

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A.NO. 321/90
T.A.NO.

DATE OF DECISION 15.7.98

Shri Chandulal M.Vaidya

Petitioner

Mr.K.K.Shah

Advocate for the Petitioner [s]

Versus

Union of India & Ors.

Respondent

Mr.N.S.Shevde

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan : Member (A)

The Hon'ble Mr. P.C.Kannan : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lerdships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

rw

Shri Chandulal M.Vaidya,
4540, Padav
Sardar Chowk,
Dahod-389 151.

: Applicant

(Advocate: Mr.K.K.Shah)

Versus

1. Union of India
1. Notice to be served through
Shri Subramaniyam or his
Successor, General Manager(E)
Western Railway, Headquarter
Office, Churchgate,
Bombay-400 020.
2. Chief Workshop Engineer,
Headquarter Office,
Western Railway,
Churchgate, Bombay.
3. Dy.Chief Mechanical Engineer
Western Railway,
Loco Workshop,
Freeland Gunj,
Dohad-389 160.

: Respondents

(Advocate: Mr.N.S.Shevde)

: JUDGMENT :

O.A.321/90

Date: 15.7.98

Per: Hon'ble Mr.V.Radhakrishnan

: Member(A)

The applicant has come to this Tribunal praying
for the following reliefs:-

"(A) This Hon'ble Tribunal may please to quash
and set aside the order dated 22.7.1989 issued
by the respondent No.3 and direct the res-
pondent to implement the order of the appellate
authority dated 14.3.1990 with all consequen-
tial benefits and the period between volunt-
ary retirement i.e. 31.7.1989 and the super-
annuation date i.e. 31.7.1990 may be considered
as continuous service and all the benefits
accrued to the applicant in between may be
paid as a consequential benefits in the

BL

interest of justice.

(B) This Hon'ble Tribunal may please to allow this application with cost.

(C) Any other order or directions may be deemed fit in the interest of justice may be passed."

The applicant was working with the respondents as Head Clerk. He had applied for voluntary retirement vide application dated 1.5.1989. Thereafter he withdrew the same on 17.7.1989. However, the respondents vide impugned order dated 22.7.1989 (Annexure-A) informed him that his request for voluntary retirement was accepted w.e.f. 31.7.1989 and the competent appointing authority i.e. Dy.CME(L) Dahod after considering his request for withdrawal of notice for voluntary retirement had not approved the same and consequently he was retired from service on 31.7.1989. The applicant made a representation to the Chief Engninee dated 23.8.1989 (Annexure A-1) against the decision of the Deputy CME alleging that he had withdrawn the voluntary retirement before it was accepted as he wanted to clear the charges framed against him / vide memorandum dated 22.7.1989 which was issued after the notice of voluntary retirement. In response to his letter, the appellate authority accepted his request and asked him to contact the Dy.CME on the ~~ter~~ terms and conditions under which he was to be taken on duty. The Dy.CME advised the applicant vide letter dated 2.4.1990 (Annexure A-4) that in

in order to allow him to resume duty he was required to refund the sum of Rs.1,23,257.00 paid to him as retirement benefits as well as the pension amount received by him. The applicant again contacted the Dy.CME(L) vide letter dated 4.4.90 (Annexure A-5) and stated that out of the amount of retirement benefits received by him he had purchased National Security Bonds of Govt. of India for Rs.90,000, and he was surrendering them to the Government. The balance amount received by him was tendered in cash. However, he was informed that unless he refund the entire amount in cash he could not be allowed to resume duty. The applicant attained the normal age of superannuation on 31.7.1990.

The applicant's case is that according to the Railway Board's Circular notice of voluntary retirement may be withdrawn subsequently with the approval of the appointing authority the request made before the expiry of notice irrespective of the fact that whether the retirement had been accepted or not. He had submitted his request for withdrawal of voluntary retirement on 17.7.89 before the expiry of three months notice period as until such time he was not informed by the acceptance of the resignation he should have been allowed to withdraw the same and allowed to resume duty. Had he been allowed to do so, he would have earned further increment and his retirement benefits would have been higher when he retired on normal age of superannuation on 31.7.90. He also stated that as soon as he received the retirement benefits he purchased Govt. of India's bonds and he could not

Ab

refund the entire amount received by him in cash but he had tendered the bonds and the balance of amount in cash which was not accepted by the Dy.CME. As he was not able to refund the retirement benefits in cash his request for accepting the bonds in lieu of cash should have been accepted and he should have been allowed to resume duty.

The main contention of the respondents is that the competent authority had not accepted the request for withdrawal of the voluntary retirement notice of the applicant which was received after acceptance of the request for voluntary retirement. After the appeal of the applicant was allowed by the higher authority he was asked to refund the entire amount of retirement benefits in cash as a condition for taking him on duty but instead of refunding the amount in cash the applicant submitted Govt. of India's bonds for major part of the amount in cash which is permissible under the rules. As the applicant did not fulfil the condition of refunding the amount for retirement benefits in cash, he was not allowed to resume duty. Hence, they have prayed for rejection of the application.

The first question raised by the applicant in this case is whether the applicant had any right to withdraw the request for voluntary retirement. As per the Railway Board's letter dated 9.11.77 'A notice of voluntary retirement may be withdrawn

lgl

subsequently only with the approval of the appointing authority provided the request for such withdrawal is made before the expiry of notice." Again as per the Railway Board letter dated 1.6.81 "the Railway servant has right to withdraw the notice of voluntary retirement before the expiry of notice period." In the Railway Board's letter dated 6.11.90 the Board has admitted that there was a confusion whether the appointing authority has a right to refuse the request for withdrawal of notice from the employee or not. It was clarified in this letter that the notice of voluntary retirement can be withdrawn only "with the specific approval of the appointing authority". However, this letter was issued only on 6.11.90 the applicant had given his notice of withdrawal on 17.7.89 i.e. before the issue of this letter. Hence, the applicant has right to withdraw the voluntary retirement. However, this question is of academic interest as the applicant was allowed to withdraw the notice of the voluntary retirement by the appellate authority but he was asked to refund the entire amount of retirement benefits in cash. The decision of the appellate authority to allow him to withdraw his request for voluntary retirement was also issued only on 14.3.90 i.e. after seven months from the date of issue of letter accepting his voluntary retirement. The condition that the applicant should refund the entire amount in cash after such a long time would appear to be unreasonable that the applicant could not be expected to keep his retirement benefits received in

Ab

cash form. He had purchased the national security bond perhaps under the impression that his request may or may not be accepted. The applicant offered to deposit the entire bonds purchased by him to the department along with balance cash but the respondents did not accept his offer and he was not allowed to resume duty. With the result the applicant could not resume duty before his normal date of superannuation i.e. 30.7.90.

After going through the facts of the case, we feel that the ends of justice will meet if the period between the date of voluntary retirement of the applicant i.e. 30.7.89 and the date of normal age of superannuation i.e. 30.7.90 is considered for the purpose of grant of increment only and after granting such increment, notional pay of the applicant should be fixed on 31.7.90 and based on his notional pay on the date of retirement, his gratuity and pensionary benefits should be worked out and paid to him. Accordingly, the respondents are directed to grant notional increment to the applicant for the period between voluntary retirement i.e. 30.7.89 and the superannuation date i.e. 31.7.90 and refix his gratuity and pension and leave encashment and pay him the arrears within three months from the date of receipt of a copy of this order.

With the above directions, O.A. stands disposed of. No costs.

P.C.Kannan
(P.C.Kannan)
Member (J)

V.Radhakrishnan
(V.Radhakrishnan)
Member (A)