

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

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O.A. No.219/1988.

DATE OF DECISION: February 6, 1990.

Amarjit Singh ... Applicant.
Shri A.S. Gulati ... Advocate for the Applicant.
V/s.
Union of India ... Respondent.
Ms. Shashi Kiren ... Advocate for the Respondents.

CORAM: Hon'ble Mr. Justice Amitav Banerji, Chairman.
Hon'ble Mr. P.C. Jain, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement? ✓
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. To be circulated to all Benches of the Tribunal? ✓

P.C.
(P.C. JAIN)
MEMBER (A)

A.B. 6/2/90
(AMITAV BANERJI)
CHAIRMAN

6.2.1990.

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Hon'ble Mr. P.C. Jain, Member (A).

(Judgement of the Bench delivered
by Hon'ble Mr. P.C. Jain, Member)

JUDGEMENT

The applicant, who was working as Chief Estimator under Chief Engineer (P&D), Northern Railway Headquarters, Baroda House, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the alleged arbitrary and mala-fide act of all the respondents in general and Chief Personnel Officer in particular for not issuing any Pension Payment Order after the alleged acceptance of his voluntary retirement with effect from 13.9.1985. He has prayed for the following reliefs: -

"The Railway Administration should pay a sum of Rs.1500/- p.m.

(a) during the pendency of the case

(b) that the Railway Administration should release my own contribution to the P.F. illegally withheld by them alongwith 12% interest thereon, P.A.

(c) Contribution towards LIC (group insurance deduction from my salary).

(d) I have spent about Rs.10,000/- on the sickness

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of my wife and children by raising interest free loan from my relatives.

- (e) Adequate relief for starving self and family may also be ordered by the Hon'ble Court at least @ Rs.2500/- p.m. from 13.9.85 onwards. "

2. The facts of the case, in brief, are as under: -

The applicant was working as Chief Estimator in the Northern Railway Headquarters, New Delhi. He was sanctioned 45 days' leave, from 30.8.1983 to 13.10.1983, for taking his wife abroad for treatment of her illness.. He alleges that he extended his leave by sending his applications from time to time, and after availing Earned Leave from 22.1.85 to 10.9.85, reported for duty on 13.9.85. On 13.9.1985 itself, he applied to the Chief Engineer (P&D)/ Chief Personnel Officer, Northern Railway, Headquarters Office, New Delhi for voluntary retirement w.e.f. 13.9.1985 and also requested for waiving the notice period of three months as a special case. This application was recommended for necessary action by the A.E.N./P&D, Dy. C.E./P&D and C.E./P&D and sent to Deputy Chief Personnel Officer on 18.9.85.

3. We have gone through the pleadings of the case and have heard the learned counsel for the parties.

4. The plea of the applicant is that after availing Earned Leave for 45 days, he extended his leave by sending leave applications from time to time. He reported for duty on 13.9.85, but the then Asstt. Engineer (P&D) advised him to take voluntary retirement since he had completed 33 years of service and on his advice, he submitted his application for voluntary retirement on 13.9.1985 itself (Vide Annexure 'A' to the application), which was processed and his voluntary retirement accepted on the same day. His letter for voluntary retirement was marked to Dy. Chief Personnel Officer, who, according to the applicant, did not carry out the orders for issuing the pension payment order and settling his dues; nor did the applicant receive any positive reply

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in spite of numerous representations, including a letter sent through Minister of State, Civil Aviation, New Delhi addressed to Minister for Railways, Government of India, New Delhi. According to the applicant, his absence from 13.10.83 to 13.9.85 has been treated as leave without pay and as such regularised and since he has put in more than 30 years of service, he has got the right to seek voluntary retirement and the Personnel Branch has no authority to withhold the orders passed by the C.E. (P&D). He has admitted that a charge-sheet dated 23.3.1987 has been served on him, but it has been done after a period of 1½ years from the date of his voluntary retirement. He denies the pendency of any disciplinary proceedings against him. He has reiterated the facts in his rejoinder with emphasis that his voluntary retirement had been accepted by the competent authority, i.e., the Chief Engineer, who could do it in exercise of the powers vested in him as Head of the Department.

5. The plea of the respondents is that the applicant remained absent unauthorisedly after the sanctioned 45 days LAP/CPC from 30.8.83 to 13.10.83 and, therefore, action under Discipline & Appeal Rules is pending against him, and a charge-sheet has already been issued to him for unauthorised absence. The applicant was on leave upto 13.10.83 and he applied for voluntary retirement on 13.9.85 when he was not on duty, and that mere submission of application does not mean acceptance of voluntary retirement. They have denied that the applicant was advised by any officer to take voluntary retirement. The Chief Engineer (P&D) had only marked his application dated 13.9.85 to Dy. Chief Personnel Officer after recommending his case and the normal procedure for obtaining vigilance clearance had to be followed before his request for voluntary retirement could be accepted. Since a case for

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unauthorised absence was pending against him, his voluntary retirement could not be accepted and, as such, his pensionary dues could not be settled. In the oral submissions, the learned counsel for the respondents further averred that the facts that the applicant had taken leave on the ground of illness of his wife and in his letter dated 13.9.1985 for taking voluntary retirement, he had stated that he could not return to India because it was not possible for him to leave his wife alone in a foreign country, were yet to be verified in view of a complaint that his wife never went abroad and that he himself went and worked with M/s. ALTAHER ENTERPRISES MUSCAT as Quality Surveyor during 30.8.83 to 30.6.84 and again from 22.1.85 to 10.9.85 without resigning from the Railways and without the permission of Railway Administration. For this act of omission, a charge-sheet had been sent to the applicant on 3.3.86 by the office of Dy. C.E. (P&D).

6. The points for determination in this case are whether the notice of voluntary retirement was a valid notice; and whether this notice was accepted or will be deemed to have been accepted by the competent authority.

7. The Scheme of Voluntary Retirement for Railway employees was notified by the Railway Board's letter No.E(P&A)I-77/RT-46, dated 9.11.77. Under this scheme, Railway servants who had put in not less than 20 years qualifying service, could seek retirement on voluntary basis by giving three months' notice in writing to the appointing authority. A notice of less than three months could be accepted by the appointing authority in deserving cases, with the approval of the Ministry of Railways. (emphasis supplied). If a Railway servant retires under the scheme of voluntary retirement while he is on 'leave not due' without returning to duty, the retirement is to take effect from the commencement of the 'leave not due'. In case of Group 'C' and Group 'D' railway servants, approval

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of the General Manager was required if notice for voluntary retirement was proposed to be accepted in cases in which disciplinary proceedings were pending or contemplated against the railway servant concerned for imposition of a major penalty. In Railway Board's letter No.E(P&A)I-77/RT-46, dated 22.8.85, it was clarified that 'Extraordinary Leave' cannot be termed as leave standing to the credit of the railway servant and, therefore, it cannot run concurrently with the period of notice given by him for seeking voluntary retirement.

8. The respondents have also made available the relevant departmental file. It is seen therefrom that the applicant was sanctioned 15 days L.A.P. from 10.1.78 to 24.1.78 and 164 days L.H.A.P. from 25.1.78 to 7.7.78. He reported for duty on 6.12.79. The period of his absence from 8.7.78 onwards was regularised by granting him 168 days L.H.A.P. upto 22.12.78 and 348 days Leave without Pay from 23.12.78 to 5.12.79. He remained on Leave without Pay from 15.3.80 to 14.3.81; on L.H.A.P. from 15.3.81 to 23.4.81; and on Leave without Pay from 24.4.81 to 13.3.82. He was sanctioned 45 days' leave from 30.8.83 to 13.10.83. An application dated 14.10.83 for six months' leave with effect from 13.10.83 on account of his wife's illness was also received in the office of the respondents, but the leave for the entire period from 14.10.83 was not sanctioned. Even on 13.9.85, though the applicant was in Delhi, he did not attend office on that day. From this it will be seen that the contention of the applicant that he resumed duty on 13.9.85 is not substantiated and on that date, he was on unauthorised absence, which was continuing from the expiry of 45 days' leave sanctioned to him, i.e., from 14.10.83. Therefore, this period of unauthorised absence could not run concurrently with the period of notice.

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9. The request for voluntary retirement itself stated that the period of notice may be waived as a special case and he sought retirement with effect from the date of his request, i.e., 13.9.85. In such a case, approval of the Railway Ministry was required before a notice of less than three months - in this case, there was no notice period at all - could be accepted by the competent authority. Moreover, as already stated above, since disciplinary proceedings were contemplated against him, notice for voluntary retirement required the approval of the General Manager in the case of the applicant, who belonged to Group 'C' staff. In this case, neither the approval of the Railway Ministry nor the approval of the General Manager was obtained. The applicant has also not shown to us that any order or letter to the effect that his request for voluntary retirement had been accepted, was issued to him. The file also does not show any such order of the competent authority. The confidential letter No.CE/Misc/Confdl/82, dated 12.12.1985 (Annexure 'D' to the application) on which reliance has been placed by the applicant, cannot be taken as a letter of acceptance of his voluntary retirement or regularisation of the period of his absence from duty as it is only a confidential communication between one wing of the Department to another without any supporting evidence in regard to the contents thereof. Even assuming that C.E. (P&D) was the competent authority in this case, he also had not issued any order to that effect. He had only forwarded the application of the applicant with his recommendation to the Dy. C.P.O. As stated above, the Head of the Department did not take the approval of the Railway Ministry or of the General Manager, as required in this case. From this, it is clear that the request of the applicant for voluntary retirement was not accepted.

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10. It was argued on behalf of the applicant that as per the Railway Board's letter dated 9.11.77 on the Scheme of Voluntary Retirement for Railway Employees (supra), even where the notice of voluntary retirement given by a Railway servant requires acceptance by the appointing authority, the Railway servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice, and, therefore, even if it was accepted for the sake of argument that the request of the applicant for voluntary retirement was not accepted, his request will be deemed to have been accepted in accordance with the aforesaid provision⁶⁴ in the scheme. The presumption of acceptance is to be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice. (emphasis supplied). In this case the prescribed period of notice of three months was not given by the applicant, nor there was a notice for a shorter period. In this case, the applicant applied for voluntary retirement with effect from the same date on which he made such a request. It would, therefore, be illogical to hold that the applicant's request for voluntary retirement can be presumed by him to have been accepted if the competent authority did not issue any order to the contrary on the same date. However, the logical interpretation in such^a case would be that the applicant would be entitled to presume acceptance of his voluntary retirement if the competent authority did not issue any order to the contrary within the maximum period of three months, which is prescribed for notice for such request. This period expired on 13.12.85. The respondents have not shown anything to establish, or even to indicate, that

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any communication to the contrary had been sent to the applicant by that date. In fact, we have not been shown any such communication having been sent to the applicant even later.

11. In view of the above discussion, we are of the view that the request of the applicant for voluntary retirement will be deemed to have been accepted on the expiry of three months from the date of his request dated 13.9.1985. We further hold that in terms of the Railway Board's letter No.E(P&A)-77/TR-46, dated 9.11.77 read with the clarification issued in the Railway Board's letter of the same number, dated 22.8.85 (supra), the voluntary retirement in this case shall take effect from the date of expiry of the 45 days' Earned Leave sanctioned to the applicant, i.e., with effect from 14.10.1983. The respondents are, therefore, directed to settle the retirement benefits of the applicant within a period of three months from the date of receipt of a copy of this order by them. In the facts and circumstances of the case, we do not consider it a fit case for awarding any interest on the amounts which may become due to the applicant on his voluntary retirement, except that he will be paid interest on the balance in his Provident Fund and the Group Insurance Scheme, as admissible to him under the rules. The respondents would be at liberty to continue or initiate, as the case may be, the disciplinary proceedings against the applicant, referred to above, in accordance with law, if so advised.

12. The application is partly allowed in terms of the above directions. The parties shall bear their own costs.

(P.C. JAIN)
MEMBER(A)

(AMITAV BÄNERJI)
CHAIRMAN