

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 24th DAY OF OCTOBER 1997

Original Application No. 78 of 1993

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.D.S.BAWEJA, MEMBER(A)

R.D. Agrawal, aged about 55 years
S/o Late P.D. Agrawal, r/o 171/5
Civil Lines, Kamla Colony
Bareilly, U.P.

.. .. Applicant

(Applicant in Person)

Versus

1. Union of India through the General Manager
Northern Railway, Baroda House,
H.Q. Office New Delhi.
2. The Divisional Railway Manager,
Northern Railway, D.R.M. Office
Moradabad.
3. Sri Shiv Raj singh, Divisional
Commercial Manager, Northern Railway
DRM Office, Moradabad.

.. .. Respondents

(By Advocate Shri A.K. Gaur)

O R D E R (Reserved)

JUSTICE B.C.SAKSENA,V.C.

The applicant had appeared in person and had submitted written arguments to which by way of reply written arguments have also been filed by the learned counsel for the respondents. We have perused the pleadings on record as also the submissions in the written arguments of the parties.

2. The facts in short giving rise to the present OA are that the applicant had sought voluntary retirement and had served ~~with~~ a notice on 21.5.92 providing three months which expired w.e.f. 20.8.92. Through this OA the applicant challenges an order dated 1.12.92 imposing the punishment of dismissal from service pursuant to completion of a departmental inquiry in respect of charges contained in charge sheet No.Vig/Commercial/60/58/RB dated 19.9.88

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The applicant has also sought a direction to be issued to the respondents to treat the applicant as having retired from service on 20.8.92 and as being entitled for all retiral benefits as admissible under law.

3. The main thrust of the submission of the ~~learned counsel~~ ^{for the} applicant is that the notice of voluntary retirement dated 20.5.92 came into effect after expiry of three months period on 20.8.92 and consequently thereafter any order of punishment viz specifically the order dated 1.12.92 dismissing him from service is non-est. The respondents case is that since the departmental proceedings against the applicant on the basis of the charge sheets dated 19.9.88 referred to hereinabove and another charge sheet No.41-49/RNU-TRC-92 dated 24.6.92 were pending there was no question of the applicant being eligible for seeking the voluntary retirement.

4. It would be relevant to indicate that against the charge sheet dated 24.6.92 the applicant had filed another OA NO. 1001/92 before the Allahabad Bench of the Tribunal. Through that OA he had also challenged an order dated 27.5.92 placing him under suspension. The said OA was disposed of at the admission stage itself. The plea of the applicant was that the charges against him ^{were} absolutely false and ^{suspension order} ~~was~~ passed with retrospective effect on account of bias since he had instituted several cases against the Railway Administration. The Division Bench took the view that whether the charges against the applicant are correct or not has to be decided by the Enquiry officer and not by the Tribunal. It further took the view that since the charges levelled ~~against~~ ^{are} grave in nature it was within the jurisdiction of the disciplinary authority to place the applicant under suspension ~~and~~ no intervention of the Tribunal ^{was} therefore called for. The D.B accordingly dismissed the OA with the observation that ^{the} applicant shall

submit~~ted~~ reply to the chargesheet within a period of four weeks and thereafter the inquiry shall be concluded within a period of three months. May it be, by taking day today proceedings and the applicant shall fully co-operate with the inquiry.¹¹ It was further provided that if inspite of full co-operation by the applicant the inquiry ~~is~~ not ~~being~~ concluded within the stipulated period it will be open to the applicant to approach the Tribunal. bcl

5. The record of OA 1001/92 further shows that the applicant filed MA 2586/94 indicating that since the stipulated period has lapsed and the inquiry has not been concluded the applicant is entitled to the relief claimed in OA 1001/92. The said application came up for orders before another D,B .B By an order passed on 7./11/94 it was held that the OA had been finally disposed of. That being so the OA cannot be revived by filing a misc. application. It was held that ~~the~~ M.A. No. 2586/94 was not maintainable and it was therefore rejected. However, in the order dated 7.11.94 it was provided that the applicant if aggrieved by final order passed in the departmental proceedings may file fresh case subject to limitation. The applicant in this M.A no. 2586/94 for the first time indicated that on 21.5.92 he ~~where~~ had sought voluntary retirement and took the plea that after expiry of three months notice w.e.f. 20.8.92 the voluntary retirement has taken effect and consequently no departmental proceedings can be held against him. These facts have relevance as would be evident from our discussion herein~~below~~. The contention of the applicant is that after expiry of three months notice period seeking voluntary retirement the applicant ceases to be in service. In effect the submission is, though not so spelled out, that the jural relationship of master and servant between the Railway Administration and the applicant came to an end on expiry of the three months notice period and as such, the order of punishment dated 1.12.92 is non-est. bcl

6. The factual situation in the present case in view of the facts noted hereinabove is that before expiry of the notice for voluntary retirement another charge sheet had been issued against him and the applicant had been placed under suspension. He challenged the order of suspension as also the chargesheet. The OA was dismissed and the effect of the order passed in OA 1001/92 dated 18.8.92 is that it would be open to the respondents to pass an order for punishment against the applicant within a period of four months thereafter. As a matter of fact, however, the respondents in their pleadings have indicated that since an order of punishment had been passed against the applicant pursuant to another chargesheet dated 19.8.88 the disciplinary proceedings pursuant to chargesheet dated 24.6.92 have been kept in abeyance. In our opinion, the circumstance that no punishment order pursuant to chargesheet dated 24.6.92 which was the subject matter of OA 1001/92 have been passed does not detract from the factual situation that the jural relationship was to continue till December 1992. This is further supported by the fact that M.A. 2586/94 indicating submission of notice of voluntary retirement had been rejected.

7. The applicant in his written notes of argument placed reliance on several decisions which may now be noted and dealt with. However, before analysing the said decisions it is also relevant to indicate that neither the applicant nor the respondents have made reference to the statutory rules governing voluntary retirement of a railway servant. We, on our own, however ~~take~~ ^{take} judicial notice of the relevant provisions ~~and indicate~~ ^{and indicate} The relevant provision is

contained in Rule 1802 (b) of the Indian Railway Establishment Code Volume 2 which reads as under:

1802(b)(1)

Any railway servant may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years if he is in group 'A' of Group 'B' service or post (and had entered Govt. service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years: Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension who seeks to retire under this clause

The other rule is Rule 1803(b) which reads as under:

1803(b)

A railway servant who is governed by any of the pension rules, may retire from service at any time after completion of 30 years of service qualifying for pension, after giving notice in writing to the appropriate authority, at least three months before the intended date of retirement:

Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension, who seeks to retire under this clause.

It may be noticed that except for difference in the age when the said notice of voluntary retirement could be given the provision in both the rules are identical.

8. Now we may analyse the decisions relied upon by the applicant.

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(1) Kailash Chandra Mohanty Vs. State of Orissa and Ors
reported in 1990(3) S.L.R pg 236.

This is a decision by the Orissa Bench of the CAT. The provision applicable and considered in the said case was Rule 836 of the Police Manual and Orissa Service Code, Rule 71(a)-Proviso. In the said case the applicant had sought voluntary retirement w.e.f. 2.11.81 and had served three months notice. The Director General of Police had issued instructions to concerned officers to allow the applicant to retire. However, no communication was sent to the petitioner. By an order dated 27.9.85, effective from 2.10.85 the applicant was dismissed from service. The said order was challenged through an OA and it was quashed holding it to be illegal as notice by petitioner for voluntary retirement became effective from 2.11.81 and he ceased to be in service thereafter. The Bench had noted that the petitioner's case was covered by the modified scheme under the Finance Department Memorandum dated 28.2.78. The bench noted that Para VIII (B) had provided that even where the notice of voluntary retirement is given by a Government servant requires acceptance by the appointing authority, the Government 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. In the OA before us, the provision in Rule 1802(b)(1) or Rule 1803(b) is not ~~inpar~~imateria. There is no provision that the government servant giving notice may presume acceptance or that the retirement shall be effective in terms of the notice unless the competent authority issues a notice to the contrary before the expiry of the period of notice. Since the provision which came up for consideration in the said case is not ~~inpar~~imateria no advantage can be drawn by the applicant from the said decision.

9. The next decision^{is} of the Rajasthan High court reported in 1991 S.L.J pg 173 Usman Khan Vs. State of Rajasthan. In this case the relevant provision was the Rule 244(1)(a) of the Rajasthan Service Rules, 1951 as also Rule 244(i)(b). This decision again invokes provisions which are not in pari-materia with the rule with which we are concerned in the present OA and the case has proceeded on the basis of the provisions applicable in that case.

10. 1990(3) SLJ Gummadi Sri Krishna Murthy Vs. the District Educational Officer, Guntur and Ors.

In the said case a notice of voluntary retirement had been given. It was neither rejected nor accepted within the statutory period and it was held that the notice lapses after expiry of three months if it is not accepted or rejected. The petitioner in the said case sought to withdraw the notice after expiry of three months period. Ignoring the withdrawal of notice, the retirement was accepted by the authority. On a consideration of the provisions of the Andhra Pradesh revised Pension Rules 1980 Rule 43 it was held that the retirement order was illegal even after expiry of notice period and the withdrawal of notice of voluntary retirement was valid. This decision is also unhelpful since neither the facts nor the statutory provision considered therein have any similarity to the facts and the statutory provision in the case in hand.

11. V. Krishnamurthi Vs. Union of India and another

reported in 1989(4) SLR pg 601. From the facts of the said case it appears that the applicant had given three months notice seeking voluntary retirement under the Provisions of FR-56(k) and during the pendency of the said notice an order under FR-56(J) compulsorily retiring the applicant was passed. In these circumstances the question considered by the Division Bench was whether the order of compulsory retirement was valid. The Division bench took

the view that the factum of notice of voluntary retirement had not been placed for consideration before the Screening Committee which made the recommendation for compulsory retirement and therefore it ~~is~~ held that the said order of compulsory retirement was illegal.

12. The next decision relied upon is a decision of the Punjab and Haryana High court in re:

Dr.Mrs. Santosh Gupta, Medical Officer Vs.

The State of Punjab and Others. reported in
1991(2)SLR 145.

In this case the provision of Rule 3(3) of the Punjab Civil Services(Premature Retirement) Rules 1965 were considered. The said rule provided that an employee after completing 20 years qualifying service may,by giving notice of not less than three months in writing to the appropriate authority, retire from service, and if the necessary permission for retirement is not refused before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the aforesaid period.

Evidently, the later specific provisions in Rule 3(3) which was considered in the said case are totally absent in Rule 1802 of the Indian Railway Establishment Code Volume 2. Thus, this decision again is distinguishable.

13. Various other deccisions have been indicated in the written notes of arguments. It is not necessary to refer to all the said cases. We have, however, gone through the said decisions and find that the statutory provision which came to be considered in the said cases is not ~~inparimateria~~ with the provision with which we are concerned and the facts also are not similar.

14. The applicant has placed reliance ~~on~~ a decision of Hon'ble Supreme court in Union of India Vs. Sayed Muzaffar Mir reported in 1995 SCC(L&S) 256. This decision of the Hon'ble Supreme court arises out of a decision of CAT Bombay bench relating to a railway servant. Therein a

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railway servant had given three months ^{notice} seeking voluntary retirement under provisions of Rule 1803(b)(1). During the statutory period of notice no order was passed by the authority concerned either under proviso to Rule 1802(b)(1) with-holding permission to retire or under rule 1801(d) retaining the railway servant in service. An order of removal from service was passed on 4.11.85 while the period of three months notice had expired on 21.10.85. The Tribunal held the order of removal from service to be non-est. The Hon'ble Supreme court affirmed the judgment of the Bombay Bench of the Tribunal.

15. The facts so far as the giving of notice for voluntary retirement, expiry of the period of notice, and non passing of orders by the relevant authorities are also present in the OA before us. This decision therefore squarely applies and supports the applicant. Strangely enough, the applicant in his notes of arguments has cited this decision and other decisions which we have referred to. The learned counsel for the respondents in his written arguments in reply has not cared to cite any relevant decisions so as to meet the decisions cited by the applicant. However, from the register of case law maintained by one of us we find there are two subsequent Supreme court decisions which need to be noted. The earlier decision in union of India Vs. Sayed Muzaffar Mir came up for consideration in a subsequent decision viz Dr. Baljeet Singh Vs. State of Haryana reported in 1997 SCC(L&S) 313. In this case the Punjab Civil Services Rules, rule 5.32(B) was considered. We find that the said rule is ~~in~~ ⁱⁿ ~~prima~~ ^{prima} materia with Rule 1802 of the Indian Railway Establishment Code Vol-2 with which we are concerned. In the said case a notice for voluntary retirement ^{was} ~~is~~ tendered on 20.9.93. The applicant handed over charge on 11.2.94 and thereafter the authorities by proceedings dated 25.2.94 declined to accept his retirement.

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This order was challenged before the High court and the High court refused to interfere with the order passed by the government. The matter thereafter came up before the Apex court. In the facts of the said case it appears that criminal prosecution for various offences under the IPC were pending trial against the appellant. the Hon'ble Supreme court noted the argument of the learned counsel for the applicant that under the relevant rule the appellant was entitled to retire on expiry of three months notice which he had already tendered and he was entitled to relinquish his office from the said date. In support of this submission reliance was placed in the earlier supreme court decision in Union of India Vs. Sayed Muzaffar Mir. The Hon'ble Supreme court however, distinguished the earlier decision and observed:

"When serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or necessary disciplinary action should be taken under the law. Therefore, mere expiry of three months' period of notice given did not automatically put an end to the jural relationship of employer and employee between the Government and the delinquent official. Only on acceptance by the employer of resignation or request for voluntary retirement their jural relationship¹ ceases. In this case since serious offences were pending trial against him, the Government have rightly refused to permit him to retire voluntarily from service pending the action against him."

It was further held that the ratio in the earlier decision in Union of India vs. Sayed Muzaffar Mir had no application to the fact situation and cannot be applied/extended to all situations. It was observed each

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case should be considered in its own backdraw of facts. Until the jural relations of the employer and employee come to a close according to law, the employer always has power to decide and pass appropriate order.

Another significant observation which contained in para 4 of the judgment:

" It is seen in the service jurisprudence that before an incumbent attains superannuation while an enquiry is contemplated against him, it may be open to the Government for completing enquiry or to initiate action against a delinquent employee. When such is the situation, it will always open to the Government to decide whether or not to permit an incumbent to retire from service."

A further significant submission that was noted was that the petitioner had handed over charge which was accepted by the respondents and therefore there was no scope for the Government to refuse acceptance of the resignation. The Hon'ble Supreme court observe:

" If the contention is given acceptance, it would lead to deleterious consequences. For instance, if a public servant commits misappropriation of funds of the Govt, and after tendering his resignation and handing over charge walks away with the booty. Acceptance of such contention would lead to serious repercussions and consequences flowing therefrom would be disastrous to maintain discipline in service. Under these circumstances, until the acceptance or rejection of request for voluntary retirement is communicated to the petitioner, the petitioner

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is required to remain in office and his handing over the charge without any order of the competent authority and acceptance of his request for voluntary retirement have no result."

In the facts of the present OA as noted by us earlier the applicant was ordered to be placed under suspension and chargesheet was also issued to him. He filed OA No. 1001/92 We have analysed the effect of the order passed while disposing of the said OA as also the order passed in M.A. No. 2586/94. In the light of the said we have already held hereinabove that the respondents had the right to pass an order of punishment in December 1992 and the jural relationship as a matter of fact did continue. In this context, it is further relevant to indicate that the applicant sent a reminder to the notice of voluntary retirement which is dated 30.8.92 after indicating that the period of notice had expired on 20.8.92. The applicant stated that "it is presumed that you have accepted my voluntary retirement but confirmation is requested". He further stated that "necessary orders may kindly be communicated as I am not in a position to serve the railway administration more." Thus, this was after the expiry of the notice period. The applicant wanted to be informed of the sanction and acceptance of his request for voluntary retirement. In both these documents the applicant has given his designation as Chief Reservation Supervisor, Northern Railway. This is relevant since after the impugned notice of dismissal from service dated 1.12.92. The applicant in other documents filed alongwith the OA as also the rejoinder has indicated himself to be Ex. C.S.R. In Annexure A-3 filed alongwith the rejoinder which is dated 226.11.92 the applicant had stated "I am always ready to co-operate with you to maintain the official relations as master and

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servant.". These facts go to show that the applicant did not consider severance of the jural relationship of master and servant even after the expiry of the period of notice for voluntary retirement and since as a matter of fact the jural relationship continued beyond the said date we are not inclined to hold in the facts and circumstances of this case that the impugned notice of punishment of dismissal from service dated 1.12.92 is non-est.

The other subsequent Supreme court decision is reported in 1997 SCC(L&S) 941 Power Finance Corporation Ltd Vs. Pramod Kumar Bhatia. In this case the respondent who was an employee of the Corporation had applied for voluntary retirement pursuant to a scheme framed by the Corporation to relieve surplus staff. Initially by order dated 20.12.94 the Corporation accepted respondent's voluntary retirement w.e.f. 31.12.94 subject to his clearance of outstanding dues, but subsequently the appellant Corporation withdrew the scheme realising its mistake that the scheme was not applicable to it because there was no surplus staff. The respondent, however, by his letter dated 6.1.95 requested the appellant-Corporation for deduction of his outstanding dues from the amount payable to him, and also requested for formal relieving order w.e.f. 31.12.1994. In these set of facts the Hon'ble Supreme Court held :

"The order dated 20.12.1994 was a conditional order. it did not become effective until the dues were paid. The respondent himself requested for adjustment of outstanding dues but no such adjustment was made. He therefore rightly understood that unless he was relieved of the duties of the post after the payment of the outstanding dues, the order accepting his voluntary retirement did not become effective."

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Our observations hereinabove in the context of the facts of the present OA also runs in the same vein the significant observation in this case. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the voluntary retirement or resignation the jural relationship of the employee and the employer does not come to an end.

The learned counsel for the respondents on his written arguments has cited the following decisions:

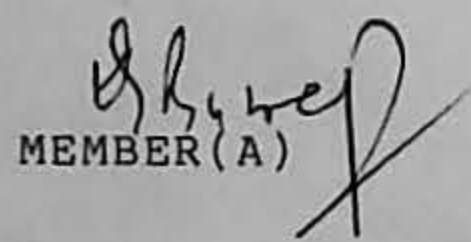
- (1) Balram Gupta Vs. Union of India and Ors AIR 1987 SC 2354
- (2) AIR 1978 S.C 694, A.I.R 1981 S.C 1829
- (3) Balbir Singh Negi Vs. Union of India and Ors J.T. 1996(1) S.C. pg 126

(4) 1992 (20) ATC 778

(5) 1988(7) ATC 844 and 950

In the said cases the question considered has no nexus with the question which has cropped up for consideration before us. The said decisions are wholly irrelevant.

On a conspectus of the discussion hereinabove we hold that the OA lacks merit and is accordingly dismissed. No order as to costs.


MEMBER (A)


VICE CHAIRMAN

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Dated: october 24 1997

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