

(a)

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**AHMEDABAD BENCH**

**O.A.NO./ 133/92**  
**T.A.NO.**

**DATE OF DECISION** 18.2.98

Nooroodeen Nathubhai

**Petitioner**

Mr. P.H. Pathak

**Advocate for the Petitioner [s]**

**Versus**

Union of India and another

**Respondent**

Mr. R.M. Vin

**Advocate for the Respondent [s]**

**CORAM**

Mr. XXX.

**The Hon'ble Mr.**

V. Ramakrishnan,

**Vice Chairman**

**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 ? *✓*

Nooroodeen Nathubhai  
C/o. Kismat Bhathha  
Nr. Railway Station  
Ranavav-2, Dist. Junagadh.

Applicant

Advocate: Mr. P.H. Pathak

Versus

(1) Union of India  
Notice to be served through  
General Manager  
Western Railway  
Churchgate, Bombay.

(2) Divisional Railway Manager  
Western Railway  
Bhavnagarpara  
Bhavnagar.

Respondents

Advocate: Mr. R.M. Vin

ORAL ORDER

IN

O.A. /133/92

Dated 18.2.98

Per Hon'ble Mr. V. Ramakrishnan, Vice Chairman:

The applicant has prayed for a direction to the respondents to grant him retirement benefits by holding that he retired from service after 31.1.91. He has also prayed for cost.

2. We have heard counsel for both the parties.

3. The applicant joined service as Gangman in 1958 and he was given promotion as Pointsman in 1960. This contention is not denied by the respondents. On 31.10.1990 he submitted a notice to the D.R.M. Bhavnagar stating that he may be allowed to retire from service and that he may be allowed with effect from 31.1.91 or after three months of the receipt of resignation. This notice is in Gujarati and English translation

of the same states:

" I intend to retire from services as per my wish. Therefore, I may be allowed to retire from services with effect from 31.1.91 or after 3 months of the receipt of this letter of resignation and kindly pay me <sup>my</sup> all dues of retirement".

From the reply statement of the respondents it is seen that there was some confusion on the part of the Railway Administration as to whether it is in fact an application for resignation or for voluntary retirement. Subsequently, he made another application in continuation of his earlier one on 22.3.91 where he had referred to his earlier application dated 31.10.1990 and stated that as the notice for voluntary retirement given by him had not been accepted so far, the same may be accepted as early as possible. The Railways have taken the stand that he had not specified any exact date on which he wanted to retire and eventually he was permitted to retire w.e.f. 2.8.91 by an office order. His gratuity, provident fund money etc. were released to him soon thereafter.

4. It is not in dispute that the applicant had put in the requisite period of service in any case over 20 years when he gave notice dated 31.10.90. In terms of Railway (Pension) Rules corresponding to Rules 48 of the C.C.S. Pension Rules he has right to go on voluntary retirement after giving three months' notice. The notice is dated 31.10.90 and in the absence of any averment to the contrary in the reply statement we take it that it was received by the

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authorities on the same date and three months' notice thus expired on 31.1.91. There is also no intimation from the Railways prior to that date that he was not permitted to retire. There is, of course, a reference to the resignation in his notice dated 31.10.90 but when <sup>6</sup> look at the tenor of the notice, it is very clear that he intended to go on voluntary retirement and not to resign. In view of this position, the applicant stands retired under the relevant rules w.e.f. 31.1.91. It is true that he had submitted another letter dated 22.3.91 referred to earlier. This, however, cannot alter the position that he stood retired w.e.f. ~~1.2.91~~ 1.2.91 and ~~that~~ this subsequent letter may be disregarded.

We, therefore, do not agree with the contention of the respondents that they could act only on the second letter of 22.3.91 and ~~they~~ allowed him to retire from 2.8.91. The applicant had a legal right to have retired from 1.2.91 and we declare accordingly. For the period from 1.2.91 to 2.8.91 which is the date when the Railways had held him to have retired, he was not paid any salary either as on duty or on account of leave. This comes out clearly in the additional reply statement dated 29.4.97 filed by Senior Divisional Personnel Officer Bhavnagar Division.

5. In the circumstances, the applicant had become entitled to gratuity and pension w.e.f. 1.2.91. As regards the commutation, the same was allowed from 2.8.91. In view of this, the applicant should be

paid full pension from 1.2.91 upto 1.8.91 and his pension as reduced by the commuted value from that date. Payment of pension from August 91 onwards presumably has been done by the Railways. In view of the delay in releasing the retirement benefits, we further hold that the applicant is entitled to interest at 12% on the amount of gratuity from 1.5.91 upto the date of actual payment. As regards his pension, he is entitled to interest at 12% per annum and from the period from 1.5.91 upto the period on which the pension was released to him by the Railways.

6. Mr. Pathak says that the applicant was facing some disciplinary proceedings and was inflicted with the penalty of dismissal but this order was quashed by this Tribunal. According to Mr. Pathak, the respondents have not taken into account the gap from the date of his dismissal to the date of his reinstatement while calculating the retirement benefits. This is not an issue in the present O.A. However, we expect the Railway Administration to act in accordance with the relevant rules and instructions particularly the Railway Rules, corresponding to Rule F.Rs. 54 (A) which regulates such cases.

7. The Railways shall implement above directions within three months. The O.A. is finally disposed of as above. No costs.

Ramayya

(P.C.Kannan)  
Member (J)

Parashuram

(V. Ramakrishnan)  
Vice Chairman