the impugned orders deserve to be quashed. The learned counsel stated that the order of this Tribunal dated 29.11.2001 in OA 773/1997 should be read in the context and facts of this case. The respondents have wrongly interpreted the same and have treated the applicant as having been retired with effect from 12.4.1995.

3. The learned counsel of the respondents referred to the reply filed in which it has been stated that the applicant was prematurely retired with effect from 12.4.1995 on attaining the age of 55 years. On appeal of the applicant dated 27.2.1995 to Chief Commercial Manager, Central Railway

*Chandrasekhar*

Bombay, the applicant was reinstated in terms of Headquarters office letter dated 4.4.1996 treating the period from the date of premature retirement to reinstatement as dies-non. The applicant was asked to remit an amount of Rs.24,794/- being settlement dues already received before accepting the order of reinstatement. The respondents have stated that the applicant was also taken up under disciplinary proceedings for the default of non-submission of monthly returns from January, 1991 to September, 1991, and short remittance of an amount of Rs.1586/-. On enquiry having been conducted, the disciplinary authority imposed the penalty of compulsory retirement vide order dated 20.4.1995, which was served upon the applicant on 19.2.1997. It is also stated by the respondents that the applicant was paid retiral dues considering his date of retirement as 19.2.1997 but the applicant had challenged the subsequent order dated 20.4.1995 received on 19.2.1997 in OA 773/1997 wherein this Tribunal passed the order on 29.11.2001 holding that compulsory retirement order was not a valid order and only the order of premature retirement will be valid. In pursuance to the order of this Tribunal in OA 773/1997 dated 29.11.2001, the impugned order dated 20.2.2002 has been passed. While giving effect to the order of this Tribunal certain recoveries have been worked out and the applicant has been given the benefit of recovery in instalment from his pension. The learned counsel further stated that the order dated 29.11.2001 in OA 773/1997 has become final. The order is unambiguous and the meaning assigned by the applicant is uncalled for. He urged that the present application being devoid of any merit should be dismissed.

4. We have heard the learned counsel of parties. We have also perused the material available on record including the written arguments filed by the applicant and reply thereto filed by the respondents.

5. There is no dispute that the order dated 29.11.2001 in OA 773/1997 has become final. The respondents have firstly passed an order prematurely retiring the applicant on attaining the age of 55 years. Subsequently, the order on disciplinary proceeding was also passed by which the applicant was compulsorily retired from service. Since the applicant had filed OA No.773/1997 challenging the order of compulsory retirement, this Tribunal had passed the order on 29.11.2001 stating that the order of premature retirement will only be valid. It was further observed by the Tribunal that the applicant shall also be entitled for the interest for delayed payment reckoned six months after the date he was prematurely retired. If the order of this Tribunal dated 29.11.2001 is read in its entirety, there is no doubt that this Tribunal has upheld the premature retirement of the applicant with effect from 12.4.1995. The effort made by the learned counsel of the applicant to state that the order of premature retirement was withdrawn by the respondents and accordingly the applicant should be treated as retired on attaining the age of superannuation, cannot be sustained. We are of the view that the claim made in this OA cannot be allowed to the applicant. However, the applicant will be at liberty to approach the Railway authorities for any payment which was made to him treating him as having retired in 1997 instead of 1995. This order may not be made the basis for allowing any such claim but the respondents are merely granted liberty to consider the claim of the applicant on equitable grounds. These observations are being made on account of the fact that the recovery from the applicant has resulted on account of the order of this Tribunal in OA 773/1997 dated 29.11.2001. The applicant had come to this Tribunal seeking some relief against the respondents whereas as a result of the order of this Tribunal he has been worse off. There was

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no co-ordination in different department of the respondents and that is why firstly the order of premature retirement on attaining the age of 55 years was issued on 12.4.1995 and subsequently only after a few days on 20.4.1995 another order of compulsory retirement was passed against the applicant. The applicant had challenged the second order of compulsory retirement dated 20.4.1995 served on 19.2.1997 which was accepted by this Tribunal. The logical consequence was that earlier order retiring the applicant w.e.f.12.4.1995 was upheld. This has resulted in reducing the entitlement of the applicant as he was not eligible of V- CPC benefits. It is in these peculiar facts that these observations have been made for the consideration of the respondents. But, so far as this OA is concerned, the same is dismissed with the observations as aforesaid. No costs.

*A.K.*  
(A.K.Bhatnagar)  
Member (Judicial)

*R.K. Upadhyaya*  
(R.K.Upadhyaya)  
Member (Admnv.)

rkv.

पूरांकन से ओ/का ..... जयपुर, दि.....  
परिचालित .....  
(1) सचिव, .....  
(2) अध्यक्ष, .....  
(3) प्रत्यक्षी, .....  
(4) अध्यक्ष, .....  
सूचना एवं आवश्यक कार्रवाई हेतु

*Trivedi*  
17-11-03

*Issued*  
*21.4.03*