

Central Administrative Tribunal
Registration T.A.No.1391 of 1986 (Original Suit)

Jai Ram Singh Plaintiff
Vs.
Union of India Defendant

Hon.D.S.Misra, AM
Hon.G.S.Sharma, JM

(By Hon.G.S.Sharma, JM)

This original suit has been received by
the Court of II Additional Civil Judge, Dehradun under section 22 of the
Administrative Tribunals Act XIII of 1985.

2. The plaintiff was posted as Driver Grade 'A' in the Northern Railway at Dehradun and in due course he had to retire on attaining the age of superannuation. On account of his dissatisfaction with the working of the Locoshed Dehradun, he gave a notice/application dated 30.9.1980 seeking voluntary retirement. The plaintiff however, later on changed his mind and vide his letter dated 27.12.1980 sought to withdraw his aforesaid application for retirement. The plaintiff was served with the letter dated 30.12.1980 of the Divisional Personnel Officer (short DPO) Moradabad accepting his request for voluntary retirement. The plaintiff has challenged the validity of this order and his allegation is that after the withdrawal of his application for voluntary retirement, he could not be retired w.e. is illegal and without jurisdiction. As the railway authorities have directed the plaintiff to discharge the duties after the suit for the recovery of Rs.7180 as his pay arrears up to 31.5.81 with a declaration that the order of retirement is illegal and without jurisdiction.

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3. The suit has been contested on behalf of the defendant and in the written statement filed on its behalf, it was pleaded that the request of the plaintiff for voluntary retirement was acceded to vide letter dated 30.12.1980 and the plaintiff ceased to be in railway service w.e.f. 4.1.1981 and he is not entitled to claim any pay or other allowances after his retirement. The letter dated 30.12.1980 is not illegal and without jurisdiction but it is perfectly in accordance with law and is binding on the plaintiff and his claim for any pay and allowances is not maintainable under the law. After the transfer of the suit to this Tribunal, the defendant sought an amendment in the written statement and it has now been further pleaded that the order dated 30.12.1980 was personally served on the plaintiff on 4.1.1981 and at that time, the plaintiff did not protest against the acceptance of his request for retirement. His letter dated 27.12.1980 withdrawing his application for retirement was received by the Senior Divisional Mechanical Engineer (for short Sr.DME) through one K.P.Gautam on 13.1.1981 while he had already retired much before that. The plaintiff should have submitted his application for withdrawal through proper channel in time and the plaintiff now cannot resile ~~after~~ his having accepted the order dated 30.12.1980 on 4.1.1981.

4. In his rejoinder, it has been pleaded by the plaintiff that the DPO, who is said to have accepted his retirement, was not competent to do so. On the periodical medical examination of the plaintiff on 30.12.1980 in the retirement forms filled by the Welfare Inspector, the date of his retirement was shown to be 31.3.1987. The plaintiff had not tendered his retirement voluntarily but was forced to submit a complaint to the Divisional Railway Manager (for short DRM) stating that in case his grievances were not redressed, he would like to retire. In this background he had submitted his application for the withdrawal of his application for

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retirement before his request for retirement was actually accepted. As the plaintiff had not sent his application for voluntary retirement through proper channel, he had also not sent his application for its withdrawal through proper channel. He has no concern with any K.P.Gautam. The APO who has signed in the name of the DPO is not the competent authority to accept the retirement of the plaintiff and the plaintiff is entitled to more than the amount claimed by him in his suit.

5. As the application for voluntary retirement was sent by the plaintiff on 30.9.1980, he should have been retired on the expiry of three months treating this application as a notice from his side but as he was retired from a subsequent date, i.e. 4.1.1981, it created certain difficulties at the time the arguments were heard in this case on the first date and on the request of the learned counsel for the parties, the hearing was adjourned and arguments were heard again and it was explained on behalf of the defendant that though the application of the plaintiff for voluntary retirement was accepted w.e.f. the due date 30.12.1980, the communication of the order from the Divisional Headquarters Moradabad to Dehradun where the plaintiff was posted took some time and the order could be served on the plaintiff only on 4.1.1981 and the plaintiff was treated to have retired w.e.f. that date. We find no difficulty in accepting this legal position.

6. Now the main question which arises for determination in this case is whether the plaintiff had withdrawn his application or notice for voluntary retirement before it was actually accepted by the defendant? The plaintiff has filed some original documents as well as copies of some other documents which are relevant for the purposes of inquiry before us. On the original application dated 30.9.1980 of the plaintiff for voluntary retirement, the processing started in DRM's office in Dec.1980 and on

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10.12.1980 a note was presented about it stating that the DPO was the competent authority to accept the request of the plaintiff. This note was examined by the Sr.DME besides other officers and on 15.12.1980, the Sr.DME forwarded the note to the competent authority, the DPO, with the remark "may be accepted". The DPO put his signatures on that note on 20.12.1980. We are, therefore, of the opinion that the request for voluntary retirement of the plaintiff was actually accepted by the DPO on 20.12.1980. On 26.12.1980, the office put up a note before the APO for the perusal of the order and his signatures. This order is the order dated 30.12.1980 signed by APO on behalf of the DPO Moradabad. The month and year (12/1980) were typed and the space for date was left blank. The date 30 has been written by hand by the APO on this letter as appears from its original paper no.49 on the record. In this way, the draft of the letter was signed on 30.12.1980 by the APO on the basis of the retirement accepted by the DPO on 20.12.1980. On his own showing, the plaintiff has sent the application for the withdrawal of his earlier application on 27.12.80. Its copy has been filed as annexure 3 by the defendant and it bears an endorsement by Sr.DME that it was handed over to him by K.P.Gautam on 13.1.1981. This endorsement is dated 5.2.1981. On this basis, it was vehemently argued by the learned counsel for the plaintiff that how the Sr.DME could remember the date 13.1.1981 when this letter was given to him by K.P.Gautam and why he did not pass any order on it on that date. Much can be said about it but we find nothing foul on the part of Sr.DME in this connection. At the earliest the Sr.DME could pass some orders on that application on 13.1.1981 when it is stated to have been produced to him by K.P.Gautam. That date too was subsequent to the acceptance of the request of the plaintiff for the retirement. The Sr.DME had nothing to do ^{with} ~~on~~ this application and as such, even on 5.2.1981, he did not pass any order on it. He could remember the date 13.1.1981 for various reasons.

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One of them could be that they might not have met on any date between 13.1.1981 and 5.2.1981. In any case, the plaintiff has not been able to establish by any reliable evidence before us that he had actually handed over his this application of withdrawal on 27.12.1980 to any competent authority. On the other hand, he has boldly taken the plea that he was not obliged to send it through proper channel. In case, the application was not sent through proper channel and it did not reach the competent authority in time, he cannot blame the railway administration for the same. Thus according to our view, the application of the plaintiff for the withdrawal of his request for retirement did not reach any competent authority till his retirement was accepted and a letter for formal intimation was issued to him. The withdrawal made subsequent to the acceptance of his request is, therefore, of no legal consequence and cannot save the retirement of the plaintiff made effective from 4.1.1981. There is thus, no force in his contention.

7. The plaintiff became wiser during the pendency of this case and in his rejoinder he raised two new pleas ; first, the request for voluntary retirement was really not a request for retirement but it was a complaint and second, that the DPO or APO was not competent to accept his retirement. According to the settled law of pleadings, every case has to be decided on the basis of the pleas taken by a party. In the plaint, the plaintiff did state that he was not happy with the working of the Loco Foreman, Dehradun and he was being forced to run the defective engines. He, therefore, decided to seek voluntary retirement and sent the letter dated 30.9.1980. We are ^{not} convinced with the arguments advanced on behalf of the plaintiff that the request made by him for retirement was not made voluntarily but was made under compulsion. Further, we have gone through his earlier letter dated 30.9.1980 on record and it nowhere shows that in any manner it contained a request for conditional retirement. It was mentioned in the application that he had already completed 38 years 4 months and 28 days railway service and requested to accept his voluntary

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^{in the plaint of}
retirement. In the absence of a specific plea, we are, therefore, unable to accept the contention of the plaintiff that it was not a request for voluntary retirement.

8. Regarding the lack of jurisdiction on the part of DPO or APO to accept the retirement of the plaintiff, we find nothing in the plaint and this fact was raised for the first time in the rejoinder. The plaintiff did not produce any document, rule or circular letter of the Railway Board to show that the DPO was not ^{the} competent authority to accept his voluntary retirement. We, therefore, do not find any force even in this contention.

9. There is no other point for consideration and in the result the case merits dismissal.

10. The suit is accordingly dismissed without any order as to costs.

[Signature]
31/8/87

MEMBER (A)

[Signature]
31/8/87

MEMBER (J)

Dated: Aug, 31, 1987
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to the years 1960 and 1963. As far as the punishment in the year 1964 is concerned since the entries have ^{or not} been ~~entered~~ ^{initialed} by an officer, these entries cannot be taken as authentic. In any case the record shows that they have had no effect on the plaintiff. Therefore, no action is required on this ^{or} prayer ^{or} regarding this entry.

10. The application is disposed of in the above terms with no order as to costs.

S. L. Arora
MEMBER (J)

अनुराग जोशी
MEMBER (A)

Dt. Feb. 17th 1989.

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