

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**O.A. NO.** 92 OF 1990~~**T.A. NO.**~~**DATE OF DECISION** 14-02-1995

Shri Hariram Dube

Petitioner

Mr. B.B. Gogia

Advocate for the Petitioner (s)

Versus

Union of India & Another

Respondent

Mr. Kyada

Advocate for the Respondent (s)

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The Hon'ble Mr. N.B. Patel, Vice Chairman

The Hon'ble Mr. K. Ramamoorthy, Member (A)

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 Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

/ No

Shri Hariram Dube,
Retd. Diesel Driver,
Quarter No.105/A,
Railway Colony,
Gandhidham.

..... Applicant

(Advocate : Mr. B.B. Gogia)

Versus

1. Union of India,
Through The General Manager,
Western Railway,
Churchgate,
Bombay - 400 020.

2. Divisional Railway Manager,
Western Railway,
Ajmer Division,
Ajmer (Rajasthan).

..... Respondents

(Advocate : Mr. Kyada)

J U D G M E N T

O.A. NO. 92 OF 1990

Date : 14-02-1995

Per : Hon'ble Mr. K. Ramamoorthy, Member (A)

This application is concerned with the question as to the stage at which a Govt. employee can withdraw his request for voluntary retirement.

2. In the facts of the present case, it is an admitted position that the applicant who was working as a Diesel Driver under Loco Forman, Ajmer Division, Gandhidham had sought voluntary retirement on 28th December, 1988 giving three months notice which would have normally expired on 28-3-1989. According to the applicant, however, he had withdrawn this request on 20-3-89 itself which is disputed by the respondents. In any case, it is also an admitted position that the respondents had allowed the applicant to

retire only vide order dated 8-8-89 and it is also an admitted position that he was actually allowed to retire on 10-8-89. The applicant as soon as he knew of a decision taken on 8-8-89 had immediately made according to him another representation dated 9th August, 1989 stating that he wanted to withdraw the earlier request. In spite of this request, the applicant was made to retire on 10-8-89 taking the plea that Govt. had already taken a decision in the matter to accept the voluntary retirement. He continued this very plea in his letter of 5-10-89 which was again rejected on 17th November, 1989 and reiterated in the respondents' communication of 6th December, 1989 (Annexures A/6 and A/7 respectively).

3. The respondents themselves have admitted the position that had the applicant withdrawn his resignation during notice period, the respondents were bound to consider the application and allow withdrawal of the resignation. The legal position regarding the admissibility of the withdrawal of notice within the time prior to the expiry of the notice period is an accepted position and even the respondents in their written statement submitted on 15-7-91 have stated "it is submitted further that in terms of Railway Board's instructions vide letter dated 1-6-1981, an employee can withdraw his request for Voluntary Retirement within a period of 3 months (Notice period)". It is the contention of the respondents that the applicant had not withdrawn his request during that period and the purported letter of 20th March, 1989 annexed at A/2 was only later brought in, and was an after-thought. The counsel for the applicant has denied this charge and stated that he has obtained the receipt of Loco Forman In-charge on the letter of 20-3-89 which had been produced at Annexure A/2. It is the contention of the applicant that the applicant

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should not be penalised for the failure of one of the employees of the respondents in not forwarding such a request in time. The respondents have not refuted this evidence by way of any affidavit from the concerned Forman In-charge of Loco Shed. As a reason therefor, the respondents have stated in their sur-rejoinder that "the name of Loco Forman given is not complete one as it has been said that Gagandass but no surname or anything has been shown and therefore respondents call upon the applicant to give full name and address of that person and contention raised by the applicant can be met with". It is surprising that the respondents Railways should give such an excuse since the Loco Forman In-charge at that particular point of time is well within the knowledge of the respondents and the formal denial by an affidavit of the Loco Forman In-charge could certainly have been given without the respondents waiting for further details from the applicant.

4. Be that as it may, the fact remains that the respondents have allowed the present applicant to continue in office beyond his expired notice period i.e. 20-3-89 and have allowed the applicant to work till August, 1989. A further point has been made by the respondents in support of their theory of the withdrawal letter on 20th March, 1989 being an after-thought, by stating that no reference to this withdrawal notice is found in the applications made on 9th August, 1989 or 5th October, 1989. While there is some merit in this doubt expressed by the respondents, this has to be weighed against the possibility that the applicant would have ceased to bother about his withdrawal application, the moment he is allowed to continue to work beyond March, 1989. This might explain the reason as to why he did not

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pursue the withdrawal of retirement application till 9-8-89 as he might have legitimately presumed that the withdrawal was accepted.

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5. The respondents have tried to explain the delay in accepting the resignation request on the ground that the first letter of Loco Forman of 4-1-1989, soon after receiving the voluntary resignation request dated 28-12-88, had not been received. Only when Gandhidham Loco Forman had reminded the respondents in the matter on 5-5-89, the respondents had taken action "after verifying the qualifying service of the applicant". It is not clear from the statement of the respondents as to whether the respondents had actually acted on the letter of the applicant or merely on the reminder sent by the Loco Forman. The respondents have not shown the reasons as to why the Loco Forman sent a further reminder of 5th May, 1989 as to whether it was under a specific request of the applicant or otherwise. In the absence of any specific enquiry conducted by the respondents in this matter, we are unable to give greater credence to the contention of the respondents about the withdrawal letter being 'concocted'.

6. As regards the further point made by the applicant that even otherwise there was a formal letter withdrawing the resignation before the actual date of relief of the applicant from service, we do not hold that once a notice period is over, the time limit for withdrawal of resignation can extend to the date of actual relief itself. The notice period is meant for the department to make alternative arrangements after the notice period. If the respondents have made such arrangements, the contention regarding department having to accept the withdrawal after a notice

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period cannot be sustained. On this point, the Supreme Court in the case of Balram Gupta Vs. Union of India (AIR 1987 2354) vide judgment delivered on 1-9-87 while quoting an earlier judgment has laid down the law as under:

"Our attention was also drawn to the observations of this Court in Raj Kumar Vs. Union of India (1968) 3 SCR 857 : (AIR 1969 S.C. 180). There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter".

In this view of the Supreme Court, there can be no dispute regarding the legal position regarding the period upto which the resignation can be withdrawn. However, we do hold that in the facts of this case as decreed by the Supreme Court in the very same judgment Balram Gupta Vs. Union of India (supra) that -

"undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted".

Refusal of the respondents not to consider the request of the applicant for withdrawal of the application after undue delay in intimating action taken, is bad in law.

12 7. Having stated this position, the question, however, remains as to the amount of relief that would be available to the applicant. It is an accepted position that by now, the normal date of superannuation has also come to pass. In view of the fact that the applicant has not physically worked on the job, he cannot be paid any wages for work not done. However, he will be deemed to have retired on the due date of superannuation only and the period from 10-8-89 to the normal date of superannuation * will be

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counted towards qualifying period for pension purposes. This period will also be available for fixation of notional increments in the scale of pay which was drawn by the applicant and the further pension will have to be refixed on the basis of this notional grant of increments. The applicant will have claim for arrears of additional pension but not any claim for arrears towards pay for the said period.

8. With the above remarks, the petition is allowed.
No order as to costs.



(K. Ramamoorthy)
Member (A)



(N.B. Patel)
Vice Chairman

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