

12

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1456 of 1997

New Delhi, this the 15<sup>th</sup> day of April, 1998

Hon'ble Mr. N. Sahu, Member(Admnv)

Gurbachan Singh, S/o Shri Budh Singh,  
Rtd. Goods Clerk, Railway Station,  
Shakurbasti, Delhi-110034 R/o House  
No.552, Shri Nagar, Shakurbasti,  
Delhi-110034

- APPLICANT

(By Advocate Shri K.K.Patel)

Versus

1. Union of India through the General  
Manager, Northern Railway, Baroda  
House, New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, State Entry  
Road, New Delhi.

- RESPONDENTS

(By Advocate Shri O.P.Kshatriya)

O R D E R

By Mr. N. Sahu, Member(Admnv) -

The admitted facts in this Original Application are that the applicant was appointed as a Sealman, in Group 'D' post on 9.5.1957. On 10.2.1978 he along with others was promoted as Goods Clerk on adhoc basis. He had been continuously holding that post till 17.11.1989. On that day 42 posts of Goods Clerk were surrendered due to shrinkage of the cadre. The applicant was relieved from the post of Goods Clerk held by him on local adhoc basis by the Station Superintendent, Shakurbasti vide his letter no.301/Staff/89-SSB dated 18.11.1989. He challenged the order before this Court in O.A.No.2367 of 1989 and on account of an interim order of this Court dated 8.12.1989 he was not reverted to the post of Sealman but continued to work as a Goods Clerk in the

pay scale of Rs.975-1540. The said O.A. was dismissed on 27.5.1994 and the interim order was vacated. Consequently, the applicant was reverted to his substantive post as a Sealman by an order dated 21.10.1994. He was accordingly relieved on 1.11.1994. He applied for voluntary retirement on 18.5.1995. According to the counter affidavit, the said claim for voluntary retirement was rejected by the respondents vide order dated 20.7.1995. This order of rejection of the claim was admittedly not served on the applicant. He retired from service on superannuation on 31.8.1996.

2. The applicant claims that under the rules and instructions issued by the Railway Board he should be deemed to have retired three months after he applied for voluntary retirement i.e. 18.8.1995. He, therefore, prays that his retiral benefits be fixed as per Rule 2544(C) of the Indian Railway Establishment Code, Volume-II and for this purpose he prays that his pay should be reckoned in the grade of Rs.975-1540 for computation of pension, gratuity, or any other retiral benefits. He further invites the attention of the Court to Rule 49 of the Railway Services (Pension) Rules, under which the term "emoluments" has been defined to mean basic pay as per definition which the Railway servant was receiving immediately before his retirement and the average emoluments are to be considered by taking such pay in the last 10 months preceding his retirement.

(14)

3. The matter is, therefore, very simple. It is a question of actual payment of salary to the applicant during the last 10 months of his service. As per Annexure -R-7 dated 1.11.1994 the respondents have stated that the applicant received Rs.1450/- per month as basic pay up to 2.11.1994 and they also stated that the excess pay might have to be recovered. The basic claim of the applicant is that reversion order dated 21.10.1994 would not apply to him because the decision on his notice for voluntary retirement has not been communicated to him. The rejection of the claim for voluntary retirement states that only after the applicant joins his job as a Seaman in the grade of Rs.750-940 his request for voluntary retirement would be considered. The counsel for the applicant states that even this order was never communicated to him. I have given a specific opportunity to the respondents to produce evidence as to whether these orders have been served. No evidence was produced before the Court even after four weeks time was allowed to the respondents.

4. I have carefully considered the submissions of both the counsel. Chapter-VI of the Railway Services (Pension) Rules, 1993 deals with two types of voluntary retirement. The first is voluntary retirement on completion of 30 years of qualifying service and the second is voluntary retirement on completion of 20 years of service. The difference in the rule position between the two is very significant. With regard to the latter category under Rule 67(2) the notice of voluntary retirement

15

shall require acceptance by the appointing authority i.e. if there is no acceptance by the appointing authority then the voluntary retirement cannot be legally valid even though the applicant petitioned for the same. But with regard to the former category to which the applicant belongs, there are only two conditions - the first condition is that the Railway servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire and the second condition is that if the applicant is under suspension when the notice is given it would be open to the appointing authority to withhold such permission. Rule 66(2)(a) also gives a liberty to the applicant to make a request in writing to accept the notice of less than three months giving reasons therefor and Rule 66(2)(b) requires the appointing authority to consider such a request for curtailment of the period of notice of three months. Rule 66(3) says that a Railway servant who has elected to retire and has given the necessary intimation to that effect shall be precluded from withdrawing his notice subsequently except with the specific approval of such an authority.

5. Let us examine the conduct of the respondents in dealing with the notice of voluntary retirement dated 18.5.1995. The applicant admittedly was not under suspension. There was no charge sheet either for major or for minor penalty. There was no contemplation of any disciplinary proceeding. The only alternative left to the respondents was whether

to retire the applicant from 18.5.1995, if they decided to concede the three months waiver. If not they could retire him on, or from 18.8.1995. This is a case where the applicant had completed 30 years of service. The rule position mandates that the applicant has no option also to withdraw the petition for voluntary retirement. The respondents, by rejecting the petition for voluntary retirement have not applied their mind to the Rules on the subject.

6. What the applicant wants is his terminal benefits. These terminal benefits are governed by the Railway Services (Pension) Rules, 1993. He has to be given the 10 months average of the actual drawn by him on 18.8.1995, i.e. the date of voluntary retirement if the respondents do not choose to consider the three month's waiver period.

7. I would, therefore, hold that under the provisions of Rule 66 ibid the respondents have no other option except to consider the applicant for voluntary retirement in accordance with the said rules and pass an order either accepting his claim for voluntary retirement on 18.5.1995 or 18.8.1995. It would be appropriate if respondent no.2 pass an order to this effect in writing within four weeks from the receipt of a copy of this order and also compute applicant's pension in accordance with Rules 49 and 50 of the Railway Services (Pension) Rules, 1993 after taking into account the actual emoluments drawn by him.

*[Handwritten signature]*

8. On the question of the applicant's status as Sealman, the problem is also extremely simple. The applicant becomes a Sealman immediately after the pronouncement of the order of the Tribunal on 27.5.1994. In fact he is a Sealman from 1.11.1994, the date from which he was relieved from the higher post. Whether the applicant joins that post or not is immaterial. The factual situation here is that the respondents are expressing their impotent rage at this hour. They could not enforce the applicant to join in the post of Sealman nor they proceeded against him for disobeying their orders. One is amused at the pathetic way the respondents have looked upon the applicant's conduct for not joining the post of Sealman in spite of a Court order and in spite of their own orders. Whether he likes it or not, the applicant is a Sealman from 1.11.1994. But then, under Rules 49 and 50 of the Railway Services (Pension) Rules, 1993 the "emoluments" mean the basic pay which the Railway servant was receiving immediately before his retirement and "average emoluments" means the average to be determined with reference to the emoluments drawn by the Railway servant during the last 10 months of his service. Note 1 of Rule 50 ibid says that if during the last 10 months of his service a Railway servant had been absent from his duty on leave or otherwise the emoluments which he would have drawn had he not been absent from duty or suspended shall be taken into account for determining the average emoluments. I direct the respondents to strictly adhere to the definition of the 'emoluments' and average

emoluments given in Rules 49 & 50 ibid and compute and pay the retiral benefits to the applicant within 8 weeks from the date of receipt of a copy of this order along with interest of 12% per annum from the date of voluntary retirement to be determined, till the date of actual payment. The O.A. is disposed of. No costs.

*N. Sahu*  
(N. Sahu) 1574/98  
Member (Admnv)

rkv.