

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH:NEW DELHI

\*\*\*

OA.No.1952 of 1990

Dated New Delhi, this 1st day of September, 1994

Hon'ble Shri A. V. Haridasan, Member(J)

Hon'ble Shri B. K. Singh, Member(A)

Shri J. N. Srivastava  
R/o 53, Laxmi Apart.  
Pocket 'D' Sector IX, Rohini  
NEW DELHI-110085

... Applicant

By Advocate: Shri G. D. Bhandari

VERSUS

Union of India through

1. The Secretary  
Railway Board  
Rail Bhawan  
NEW DELHI

2. The General Manager  
North Eastern Railway  
Gorakhpur(U.P.)

... Respondents

By Advocate: Shri B. K. Aggarwal

O R D E R  
(Oral)

Shri A. V. Haridasan, M(J)

The applicant who was an Ex-XEN in the North Eastern Railway, Gorakhpur, sought permission to retire voluntarily after completion of 33 years of qualifying service vide his representation dated 3.10.89, with effect from 31.1.90. This request was accepted and vide order dated 9.11.89 it was ordered that the applicant stand retired from service with effect from 31.1.90. Thereafter, the applicant changed his mind and submitted a representation

Contd...2

on 11.12.89 seeking withdrawal of his request for the ground that on voluntary retirement on/account of certain change in circumstances, he wanted to continue in service till the age of superannuation. This request for withdrawal of voluntary retirement was not accepted by the General Manager, North Eastern Railway and accordingly he was informed of the decision of the General Manager. He made a further representation on 15.1.90 for withdrawal of the notice of voluntary retirement inviting the Railway Board's circular ~~xx~~ which permits withdrawal of notice for voluntary retirement before the intended date of retirement. However, this request of the applicant was also not considered and he was listed along with other persons, as retiring w.e.f. 31.1.90(AN). vide order of General Manager dated 25.1.90. However, the applicant relinquished the charge of the post of XEN/Bridge/Open Line in the afternoon of 31.1.90. He submitted a further appeal to Secretary, Railway Board on 9.5.90 against the rejection of withdrawal of voluntary retirement. Finding no response, the applicant filed this OA under Section 19 of the Administrative Tribunal Act, 1985 praying for the following reliefs:-

"(i) To set aside and quash impugned retirement orders dated 9.11.89 and dated 25.1.90(A-1 & A-4 respectively) and the Rejection of request for withdrawal of Notice, dated 26.12.89 being badly vitiated.

Contd....3

- ii) direct/command/direct the Respondents to deem the applicant continuing in service as XEN Bridge(O.L.) on 31.1.90 and allow him to resume the charge of his duties.
- iii) direct the Respondents to grant all consequential benefits of seniority and promotion.
- iv) direct the respondents to pay all the wages and allowance etc. from the date of illegal voluntary retirement i.e. 31.1.90 with penal interest..."

2. The respondents in their reply contended that in accordance with the extant Railway Board's instructions in the matter of granting permission to withdraw notice of voluntary retirement, the competent authority has absolute discretion either to grant or to refuse. As in this case the competent authority has refused the grant of permission, the order is perfectly in order. The applicant has filed a rejoinder also reiterating the facts averred in the OA.

3. We have gone through the pleadings and heard the learned counsel for the applicant Shri G.D. Bhandari and Shri B. K. Aggarwal, who appeared as counsel on behalf of the respondents.

4. It is well settled by now that when a Government employee changes his mind and requests for withdrawal of his voluntary retirement and if such request is made before the intended date, the competent authority has to take into consideration of the change in the circumstances and if it is satisfied that it is a

6

bonafide case, grant the request. If any authority which can be held in the decision by the Hon'ble Supreme Court in Balram Gupta Vs U.O.I. A.I.R. 1987 S.C. p.2354. In this case, the applicant had made a request for withdrawal of the notice of voluntary retirement well in advance of the date of retirement. In the order of rejection no reason has been given as to why the petitioner's request was not accepted. Therefore, we are not convinced that the decision of the competent authority to reject the request is a well considered decision. However, the facts and circumstances of the case have driven the applicant to a anomalous situation where he is barred from claiming any benefit even of the decision of the General Manager cannot be said to be a well considered one because it is seen that on 31.1.90 without any compulsion whatsoever the applicant had relinquished the charge of the post of XEN/Bridge/Open Lines(Annexure-6). Annexure-6 is the copy of memo of relinquishment of charge of XEN by the applicant which reads as thus:

" In terms of GM(P)'s Office Order No.34 circulated under endorsement No.Ka/210/5-2/DGN/1 dt. 25.1.90, the undersigned has relinquished the charge of the post of XEN/Bridge/Open Lines in the afternoon of 31.1.90 after voluntary retired from Rly. service..." (Signed by the applicant).

5. Relinquishment is a voluntary act. There is no case for the applicant that the relinquishment of charge was made by him under protest or that he was compelled

Contd...5

✓

to hand over charge. If the applicant was aggrieved by the order dated 25.1.90 in which it was mentioned that the applicant would stand retired with effect from 31.1.90, he should have refused to leave the charge and challenged the order before an appropriate forum, without any protest, since he had relinquished the charge his claim for continuance in service, cannot be accepted as he has already accepted the retirement. Under these circumstances, we find that the applicant is not entitled to any relief, and accordingly we dismiss this OA, leaving the parties to bear their own costs.

3  
(B. K. Singh)  
Member (A)

  
(A. V. Haridasan)  
Member (J)

dbc