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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

O.A.No.650 of 2010
Cuttack, this the 21st October, 2010

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THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A)

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Surya Narayan Mishra, aged about 48 years, son of Chakradhar Mishra, D-3/G, Rail Vihar, Chandrasekharpur, Bhubaneswar, Dist. Khurda, Orissa, PIN 751 023 [last employed as Chief Transportation Inspetor, E.Co.Railway, Bhubaneswar]

.....Applicant

By Legal Practitioner: M/s.A.Bhoi & R.K.Sahu

-Versus-

1. Union of India represented through the General Manager, East Coast Railway, 1st floor, South Block, ECoR Sadan, Chandraekharpur, Bhubaneswar, Dist. Khurda, PIN 751 017.
2. The Chief Personnel Officer, East Coast Railway, 2nd Floor, South Block, ECoR Sadan, Chandraekharpur, Bhubaneswar, Dist. Khurda, Orissa, PIN 751 017.
3. Chief Operating Manager, East Coast Railway, Ground Floor, South Block, ECoR Sadan, Chandrasekharpur, Bhubaneswar, Dist. Khurda, Orissa, PIN-751 017.

.....Respondents

By Legal Practitioner: Mr.S.K.Ojha, SC

ORDER

MR. C.R.MOHAPATRA, MEMBER (ADMN.):

In this Original Application filed U/s.19 of the A.T. Act, 1985,

the prayer of the Applicant is as under:

“To admit this Original Application, call for the records w.r.t. applicant's option for Voluntary Retirement, after hearing the parties set aside the letters dated 22.09.10 and 29.9.10 containing the impugned orders at Annexure-8 series of the Railway Authority disagreeing to accept the voluntary retirement of the applicant opted w.e.f. 23.9.10 and direct to the Respondent Authority/Authorities of accepting and giving effect to the Voluntary Retirement of the applicant w.e.f. 23.9.10 as per his lawful option vide notice dated 23.6.10 and for settlement of applicant's consequential benefits due to retirement.

And pending disposal of this Original Application the Respondent(s) may be directed to reconsider the lawful option of the applicant given vide notice dated 23.6.10 and representation dated 3.8.10 for his voluntary retirement w.e.f. 23.9.10 and for settlement of applicant's consequential benefits due to the retirement within a stipulated period with intimation to the applicant.

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And further may be pleased to pass any other direction/ directions or order/orders as the Hon'ble Tribunal deems fit and proper."

Applicant also seeks ad interim order to the following extent:-

"to pass an interim order directing the Respondent Authority/Authorities to reconsider the lawful option of the applicant given vide notice dated 23.6.10 and representation dated 3.8.10 for his Voluntary Retirement w.e.f. 23.9.10 and for settlement of applicant's consequential benefits due to the retirement within a stipulated period with intimation to the applicant without taking any coercive action against the applicant.

And/or further may be pleased to pass any other interim relief, as the Hon'ble Tribunal deems fit and proper."

2. Copy of this OA has already been served in advance on Mr. S.K.Ojha, Learned Standing Counsel for the Railway. Heard Learned Counsel for the Applicant and Mr. S.K.Ojha, Learned Standing Counsel appearing on notice for the Respondents and perused the materials placed on record.

3. It appears from the record that by referring to an earlier letter stated to have been submitted by the Applicant dated 1st June, 2010 wishing to go on voluntary retirement w.e.f. 30th June, 2010 (copy not enclosed), the Applicant through letter under Annexure-2 dated 23.6.2010 stated as under:

"I Shri Surya Narayan Mishra, son of Chakradhar Mishra, working as Chief Transportation Inspector in Operating Department of East Coast Railway had earlier applied vide my application dated 1st June, 2010 saying that voluntary retirement may be accepted from 30th June.

I had submitted another application dated 16.6.2010 in which I had withdrawn my voluntary retirement application as I was improving my health condition.

Recently again my health condition is being deteriorated. Therefore, finally I have decided to take the voluntary retirement considering health condition.

I, therefore, request you to consider my volunteer retirement application and give me the volunteer retirement from 31st July, 2010 exempting the normal notice period."

As it further appears from record, on receipt of the application of the applicant under Annexure-A/2 dated 23.06.2010, he was intimated under Annexure-A/3 dated 30.7.2010 as under:

Your aforesaid application seeking voluntary retirement from railway service from 31.7.2010 exempting the normal

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notice period had been put up to the competent authority i.e. COM/ECOR/HQ/BBS, who did not accept your notice for voluntary retirement by way of waiver of the normal notice period of three months."

Thereafter through representation under Annexure-A/4 dated

3.8.2010 applicant intimated to his authority as under:

"I Shri Surya Narayan Mishra, son of Chakradhar Mishra, working as Chief Transportation Inspector in Operating Department of East Coast Railway had applied vide my application dated 23rd June, 2010 for taking voluntary retirement from 31st July, 2010 exempting the normal notice period.

Now, vide letter No. ECoR/Pers/07/VR/SNM/01 dated 30.7.2010 given by CPO/ECoR, it is informed to me that my application for taking voluntary retirement is not accepted by COM/ECOR/BBS by way of waiver of the normal notice period of three months.

Under the circumstances it is once again requested to consider my application dated 23.6.2010 for voluntary retirement from Railways as notice of normal three months i.e. normally due on 23.09.2010 and I wish to take volunteer retirement from 23rd September, 2010 as per the extent rules."

4. The aforesaid application of the applicant was forwarded by the STM/EA to COM to the CPO, ECoRly, Bhubaneswar in letter under Annexure-A/5 dated 05.08.2010. Meanwhile the applicant surrendered the Railway belongings issued and kept by him. As it is seen after a protracted correspondence between both of them, finally vide letter dated 29.9.2010, the Assistant Personnel Officer (HQ-II) intimated the Applicant as under:

"With reference to your aforesaid letter addressed to Chief Personnel Officer, it is clarified that you have submitted option on 23.6.2010 for Voluntary Retirement from Railways w.e.f. 31.7.2010 exempting the normal notice period. The same was not accepted by the competent authority i.e. COM/ECOR/BBS by way of waiver of the normal notice period of three months, which was communicated to you vide this office letter even dated 30.7.2010.

Once again, you submitted option on 03.08.2010 through CTPM/ECOR/BBS to consider your Voluntary Retirement from Railways as notice of normal period of three months and allow you to take voluntary retirement from 23.9.2010. As per extant rules, your notice for voluntary retirement is current upto three months i.e. upto 2.11.2010.

However, in view of a pending vigilance case against you, the competent authority did not agree to accept your notice

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for Voluntary Retirement, which is also informed to you vide this office letter no even dated 22.9.2010.

This is for you information and this disposes your letter dated 22.09.2010."

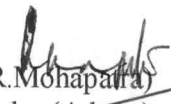
5. Master circular 11.4. speaks that a railway servant giving notice of voluntary retirement the acceptance of which requires appointing authority's approval may presume acceptance of the notice and the retirement shall be effective in terms of the notice, unless the competent authority issues an order to the contrary, before the expiry of the period of notice (vide Rly Bd's letter No. E(P&A)I-77/RT-46 dated 9.11.1977)[Annexure-A1]. No Rule has been produced by the Applicant that once voluntary retirement is tendered the authority is bound to accept the same or the exemption of the notice period of three months once prayed cannot be refused. Rather it is provided that voluntary retirement will take place after the acceptance of such request by the Appointing Authority. If no communication is made on such request as per the provisions of the Railway Board's instruction the voluntary retirement will take effect. But in the instant case no such event is noticed. Applicant's application was duly acknowledged through reasoned order. There was no delay in replying to the applicant whenever any application is received by the authority from the applicant in this regard. When the request of the applicant to go on voluntary retirement has been refused by the competent authority, ~~questioning~~ of presuming acceptance of the request for voluntary retirement does not arise. Applicant failed to show any provision of the Rule that in the circumstances as in the present case the refusal of the permission to go on voluntary retirement was in any manner de hors the Rules or instruction of the Railway Board. In absence of this I do not see any illegality or infirmity in the order refusing the request of the applicant to go on voluntary retirement. However, if the applicant has any grievance he can agitate the same after the notice period of three months/02.11.2010 is over but certainly not prior to that.

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Further if he has any grievance against the order dated 29.9.2010 he should first try to remedy the same by way of availing of the opportunity of appeal. Having not done so, I am not inclined to entertain this Original Application which is held to be premature.

6. For the discussions made above, this OA stands dismissed by leaving the parties to bear their own costs.

7. Send copies of this order along with OA to the Respondent No.2 for information.


(C.R. Mohapatra)
Member (Admn.)