

15
CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.43/2010


Cuttack this the 03rd day of ~~December~~^{January}, 2011


Pabitra Kumar DasApplicant

VERSUS

Union of India & Ors.Respondents.

1. Whether it be referred to reporters or not? ✓
2. Whether it be referred to PB, CAT, New Delhi or not? ✓


(A.K.PATNAIK)
MEMBER (JUDICIAL)


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

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.43 OF 2010

Cuttack this the ^{January,} 03rd day of ~~March~~, 201~~9~~

CORAM:

HON'BLE SHRI C.R.MOHAPATRA, ADMINISTRATIVE MEMBER
AND

HON'BLE SHRI A.K.PATNAIK, JUDICIAL MEMBER

...

Pabitra Kumar Das,
Sadangoy Paschim Bad,
P.O. Sadangoy, P.S. Delang,
Dist-Puri 752015.

...Applicant.

(By Advocate Shri R.B.Mohapatra)

v.

1. Union of India, represented
Through General Manager,
East Coast Railway,
Rail Bhawan,
Chandrasekharapur,
Bhubaneswar-751002.
2. Divisional Railway Manager,
East Coast Railway,
Khurda Division,
Khurda Road,
P.O. Jatni,
Dist. Khurda.
3. Senior Mechanical Engineer,
East Coast Railway,
Khurda Division,
Khurda Road,
P.O. Jatni,
Dist-Khurda.
4. Senior Divisional Personnel Officer,
East Coast Railway,
Khurda Division,
Khurda Road,



P.O.Jatni,
Dist Khurda.
(By Advocate Shri S.K.Ojha, S.C.)

...Respondents.

ORDER

{C.R.MOHAPATRA, ADMINISTRATIVE MEMBER}

The undisputed facts of the case are that the applicant while working as Section Engineer (C&W) at Khurda under Khurda Division of East Coast Railway submitted an application on 24.12.2009 seeking voluntary retirement from Railway service. On the same day i.e. 24.12.2009, the Respondent No.3 (Senior Mechanical Engineer), East Coast Railway, Khurda Road is stated to have accepted the voluntary retirement application. The applicant submitted another application on 27.12.2009 requesting the Respondent No.3 for withdrawal of his voluntary retirement application, but this was rejected on the ground that the voluntary retirement applicant had already been accepted. The applicant has challenged the said rejection order by filing this OA, seeking the following relief :

- (a) admit, issue notices to the Respondents to show cause or to file their counter to the above Original Application within a stipulated period;
- (b) if they fail to show cause, or caused insufficiently, then after perusing the pleadings of both the parties and after hearing them finally, allow this Original Application;
- (c) and pass an appropriate order/direction against the Respondents to take a decision with regards to the application dt. 27.12.2009 of the Applicant with regards to his withdrawal of his earlier application dt.



18

- (d) 24.12.2009 for his voluntary retirement from Railway Service;
and pending disposal of the above Original Application, the status quo of the Applicant as a Section Engineer (C & W) at Palasa may be maintained and the Respondent No.2 to 4 may be restrained not to take any action with regards to the application dt. 24.12.2009 for his voluntary retirement till then;
- (e) and pass any other appropriate order(s) as deems proper and fit in the interest of justice;

2. On 19.2.2010 when the matter came up before the Tribunal, while admitting the OA notices were issued to the Respondents and interim prayer for maintaining status quo was allowed. According to the submission of the Ld. Counsel for applicant, the applicant was getting salary from the employer having continued in the post of Section Engineer notwithstanding the Respondent Counsel's submission that the request for voluntary retirement had been accepted on 24.12.2009.

3. The contention of the applicant is that due to his personal difficulties and family problems he submitted an application dt. 24.12.2009 for voluntary retirement from Railway Service. But, after three days he submitted another application before the Senior Divisional Mechanical Engineer withdrawing his earlier application for voluntary retirement and requested to allow him to continue in his service, which was followed by reminders dt. 7.1.2010 and 20.1.2010. Till the date of filing the present O.A. he

had been discharging his duties. It is his contention that in the absence of a legal, contractual or constitutional work a prospective resignation can be withdrawn at any time before it becomes effective. It is also permissible under F.R. 56 (k).

4. The Respondents by filing their counter have contested the claim of the Applicant and have tried to justify the rejection of withdrawal of voluntary retirement application vide order dt. 4.1.2010 (though no such order has been annexed to the counter). The Respondents contend that since the applicant was holding a Safety Category post and submitted application for voluntary retirement with full state of mind, the same cannot be withdrawn after its acceptance. It is further pointed out by the Respondents that since the applicant was holding a sensitive, as well as, safety category post which directly relates to movement of trains, had the authority not taken any decision on his voluntary retirement application immediately there was every possibility of loss of public life and property. It has been brought out by the Respondents that in all the cases of proposed voluntary retirement the Railway servant has to give three months notice, provided the competent authority may accept notice of less than three months in deserving cases. It is also stated in the counter that in the case of proposed retirement under the relevant clause regarding permission to retire, order has to be issued only after consultation with the Finance Branch that the Railway servant has completed his required

180
qualifying service. A notice of voluntary retirement may be withdrawn with the approval of the appointing authority provided request for such withdrawal is made before the expiry of notice or before its acceptance.

5. A rejoinder has been filed by the applicant wherein it has been pointed out that the applicant was allowed to continue in his service till he filed the OA on 3.2.2010 and till then no communication was received by the applicant regarding rejection order dt. 4.1.2010 in respect of the withdrawal application dt. 27.12.2009. In addition to above the applicant has more or less reiterated his pleas in the rejoinder.

6. Having heard the parties in extenso, we have also perused the record. During the course of hearing, the Learned Counsel for the applicant submitted certain documents from the State Bank of India pertaining to the Savings Bank Account of the applicant which shows that the applicant had been paid salary upto 30.4.2010. The Learned Standing Counsel for the Railways by producing a copy of the Supreme Court decision in *Chairman and Managing Director Indian Overseas Bank and Ors. v. Tribhuwan Nath Srivastava* {(2011) 1 SCC (L&S 529)} pleaded that it is the discretion of the employer to accept or reject employee's application for grant of voluntary retirement. However, in the same decision it has been held that said discretion is not absolute, completely divorced from reasonableness, thus reasonableness of a

19 decision or an action can only be judged in totality of the facts and circumstances and having regard to object and purpose sought to be achieved. It is a fact that there is a provision for seeking voluntary retirement subject to certain conditions as spelt out under the Railway Establishment Manual. One of the most important conditions is that an eligible employee by giving notice of not less than three months in writing to the appropriate/appointing authority can retire from service. It is also provided that notice of voluntary retirement may be withdrawn subsequently only with the approval of the concerned authority provided the request of such withdrawal is made before the expiry of the notice period and/or the appointing authority has not accepted the notice for voluntary retirement.

7. The present case is unique in its nature. We have noted the contention of the Respondents that the application for voluntary retirement which was submitted on 24.12.2009 has been accepted on the same day. It is incredible that such an application could be processed by the concerned authorities in consultation with the Finance Wing (as mentioned in the counter) in such a record time. We have also not seen any order or document under which the applicant has been transferred to the pension establishment section after acceptance of the voluntary retirement. No office order issued in this regard has been furnished along with the counter or during the hearing to show that the applicant is

188 struck off from the establishment w.e.f. 24.12.2009. On the

contrary, we find that the applicant was in the pay roll of the Respondents even before he came to this Tribunal by filing this OA.

As a matter of fact, during the course of hearing the file in which the voluntary retirement case was dealt with and whether the decision was taken by the competent authority in consultation with finance wing or vigilance etc. could not be produced by the Railway Administration. Under the relevant provisions of Railway

Establishment Manual, the applicant has a right to withdraw his application for voluntary retirement and this right has been denied to him on the specious plea of having accepted his request on the very same day. Due to this stand of the respondents, the

applicant was not allowed any breathing space for a change of mind. Normally the notice period is three months and during this

time one can change his mind and seek cancellation of his application for voluntary retirement. By acting in a manner against

the provisions of the rules and taking a narrow view with interpretation of the provisions of the Rules the applicant has been

deprived of his right to withdraw the voluntary retirement application. The undue haste in acceptance of voluntary retirement

of an employee who has worked in the organization for a considerable time smacks of arbitrary exercise of power and is an

example of loathsome management practices of the organization.

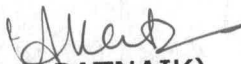
As a benevolent employer the Railway Administration ought to have

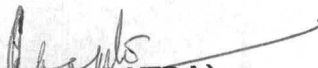
adequately applied its mind to reconsider the case of the applicant when it received the withdrawal request within 3 days.

The decision cited by the Learned Counsel for the Respondents, therefore, is of no help in the facts and circumstances of this case.

8. In view of the discussions above, we have no hesitation to hold that the rejection of the withdrawal application dt. 27.12.2009 submitted by the applicant is nothing but impulsive and not the product of due application of mind rather against the spirit of the relevant rules.

9. Accordingly, we quash the order of rejection of withdrawal of voluntary retirement by the Senior Divisional Mechanical Engineer, Khurda Road. Respondents are directed to allow the applicant to continue in the post as held by him prior to the order of rejection of voluntary retirement. The O.A. is allowed to the extent stated above. Parties to bear their own costs.


(A.K.PATNAIK)
MEMBER (J)


(C.R.MOHAPATRA)
MEMBER (A)

B.