

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

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ORDER SHEET

ORDERS OF THE TRIBUNAL

15.05.2012

OA No. 297/2012 with MA 132/2012

Mr. C.P. Sharma, Counsel for applicant.

Heard learned counsel for the applicant.

The OA as well as MA are disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 15th day of May, 2012

ORIGINAL APPLICATION No. 297/2012
With
MISC APPLICATION NO. 132/2012

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Duli Chand Bairwa son of Shri Shukji R. Bairwa, aged about 41 years, resident of Village Danda, Post Sankhda, Tehsil Sapotra, District Karuali.

... Applicant
(By Advocate : Mr. C.P. Sharma)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.).
2. Senior Divisional Engineer, Division Office, Kota, West Central Railway, Kota.
3. Divisional Railway Manager, Divisional Office, Western Central Railway, Kota.

... Respondents
(By Advocate: -----)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- "(i) by an appropriate order or direction, the Hon'ble Tribunal may kindly call for the entire record pertaining to issuance of impugned order dated 20.11.1997 and after examining the same be pleased to declare the impugned order null and void and be quashed and set aside.
- (ii) By further appropriate order or direction the respondents be directed to revoke the order dated 20.11.1997 and the applicant be allowed/given all the consequential benefits and salary for the intervening period from 20.11.1997 to till the death of applicant's father i.e. 21.10.1997 and accordingly family pension also be revised and one member of the family also be given compassionate appointment.
- (iii) Any other order or direction which may be considered just and proper in the facts and circumstances of the case be passed in favour of the applicant.

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(iv) Cost of the OA may kindly be awarded to the applicant."

2. The applicant has also filed an MA under Section 5 of the Limitation Act for condonation of delay in filing the present OA.

3. Heard the learned counsel for the applicant on OA as well as MA.

4. Learned counsel for the applicant argued that the impugned order dated 20.11.1997 by which the father of the applicant was voluntarily retired was arbitrary and illegal. He further argued that the applicant came to know about this in the month of March, 2012 when he found some paper of his father relating to the voluntary retirement and then came to know that a great injustice has been done against his father by the Railway authorities. Therefore, he requested that the delay in filing the OA may be condoned. In support of his averment, he referred to the judgment of the Hon'ble Supreme Court in the case of **Balram Gupta vs. Union of India & Another**, AIR 1987 SC 2354(1), with regard to withdrawal of notice of voluntary retirement prior to the expiry of the notice period. He also referred to the judgment of the Hon'ble Supreme Court in the case of **N. Balakrishnan vs. M. Krishnamurthy**, AIR 1998 SC 3222, with regard to delay of 883 days in filing up the case due to failure of the advocate to inform the appellant as well as his failure to take action.

5. Having heard the learned counsel for the applicant and after carefully gone through the relevant documents on record and the case law, referred to by the learned counsel for the applicant, I am of the

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opinion that the reasons recorded in MA for condonation of delay in filing the OA are not satisfactory. He has not been able to explain the day to day delay in filing the OA. The applicant has assailed the order dated 20.11.1997 (Annexure A/1) after a lapse of about 15 years. The father of the applicant, Shri Shukji R. Bairwa, was retired on 03.12.1997 on his request for voluntary retirement. The father of the applicant expired on 21.10.2001 that is almost after four years of the order dated 20.10.1997. During these four years, the father of the applicant also never agitated about his voluntary retirement before the respondents. Now the applicant is agitating this matter almost after a gap of 15 years, which is hopelessly time barred. I am of the view that the ratio laid down by the Hon'ble Supreme Court in the cases referred to by the learned counsel for the applicant in the cases of **Balram Gupta vs. Union of India & Another**, AIR 1987 SC 2354(1) and **N. Balakrishnan vs. M. Krishnamurthy**, AIR 1998 SC 3222, is not applicable under the facts & circumstances of the present case.

6. On the contrary, the ratio laid down by the Hon'ble Supreme Court in the cases of **D.C.S. Negi vs. Union of India & Others** decided on 07.03.2011 [Petition for Special Leave to Appeal (Civil) 7956/2011], **Union of India & Others vs. M.K. Sarkar**, 2010 (1) SCC (L&S) 1126, **C. Jacob vs. Director of Geology and Mining**, 2008 (2) SCC (L&S) 961 and **E. Parmasivan & Others vs. Union of India & Others**, 2005 SCC (L&S) 125, is squarely applicable in the facts & circumstances of the present case.

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7. Consequently, in view of the judgments of the Hon'ble Supreme Court in the cases referred to in Para 6 above, I am of the view that the Misc. Application for seeking condonation of delay deserves to be dismissed and the OA also deserves to be dismissed on account of delay & latches.

8. Accordingly, the OA as well as MA are dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ