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NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

4-12-09

Mr. Vinod Boyal, Counsel for applicant
Heard learned Counsel for the
applicant.

For the reasons dictated
separately, OA as well as MA are
disposed of.

Order is not necessary in this case.

(Signature)

Shri M. L. Chauhan (M.L. Chauhan)
(B.L. Khatru) M.L.A. (Signature)
M.L.A.

M.L.A.

Order is not necessary in this case.

(Signature)

Order is not necessary in this case.

(Signature)

Order is not necessary in this case.

Order is not necessary in this case.

Order is not necessary in this case.

(Signature)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 4th day of December, 2009

ORIGINAL APPLICATION No.469/2009
With MA No.314/2009

CORAM:

HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Mahesh Chand Joshi
s/o Shri Bhawani Shankar Joshi,
r/o 197, Mahatma Gandhi Nagar,
DCM, Ajmer Road, Jaipur

.. Applicant

(By Advocate: Mr. Vinod Goyal)

Versus

1. Union of India,
through General Manager,
North Western Railway, Jaipur
2. Divisional Railway Manager,
North Western Railway, Jaipur

... Respondent

(By Advocate:)

O R D E R (ORAL)

The applicant while working as Chief Trains Examiner (CTXR),
Jaipur was directed to undergo periodical medical test vide order
dated 15.7.1992 and for that purpose prescribed form duly filled in

was issued by the Divisional Mechanical Engineer. It appears that the applicant did not appear in the medical test and subsequently vide order dated 24.8.1992, the applicant was forbidden and not allowed to join duty till he passes the medical examination and deposit fitness certificate pursuant to medical memo dated 15.7.1992. Thereafter the applicant retired on superannuation on 31.5.1993. The grievance of the applicant in this OA is that medical memo dated 15.7.1992 whereby the applicant was asked to undergo medical test and order dated 24.8.1992 by which the applicant was forbidden to perform duty were not justified at all, as the applicant has attained the age of 57 years on the relevant date and as per Medical Manual, medical test of a person who has attained 57 years of age, is not required. The applicant in this OA has prayed that the period of absence from 17.7.1992 to 31.5.1993 be treated as duty for all purposes including pay and allowances, pension and other benefits etc. and also that the applicant be promoted to the higher scale of Rs. 2375-3500 w.e.f. 25.9.1991 when persons junior to the applicant were granted regular promotion. It is on the basis of these facts, the applicant has filed this OA.

It may also be stated that the applicant has made a grievance regarding this aspect by his representation dated 10.4.2003 which was also rejected by the authorities vide order dated 10.6.2003. It is these orders which are under challenge in this OA.

Alongwith this OA, the applicant has also filed a Misc. Application No.314/2009 for condonation of delay. In this application, the applicant has not explained any delay prior to the

year 2006. It has been stated that he has filed OA No. 460/2006 before this Tribunal which was disposed of vide order dated 15.10.2008. Thereafter the applicant submitted representation dated 15.12.2008 in Pension Adalat held by the Divisional Railway manager, Jaipur on 15.12.2008. According to the applicant, he has not received any reply from the Pension Adalat upto 15.7.2009, therefore, this OA was preferred. In this application the applicant has stated that Rule 1018 and 1907 of the IREM prescribe periodical medical examination test of B-1 medical category staff at the age of 45 years, to which the applicant belongs. Thus, the order dated 15.7.1992 after he attained the age of 57 years is in violation of the aforesaid provisions and was invalid in the eyes of law. According to the applicant, it was a case of hostile discrimination and the respondents cannot stop the applicant in arbitrary and discriminatory manner, as such, the delay in filing the OA may be condoned.

3. We have heard the learned counsel for the applicant at admission stage. We are of the view that the applicant has not made out a case for condonation of delay. As can be seen from the facts stated above, admittedly, the applicant belongs to B-1 medical category to which category periodical medical examination is prescribed under Rule 1018 and 1907 of the Indian Railway Establishment Manual (IREM). Pursuant to such provision, vide impugned proforma dated 15.7.1992, the applicant was directed to present himself for periodical medical examination to the Chief Medical Superintendent. When the applicant had not

produced the medical fitness certificate pursuant to the order dated 15.7.1992, he was restrained from joining the duty till he obtains the medical certificate from the prescribed authority vide letter dated 24.8.1992. Thus, cause of action in favour of the applicant has accrued firstly on 15.7.1992 when he was asked to appear before the authorized medical officer for periodical medical examination and subsequently on 24.8.1992 when he was restrained from performing the duty. It is admitted fact that the applicant has retired on superannuation on 31.5.1993 and the fact remains that he has not performed duty w.e.f. 17.7.1992 to 31.5.1993. Thus, the authority has not treated the aforesaid period for the purpose of pay and allowances and for retiral benefits. According to us, the applicant has got no legal right to claim the aforesaid period as duty period especially when he has not performed duty during the aforesaid period and also that the applicant has not made any grievance with regard to the aforesaid two orders till his retirement. Even if it was not permissible for the respondents to send the applicant for periodical medical examination in terms of the provisions contained in Rule 1018 and 1907 of IREM as contended by the applicant, the facts remain that the applicant has accepted these orders and without raising any grievance allowed himself to retire on superannuation w.e.f. 31.5.1993. In case the applicant was aggrieved by the order Ann.A/1, it was permissible for him to raise such grievance at the relevant time. Further from the material placed on record, it is evident that the applicant raised such grievance only after a lapse

of about 10 years when he made representation dated 10.4.2003 which was rejected by the respondents vide order dated 10.6.2003 whereby the applicant was informed that he has not performed duty w.e.f. 17.7.1992 to 31.5.1993 when he retired on superannuation and, as such, he is not entitled for promotion in the scale of Rs. 2375-3500 pursuant to cancellation of chargesheet dated 24.8.1992. It has further been specifically stated that his representation regarding grievance of sending him for periodical medical examination at the age of 57 years contrary to the provisions contained in the Medical Manual that periodical medical check-up can be undertaken till the age of 55 years, such grievance cannot be entertained after a lapse of 10 years.

4. Thereafter the applicant did not pursue the matter till the year 2006 when he has filed OA No.460/2006 whereby he has requested for promotion in the grade of Rs. 2375-3500 alongwith condonation of delay, as according to the applicant, the order of major penalty was recalled vide order dated 24.8.1992. Copy of the order dated 15th October, 2008 in OA No.460/2006 has been placed on record as Ann.A/3. As can be seen from Para-2 of this order, it has been noticed by the Tribunal that the applicant had retired on 31.5.1993 whereas the OA has been filed after a lapse of 13 years after the date of retirement. In para-3, it has been stated that after hearing the parties, the applicant wants to withdraw the OA as he will raise his grievance before the departmental authorities. It was under these circumstances that the applicant was permitted to withdraw the OA with liberty reserved to him to agitate

the matter before the departmental authorities. Thus, this Tribunal has not made any observation on merit and the applicant was permitted to withdraw the OA when specific request was made that he wants to ventilate his grievance before the departmental authorities. This Tribunal was conscious of the fact that the OA was filed after a lapse of 13 years and no direction can be given to the departmental authorities to decide representation to be filed by the applicant regarding his stale claim.

5. Be that as it may, the OA No.460/2006 was decided on 15th October, 2008 and now the applicant has filed this OA alongwith application for condonation of delay. As already stated above, the applicant has not explained any delay till filing of earlier OA in the year 2006 when cause of action admittedly has arisen on 15.7.1992 when the applicant was directed to present himself for periodical medical examination before the Chief Medical Superintendent, Jaipur and subsequently vide order dated 24.8.1992, whereby the applicant was apprised that he will be taken on duty after submission of medical fitness certificate pursuant to order dated 15.7.1992. The applicant accepted these orders and did not make any grievance to the authorities regarding treating the period w.e.f. 17.7.1992 to 31.5.1993 as duty period and also regarding his promotion in the higher scale of Rs. 2375-3500 from the date when such promotion was granted to the so called junior to the applicant consequent upon cancellation of major penalty chargesheet on 24.8.1992. Such grievance was made for the first time vide his representation dated 10.4.2003, as can be

seen from Ann.A/2 and the said representation of the applicant was also rejected on 10.6.2003 on the ground as stated above. The applicant has not given any explanation as to why he has not ventilated his grievance at the relevant time and why he slept over the matter for a long period of 10 years.

6. That apart, the applicant has also not challenged validity of the order dated 10.6.2003 (Ann.A/3) whereby his representation regarding promotion in the higher scale of Rs. 2375-3500 and also not treating the period w.e.f. 17.7.1992 to 31.5.1993 as period spent on duty for all purposes till the year 2006 i.e. for a period of about 13 years and it was only in the year 2006 he filed OA which OA alongwith application for condonation of delay was also withdrawn by the applicant on 15th October, 2008. Thus, the explanation submitted by the applicant after 2006 i.e. filing of the OA and withdrawal of his application on 15th October, 2008 cannot constitute a sufficient cause for the purpose of delay when cause of action has arisen in the year 1992. Thus, according to us, even if the applicant has got some case on merit, he is not entitled to any relief on his own act and conduct and on account of unexplained delay of 17 years.

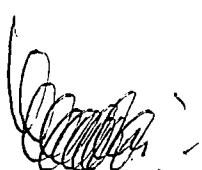
7. The matter on this point is no longer res-integra. At this stage, we wish to refer to the judgment of the Apex Court in the case of C.Jacob vs. Director of Geology and Mining and Another, (2008) 2 SCC (L&S) 961 whereby the Apex Court has held that court should not give direction to the department to consider stale claim. The Apex Court further held that it is permissible for the department to

reject the stale claim of a person on the ground of delay alone without examining it on merit. It has further been held that reply given to the individual does not give right to fresh cause of action and jural relationship. As can be seen from Ann.A/2, the claim of the applicant has been rejected by the department vide order dated 10.6.2003 which is in conformity with the decision taken by the Apex Court in the case of C.Jacob (supra).

8. Thus, for the foregoing reasons, we are of the view that the applicant has not made out a cause for condonation of delay as he has not explained the delay for the period w.e.f. 1992 when cause of action has arisen in favour of the applicant till the year 2006 and even the explanation after filing of OA No.460/2006 before this Tribunal till the same was withdrawn on 15.10.2008 and thereafter representation made to the Pension Adalat on 15.12.2008 does not constitute sufficient cause for condonation of delay and such explanation will not ~~arise~~ ^{arise in} fresh cause of action and filing of OA and withdrawal of the same will not give rise to fresh cause of action to the applicant.

9. For the foregoing reasons, we are of the view that Misc. Application No.314/2009 for condonation of delay is required to be rejected, which is accordingly rejected. Since the Misc. Application for condonation of delay is rejected, as such, the OA is dismissed as barred by limitation with no order as to costs.


(B.L.KHATRI)
Admv. Member


(M.L.CHAUHAN)
Judl. Member