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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 251/86 198
T.A. No.

DATE OF DECISION 8-5-1987

Shri V.V. SATHYARATHAN ~~Petitioner~~ Applicant

Shri Umesh Mishra Advocate for the Petitioner(s)

Versus

G.M. Northern Rlys. Respondent

Shri Jagjit Singh Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. ZAHEER HASAN, VICE CHAIRMAN

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all the Benches ?

8/5/87
(BIRBAL NATH)
A.M.

(ZAHEER HASAN)
V.C.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI.

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O.A. No. 251/86

Date of decision: 8-5-1987

Shri V.V. SATHYAVRATHAN

...

Applicant

Vs.

The GENERAL MANAGER.
NORTHERN RAILWAY.

...

Respondent..

COMRA:

HON'BLE MR. JUSTICE ZAHEER HASAN, VICE CHAIRMAN

HON'BLE MR. BIRBAL NATH, ADMINISTRATIVE MEMBER

For the applicant: Shri Umesh Mishra, Advocate

For the respondent: Shri Jagjit Singh, Advocate.

(Judgment of the Bench delivered by
Mr. Birbal Nath).

JUDGMENT.

This is an application filed in April, 1986, under Section 19 of the Administrative Tribunals Act, 1985. The facts leading to the application are that the applicant, who had joined the Railway service on 2.5.1960, proceeded on leave with effect from 4.11.1975. He resumed duty on 22.12.1981 after submitting a medical fitness certificate issued by a private medical practitioner and claimed medical leave for 5 years and three months. On 28.12.1982, the applicant sought voluntary withdrawal from service. In the notice served upon the respondents, he sought withdrawal from service with effect from 8.6.1982, i.e. he wanted this retirement to be effective retrospectively over a period of six months. He was not paid salary

from 1.3.1982 to 14.4.1982 and he represented to get the same.

When he resumed duty after long leave, he was not given any posting.

The applicant requested his officers to adjust his due leave against medical leave. With respect to his notice dated 28.12.1982, the applicant was informed as under:-

"No. 570.Sig/MWM/8 dated 28.8.1984

Sub: Voluntary retirement from service.

Ref: Your application dated 28.12.82

Since you do not qualify for voluntary retirement w.e.f. 8.6.1982 on account of your absence from duty during the period from 25.5.76 to 27.2.82, you are hereby directed to report to this office immediately."

This communication clearly showed that the applicant had been treated as absent from duty from 25.5.1976 to 27.1.1982. The applicant has approached the Tribunal to declare him voluntary retired in pursuance of his note dated 28.12.1982 and that he be sanctioned leave for the period he remained absent from 25.5.76 to 27.1.1982.

2. In the counter-affidavit, the respondents have averred that the applicant was unauthorisedly absent since 25.5.1976 to 27.1.1982. The applicant reported for duty on 28.1.1982 and he was posted to Mirzapur vide order dated 20.4.1982. However, on request made by the applicant, he was kept at Delhi for one more month. The applicant again absented himself from duty for the second time with effect from 7.6.1982. Disciplinary action was initiated against him on this ground. It was further averred that since the applicant was absent unauthorisedly for the period 25.5.1976 to 27.1.1982, this period could not be counted towards qualifying service and since the applicant had not put in the requisite qualifying service, his notice for voluntary retirement could not be accepted. It was further contended that the

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applicant had admitted that during this period, he was out of India in Iraq or Iran. For the second spell of absence, the applicant was awarded a punishment vide order dated 2/8-12-1986 for his unauthorised absence from 8.6.1982 to 24.6.1986. The applicant has filed an appeal against the impugned order of punishment.

3. We have heard the arguments advanced at the bar and gone through the documents placed before us. The applicant has been dealt with for two spells of absence (i) from 25.5.76 to 27.1.1982 and (ii) 8.6.1982 to 24.6.86. So far as the second spell of absence is concerned, the applicant has been dealt with through charge-sheet served upon him in a regular departmental enquiry and an order of punishment has also been passed against which he has filed an appeal. In the instant application, the Tribunal is not concerned with this absence or with the disciplinary proceedings. The Tribunal is concerned only with the period of unauthorised absence from 25.5.76 to 27.1.1982. We find that the respondents have treated this period as one of absence and a report to this effect has been made in the service record of the applicant. This entry was made on 18.2.1982. The applicant has sought the relief that this period be treated as leave of kind due on the ground that when he resumed duty, he had produced a certificate from some private medical practitioner. The respondents have ^{argued} averred that not only this was unauthorised absence but that the applicant had gone out of India and served in Iraq and Iran with some other Railways. So, there was no question of regularising this leave/unauthorised absence period or paying him leave salary, as claimed by the applicant. We find no evidence to sustain the claim of the

applicant that he is entitled to treat this period as one of leave and that he is entitled to receive leave salary. Even if he was granted leave in the initial period, his staying away from duty for such a long period without getting the leave sanctioned and his working in other countries would certainly disentitle him from sanction of such leave or grant of leave salary. His argument that his case was ripe for submission to the Railway Board for sanction of leave does not confer any right upon him to seek regularisation of leave or claim leave salary.

The second relief sought by the applicant is that he had served a notice of voluntary withdrawal from service vide his application dated 21.12.1982. This notice was served as a protest against his posting to Mirzapur which would have adversely affected the education of his four school-going children. Relevant portion of his notice for voluntary withdrawal from service dated 21.12.1982 reads as under:-

"At this juncture either I have to surrender my service or sacrifice my children's future. So, better I choose the future of my children and hence I am offering my withdrawal from service w.e.f. 8.6.1982".

It was argued that this notice had become effective after three months i.e. from 20.3.1983 in terms of the service conditions of the applicant.

The Railway Board's circular dated 9.11.1977 relating to the Scheme of Voluntary Retirement for Railway employees, as is material, reads as under:-

"(i) Railway servants who have put in not less than 20 years qualifying service or service in the case of those governed by SRPF (Contributory) Rules, as the case may be, may, by giving notice of three months in writing to the appointing authority, retire from service voluntarily. The scheme is purely voluntary, the initiative resting with the Railway Servant himself. The Govt. does not have the reciprocal right to retire Railway servants on its own, under this Scheme."

It was the contention of the respondents that the applicant had not put in 20 years qualifying service though he had joined the service on 2.5.1960 because his period of absence from 25.5.1976 to 27.1.1982 was treated as one of unauthorised absence. The learned counsel for the respondents relied upon rule 422 (iii) of the Manual of Railway Pension Rules, 1950, specifying what periods would not qualify as service for pensionary benefits. This rule reads as follows:-

'Unauthorised absence in continuation of authorized joining time treated as 'over-stayal' in terms of Rule 2112-R.II(F.R.73).'

It was further stated on behalf of the respondents that ^{The applicant} he had been informed vide their letter dated 28.8.1984 that he had not put in requisite qualifying service for voluntary retirement. The learned counsel for the applicant argued that this reply of the respondents was invalid because it was issued on 28.8.1984 whereas, the applicant had applied for voluntary retirement on 21.12.1982, and the notice seeking voluntary retirement would have become effective on 20.3.1982. With regard to the content of the notice, the learned counsel for the applicant ^{argued} stated that the character of the notice was never questioned by the respondents and they could not now find fault with the form or content of the notice. We are unable to accept the contention raised by the learned counsel for the applicant. We find that the notice served by the applicant was totally defective and did not conform with the requirements of a notice for voluntary retirement. A perusal of the so-called retirement notice shows that the applicant does not seek retirement. He seeks voluntary withdrawal from service. There is no such thing as 'voluntary withdrawal from service'. There are Rules governing voluntary retirement from service. Again, we find that this notice is un-sustainable because it seeks withdrawal with retrospective effect and not from a prospective date which a notice

should do. In terms of the Railway Board's circular, referred to above, a notice for three months in writing to the appointing authority is required to be served for seeking voluntary retirement. The so-called request for withdrawal from service served a notice for six months retrospectively. We, therefore, find that the notice for retirement is totally invalid and void. Again, treating the period of absence by the respondents as not qualifying for pension is substantiated by the rules on the question of qualifying service, as quoted above, and thus the applicant did not have the qualifying service to his credit to seek voluntary retirement.

4. In view of the foregoing facts, we find that the application is without merit and, therefore, reject the same with no order as to costs.

g 8/5/87
(BIRBAL NATH)
ADMINISTRATIVE MEMBER

g 8/5/87
(ZAHEER HASAN)
VICE CHAIRMAN.