

7

OA No.168 of 2009
R.N.Chudhary ... Applicant
Versus
Union of India & Others ... Respondents

Order dated : 9th April, 2010.

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

....

The grievance of the Applicant in nut shell is that on being recruited he joined the Railway on 16.06.1986. During October, 2004 he went on deputation to RVNL. While continuing on deputation, through application dated 15.06.2007 he sought approval from his principal employer to go on voluntary retirement as by that time he acquired the eligibility year of qualifying service as provided under Rules to seek such voluntary retirement under Rule 67 of Railway Services (Pension) Rules, 1993. His application for voluntary retirement dated 15.06.2007 was acknowledged and diarized by the Office of the Chief Personnel Officer, E. Co. Railway, Chandrasekharpur, Bhubaneswar on 27.7.2007. Copy of the application of the applicant dated 15.6.2007 containing the endorsement of the receiving authority' is through this OA as Annexure-A/1. Meanwhile, Applicant on being relieved his deputed post by the order under Annexure-A/2 dated 06.08.2007, reported to his duty as Senior Administrative Grade in S.E. Central Railway Bilaspur on 06.08.2007. According to the Applicant, he having received no communication whatsoever on his application dated 15.06.2007, he relinquished the charge w.e.f. 19.11.2007 and sent the relinquishment report dated 19.11.2007 to all concerned including his Appointing Authority (Secretary, Railway Board, New Delhi) through Principal Chief Engineer, S.E. Central Railway with a request for early settlement and release of his terminal benefit/retiral dues. Receipt of acknowledgement in support of receipt of the

2

8

-2-

aforesaid letter of relinquishment is filed at Annexure-A/3 to this OA. No communication having been received in regard to releasing of his statutory dues even after passage of five months of his relinquishment of the post, through representation dated 2nd April, 2008, he requested for early settlement of his retirement dues. Only after the representation dated 2nd April, 2008 he received the communication under Annexure-A/4 dated 23.5.2008 alleging non-receipt of his voluntary application and threatening taking action as deemed fit and proper. According to the Applicant as allegation of non receipt of VRS under Annexure-A/4 was an after thought to legalize the illegality committed by the Respondents in not timely taking action on the VRS application, he approached this Tribunal earlier in OA No. 451 of 2008 seeking quashing the impugned order under Annexure-A/4 and direction to release the retirement dues with interest and despite the specific order of this Tribunal dated 19th November, 2008 that while considering the case of the applicant, the competent authority shall pass appropriate order taking into account the **application already given by the applicant for voluntary retirement** and despite the submission of representation to the Appointing Authority i.e. Secretary Railway Board, New Delhi, under Annexure-A/6, reiterating the order of this Tribunal, the Deputy Chief Personnel Officer (Gaz) of South East Central Railway, Bilaspur, issued an order under Annexure-A/7 dated 11.02.2009 directing disciplinary action for unauthorized relinquishment of the charge and continued absence thereafter. In the aforesaid circumstances, by filing the present Original Application U/S 19 of the Administrative Tribunals Act, 1985, the Applicant prays for the following relief:-

- i. To quash the letter under Annexure-A/7 dated 11.02.2009;
- ii. To direct the Respondents to sanction the pension and all other pensionary dues of the applicant forthwith treating the applicant

2

9

- 3 -

deemed to have been retired from service voluntarily w.e.f. 19.11.2007;

- iii. To direct the Respondents to pay the applicant compound interest on his pension and pensionary dues @ 12 % per annum;
- iv. To pass any other order/orders as deemed fit and proper.

2. No separate counter has been filed by the Respondent No.1,2 & 3 i.e. Secretary, Railway Board, Rail Bhawan, New Delhi, GM, and CPO, ECoRly, Bhubaneswar despite notice and adequate time being granted to them. However, a counter has been filed stating to be the counter for the "Respondents" without disclosing that he has been authorized to file such counter on behalf of other Respondents. However, in the counter filed by Deputy CPO, S.E. Railway, Bilaspur (Respondent No.4) it has been stated that the present Applicant was released from the East Coast Railway in terms of the Railway Board's (Appointing Authority) letter No.2003E (O) II/7/37 dated 24.09.2004 vide CPO/ECoR/BBS' Office Order No.152/2004 dated 27.10.2004 to join in RVNL (Rail Vikash Nigam Ltd.) w.e.f. 25.10.2004. On being released from RVNL he was posted to Bilaspur. As such the applicant was no more an employee of E.Co.Railway. Therefore, the alleged VR application dated 15.06.2007 ought to have been submitted or routed through the concerned department i.e. RVNL instead of alleged submission of the same to the East Coast Railway. Further case of the Respondents is that Applicant being a Senior Administrative Grade Officer has managed to get the alleged voluntary retirement application dated 15.06.2007 acknowledged by the dispatch section on 25.07.2007 i.e. after lapse of about 40 days of the alleged date of application. Since the alleged voluntary application dated 15.06.2007 was addressed to the Secretary Railway Board, New Delhi, the same was supposed to have been routed through the RVNL as the applicant by that time was working under the RVNL. Therefore, even if the said application was submitted to the East Coast Railway, the concerned Railway is not duty

2

bound or not under any obligation to take any action on that application since the applicant was neither in the E.Co.Railway Zonal cadre nor having lien with E.Co.Rly Zone. It is also the contention of the Respondents that the applicant is in a wrong notion that his representation was disposed of by the Deputy CPO, SEC, Railway Bilashpur violating the order of this Tribunal in OA No. 451 of 2008. Through the letter under Annexure-A/7, the Deputy CPO, SEC Railway, Bilaspur only communicated the decision of the Railway Board dated 20.01.2009. By way of reiteration it has again been averred by the Respondents that as per the classified list published for the year 2005, the lien of the applicant is maintained at North Eastern Railway. The service records of the applicant are also maintained at RVNL by the time, the applicant stated to have submitted the alleged VR application. Also it is reiterated that the applicant deliberately managed to deposit the alleged application dated 25.7.2007 for his wrongful gain and to legalize his wrongful act. By stating so, the Respondents prayed for dismissal of this Original Application.

3. A rejoinder has been filed by the Applicant stating therein that there has been miscarriage of justice caused to the Applicant in the decision making process of the matter inasmuch as denial of submission of VR application by the applicant is entirely based on the communication of the RVNL as would be evident from the letter dated 23.5.2008 and is not based on record that too without endorsing or supplying copies of the letter, if any received, from RVNL or ECoR pursuant to which such a decision was taken and, as such non-submission of VRS application by the applicant is completely a myth. The Respondents are bound to take such plea to patch up the inaction in not taking timely action on the VRS as also releasing the terminal dues of the Applicant. In this connection he has stated that men may lie but document will not. His VR application has not only been acknowledged

L

by the receiving authority but also duly diarized on the same date. The diary register is a permanent record of the Railway. Had it been produced or had it physically been verified after giving due opportunity to the applicant/in his presence truth of the matter could have surfaced. Having not done so the injustice caused being in violation of the principles of natural justice is not acceptable in law. Relying on Annexure-R/1 the Applicant's counsel also severely rebutted the statement made in the counter that the applicant was not an employee of the ECoRly. The Applicant having been relieved from the ECoRly, Bhubaneswar joined in RVNL on deputation. Hence, as per the Rules his lien is bound to be retained in ECoRly to whom he has rightly submitted his VRS application. If the applicant submitted his VRS application to wrong authority/in wrong forum i.e. ECoRly, as per the law the ECoRly ought to have returned the same either to the Applicant or to the appropriate authority to whom it was addressed or to the Railway where the lien according to ECoRly of the applicant exists. Having not done so, the Respondents are estopped to play with the life of the applicant in such a manner at this belated stage which cannot be countenanced either in rule or law on the subject. Even if it is presumed that no such VR application was submitted by applicant, when the said fact was brought to the notice of his appointing authority through the earlier OA that the applicant sought voluntary retirement (meanwhile three months expired), there was no impediment on the part of the Appointing Authority to take a view on the same. Having not done so, the Respondents have encroached upon the right available to applicant to go on voluntary retirement; especially when there was no DP was pending against him or he was not under suspension; The Respondents are estopped to take the view of non-submission of VR application after the order dated 19th November, 2008 disposing of the earlier OA filed by the Applicant thereby

1

12 -6-

directing the Respondents that "... While considering the case of the applicant, the competent authority shall pass appropriate order taking into account the application already given by the applicant for voluntary retirement..." in absence of any review or writ/appeal being filed by the Respondents challenging the aforesaid order of this Tribunal. Copy of the diary register could not be produced by the Respondents although specifically averred by the applicant that the VRS application was received by ECoRly and diarized in the office of the CPO, ECoRly, Bhubaneswar. As per rules after completion of 20 years of regular service an employee has a right to seek voluntary retirement. No doubt, as per the provisions of the Railway discretion to accept or not to accept such request is vested with the authorities only in the event the employee concerned is under suspension. But there is no such right available with the employer in which the employee concerned is not under suspension as in the instant case. In terms of Rules supported by several laws if no decision is taken on the said request of an employee within three months, the employee concerned is deemed to have abandoned from service entitling him to all retirement dues which ordinarily he would have got had he been retired from service on reaching the age of superannuation. In this connection and to buttress his argument Learned Counsel for the Applicant has also relied on the decision of the Railway Board communicated in letter No. E (P&A)I-77/RT-46 dated 09.11.1977, E(P&E)I-81/RT/4 dated 01.06.1981, Rules 67 of Railway Service (Pension) Rules, 1993, and the decision of the Hon'ble Apex Court in the case of **Union of India and others v Sayed Muzafgar Mir**, AIR 1995 SC 176=JT 1994 (6) SC 288 relying on which the decision reached by the Division Bench of the CAT, Hyderabad in the case of **A.Subrahmanyam v UOI and others** (OA No. 654 of 2006 disposed of on February, 2007). If the applicant did not submit the VRS application, why nothing was pointed

12

13 - 7 -

out for five months of his relinquishment from the post and communication was made when the applicant reiterated for release of his dues. The acknowledgement received by the applicant has been certified to be true in sub para (ii) of the letter dated 11.2.2009 but according to Deputy Chief Personnel Officer, the applicant has taken up the initial and stamp with connivance of the staff. Now, question arises for consideration as to whether such finding of the Deputy Chief Personnel Officer is based on any enquiry if it is so had it been done in presence of applicant and as to whether before passing such remark, the Deputy Chief Personnel Officer had ever verified the specific contention of applicant of diarization of such application ?. If not the entire contention of the latter is bound to fall to the ground being based on conjecture and surmises and against the principles of natural justice. Order VIII R.5 CPC provides that every allegation of fact in plaint, if not denied specifically or by necessary implication or stated to be not admitted in the pleading of the defendant shall be taken to be admitted. This has been well settled in the case of **Jahuri Sah and others v Dwarika Prasad Jhunjunwala**, AIR 1967 SC 109. Hence there being no specific rebuttal to the contentions raised in OA and the applicant has exercised his right conferred under the rules, the Respondents are duty bound to treat the applicant deemed to have been retired voluntarily entitling all consequential benefits retrospectively. Accordingly, Learned Counsel for the Applicant claimed for grant of the relief sought in this OA.

4. Learned Counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having given thoughtful consideration to the points raised in course of argument perused the materials placed on record.

5. From the above it is clear that the controversy is in regard to submission and receipt of VR application of the Applicant. But fact of the

2

19

matte is that when applicant was continuing under RVNL it was incumbent upon him to send the said VR application through proper channel to his appointing authority i.e. Railway Board or at least had he sent advance copy of such VR application with due acknowledgement the present controversy could have been avoided. Having not done so in the first instance, he relinquished from the post unilaterally, without any reminder or approval is a reprehensible conduct exhibited by a senior officer of his level. Even he did not bother to mention the period of notice as required under Rule 67 of Railway Service (Pension) Rules, 1993. Be that as it may, the fact remains that the applicant had completed the requisite years of service to seek voluntary retirement. Also fact remains that the applicant is not willing to continue in service any more and keeping an unwilling worker in service forcibly in exercise of power serves no purpose rather would be a drag on the administration. At the same time, it is absolutely basic to our system that justice must not only be done but must manifestly be seen to be done. Law is the manifestation of principle of justice, equity and good conscience. It is common knowledge that there is no necessity to use the sledgehammer to crack a nut where paring knife suffices. In view of the peculiar circumstances of the case, I do not see any logic to insist on an employee to remain in service who is no more interested or willing to serve the department by exercising his right and opportunity available under Rule 67 of Railway Service (Pension) Rules, 1993 reiterated in Railway Board's instruction No. E (P&A) I-77/RT-46 dated 09.11.1977 & No. E (P&E) I-81/RT/4 dated 01.06.1981. As it reveals from record, the Applicant relinquished the office from 19-11-2007. Now insisting on him to remain in employment for the purpose of pursuing disciplinary proceedings is like flogging a dead horse.

15 - 9 -

6. The entire controversy is only on receipt/non-receipt of VR application of Applicant. But it cannot be denied that the applicant intended to go on voluntary retirement and the same has been brought to the notice of the appointing authority if not earlier at least after the order 19.11.2008 in OA No.451 of 2008. Fact of the matter is that applicant is no more in employment after putting 20 years of service. But for the controversy he is out of any means of livelihood for all these years starting from 2007. He might not have foreseen an eventuality where under his legitimate dues have been shelved. Prudence demands a pragmatic and humanitarian approach to resolve the issue. In the peculiar circumstances of the case, it would be proper for the Respondent No.1 to treat the Applicant as deemed to have retired from Railway Service after three months from the date of the order dated 19.11.2008 of this Tribunal in earlier OA No.451 of 2008 i.e. the date on which the competent authority became aware of the intent of the applicant to retire from service voluntarily. However, in that event, the Applicant shall not be entitled to any salary/wages during the intervening period from the date of relinquishment. Ordered accordingly. Respondent No.1 shall process the case of the Applicant for releasing his dues, of course after adjusting the admitted Railway dues, if any.

7. In the result, with the observation and direction made above, this OA stands disposed of. No costs.


(C.R. MOHAPATRA)
MEMBER (ADMN.)