

(19)

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH :: NEW DELHI

REVIEW APPLICATION NO.361/94 IN ORIGINAL APPLICATION No.1952/90

Dated New Delhi, this 3rd Day of December, 1994

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

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

Shri J.N.Srivastava
Ex-XEN-Bridge (Open Line)
North Eastern Railway
53, Laxmi Apartment,
Pocket-D, Sector IX
Rohini, New Delhi-110 085

.. Applicant

By Advocate : Shri K.K.Sharma
Vs.

1. The Union of India,
through the Secretary,
Railway Board, Rail Bhawan
New Delhi

2. The General Manager,
North Eastern Railway
Gorakhpur (UP)

.. Respondents

ORDER

(BY CIRCULATION)

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

The applicant in the OA has filed this Review Application praying that the final order passed in the OA 1952/90 on 1.9.1990 may be reviewed as the same suffers from an error apparent on the face of the records and also because ~~the~~ an important piece of evidence which was not available to the applicant at the time when the original application was finally heard, has now become available and that, if this piece of evidence was taken into account, the final order would have been different.

2. In the original application, the applicant had challenged the impugned orders of his voluntary retirement dated 9.11.89 and 25.1.90 and had prayed for a direction to the respondents to deem that the applicant continued

(20)

..2..

in service as XEN Bridge (O.L.) on 31.1.90 and to allow him to resume the charge of his office. After considering the rival contentions of the parties, and on a perusal of the entire material available on record, while holding that the decision of the General Manager to reject the applicant's request for with-drawal of the notice of voluntary retirement was not a well considered one, the relief prayed for in the OA was not granted, taking note of the fact that the applicant had voluntarily relinquished the charge of his office on 31.1.90 without protest, though he was aggrieved by the order dated 25.1.90, according to which, he would stand retired with effect from 31.1.90. The applicant has along with this review application^{dt.3.10.94} produced an affidavit^{of} one Shri RN Goil, a retired Chief Engineer of North Eastern Railway, in which Shri Goil has shown that the applicant, who was working under him was a competent officer, that he had protested against the order of the General Manager, North Eastern Railway dated 26.12.89 rejecting the applicant's request for permission to withdraw the notice of voluntary retirement through him on 15.1.90 enclosing a Railway Board Policy Circular dated 3.11.83, that even after the orders of the General Manager, North Eastern Railway, dated 25.1.90, retiring the applicant on 31.1.90 was received by the applicant, he had met him on 27.1.90 and conveyed his keen desire to continue in service even beyond 31.1.90, that ultimately as the General Manager did not agree to cancel the order retiring the applicant w.e.f. 31.1.90, he advised the applicant to relinquish the charge without demur to avoid any disciplinary action being taken against the applicant.=

3. The applicant has stated in the review application that this affidavit of Shri Goil, which is an important piece of evidence, was not available with him when the application

...3

...3...

was heard, and therefore, the existence of this document is a ground for ~~retirement~~ review of the final order passed in the OA. He has further stated that in the final order, this Tribunal has held that the applicant relinquished the charge without any compulsion whatsoever, while, as a matter of fact, the applicant had in paragraph 4.12 of the OA stated that "orders for applicant's retirement on voluntary basis were issued and he was made to relinquish the charge of his post as XEN (Bridge OL) on 31.1.90 while he had almost 4 years to go on 31.1.94 to retirement on superannuation. Thus, the retirement was forced on him." This, according to the applicant, is an error apparent on the face of the record.

4. Having gone through the pleadings in the OA, the final order which is sought to be reviewed, the Review application and the affidavit of Shri Gail, I am of the considered view that there is no reason or circumstance which would warrant a review of the final order. The contention of the review applicant, that there is an error apparent on the face of the record, in the order as it was held therein, that the applicant had relinquished the charge voluntarily without any compulsion whatsoever, while the applicant pleaded in the OA that the retirement was forced on him, is not tenable at all.

5. In paragraph 4 and 5 of the final order, it has been made clear that the relinquishment of the charge of the office, by the applicant on 31.1.90 was a free and voluntary act by the applicant. This conclusion was arrived at, because the order dated 25.1.90, mentioning that the applicant would stand retired on 31.1.90 was received by the applicant long before 31.1.90 and he had without registering his protest, either in the document ^{by} which he relinquished the charge, or

22

...4...


by challenging the order before any appropriate forum, relinquished the charge. The mere fact that the applicant had averred in the OA that the retirement was forced on him, does not mean that the relinquishment of the charge by the applicant was not voluntary or under protest. Therefore, there is no error apparent on the face of the record, warranting a review of the final order.

6. Now, coming to the case of the applicant that the affidavit of Shri Goil, if taken into evidence, would have changed the final order and that this document, could not be produced before the application ^{was} / finally heard, I am convinced that both these contentions have no force at all. Even if the affidavit of Shri Goil was available on record at the time when the OA was finally heard and disposed of, I do not think that the conclusion would have been different. Shri Goil has only stated that, even after the receipt of the order of the GM dated 25.1.90 retiring the applicant on 31.1.90, the applicant had met him and conveyed his desire to continue in service even beyond 31.1.90 and that, as the persuasions of Shri Goil to consider the case of the applicant for withdrawal of his notice of voluntary retirement did not find favour with the GM, Shri Goil advised the applicant to relinquish the charge without any demur as he felt that disciplinary proceedings might be initiated against the applicant, if he did not do so. However, either acting on the ~~xxxxxxx~~ advice of Shri Goil or on his own volition, the applicant had relinquished the charge without registering any protest. If the applicant did not accept the retirement, he would have, even if he was made to hand over charge, stated in the document that his handing over of charge was under protest and without prejudice to his claim to continue in service. Therefore, the

...5

affidavit of Shri Goil, even if was in evidence and was considered, the decision would have been the same. Further, the production of the affidavit now, does not amount to discovery of an important piece of evidence, which could not be produced by the applicant, before the application was finally heard if he had exercised due diligence. ~~and~~ If the applicant had considered that the affidavit of Shri Goil would have been an important piece of evidence, there was nothing which stood in his way in ~~xxx~~ producing the affidavit before the application was finally heard and decided. It is a case of fishing out new evidence and not a discovery of already existing evidence, which could not be produced after exercising of due diligence. This is not at all a ground for review.

7. In the light of what is stated above, I am of the definite opinion that the Review Application does not disclose even prima facie, a case for review and ^{that} therefore the same is liable to be dismissed by circulation.


(A.V. HARIDASAN)
Member(J)

Dated: 31/12/94 1994

mvl