

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

I/8

O.A. No. 125/2003
T.A. No.

198

DATE OF DECISION 3-12-2003

Amar Singh Solanki Petitioner

Mr. Kuldeep Mathur Advocate for the Petitioner(s)

Versus

UOI & Another. Respondent

Mr. Salil Trivedi Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

G.R. Patwardhan
(G.R. Patwardhan)
Member (A)

J.K. Kaushik
(J.K. Kaushik)
Member (J)

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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

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DAY OF DECEMBER, TWO THOUSAND THREE.

O.A. No.125/2003

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Amar Solanki,
S/o Shri Mangal Singh Solanki,
Village and Post Bisalpur,
Pali District (Rajasthan) : Applicant.

Mr. Kuldeep Mathur: Counsel for the applicant.

VERSUS



1. The Union of India, through
The General Manager,
North Western Railway, Jaipur.
2. The Divisional Railway Manager,
Divisional Officer,
North Western Railway,
Ajmer.
3. The Divisional Railway Manager (Estt.)
North Western Railway, Ajmer.

: Respondents.

Mr. Salil Trivedi: Counsel for the respondents.



ORDER

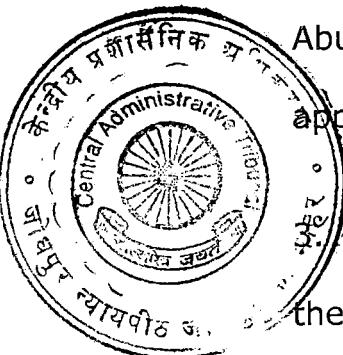
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Per Mr. J.K. Kaushik: Judicial Member.

Mr. Amar Singh Solanki has filed this O.A. primarily for the release of pension and other retiral benefits along with interest on the arrears.

2. The abridged facts of the case are that the applicant was holding the post of Passenger Driver in the Office of Loco Foreman, Abu Road. He submitted an application on 01.10.2002 praying to allow him to go on voluntary retirement. After three days, he submitted another application in continuance of the above said application dated 01.10.2002 for waiving of the period of three months by two months for granting him voluntary retirement within a period of one month. A communication came to be issued on 08.10.2002, whereby, his controlling authority i.e. the Loco Foreman, Abu Road, was directed to complete the service records of the applicant. The period of notice came to an end on 31.10.2002.

The further case of the applicant is that after the expiry of the period of one month, the applicant stopped going to office. He had already handed over his charge to the authorities of the Railway Department. He also vacated the Government accommodation. His retiral dues were not released and he had to make representations on 05.04.2003 and 23.04.2003 for release of his retiral benefits. He reminded the matter vide letter dated 08.05.2003, but there was no heed to his request.



[Signature]

4. The Original Application has been filed on multiple grounds mentioned in para 5 and its sub paras and violation of Articles 14 & 21 of the Constitution of India have been complained of.

5. The respondents have contested the case and have filed an exhaustive reply to the O.A. The respondents have taken a preliminary objection and have averred that vide communication dated 01.11.2002, the applicant was informed about the non-acceptance of his request but he concealed this fact and remained absent unauthorisedly. The applicant was also informed by communication dated 29.10.2002 that the competent authority has not accepted his request for voluntary retirement. It is also stated that another notice dated 03.10.2002 was received from the applicant requesting for acceptance of his voluntary retirement for waiving the normal period of three months.



The further defence of the respondents as set out in the reply is that the applicant himself has stopped coming for duty and vide communication dated 24.12.2002, he was also asked to be present for special medical examination. It is also submitted vide application dated 28.02.2003, the applicant submitted his notice for voluntary retirement and the same has been accepted vide letter dated 22.07.2003. The OA does not survive as the applicant has been paid all his retiral dues within the stipulated period. A PPO has also been issued.

5/10
I/K

7. With the consent of the parties, the case was taken up for final hearing at the admission stage. We have heard the learned counsel for the parties and have anxiously considered the submissions, pleadings and the records of this case. The respondents were also been directed to make available the proof of service of the communication by which the applicant's request for voluntary retirement had been refused by the competent authority.

8. Both the learned counsel has reiterated their pleadings. The learned counsel for the applicant has submitted that after submission of the notice for voluntary retirement, another application was submitted by the applicant for waiving the period of notice by two months. The applicant had never been informed by any communication regarding the non-acceptance of his voluntary retirement. As per the rules in force, if no communication is received within the stipulated time specified in the notice, or three months there shall be presumption of acceptance of his voluntary retirement. He has categorically submitted that the communication R.1 was never served on him and the respondents should be put to strict proof. As regards the communication dated 24.12.2002, it is stated that the same was also not served on him. In this way of the matter the applicant stood retired at least from 03.01.2003, i.e. on expiry of three months period from the date of notice and he ought to have been given his due retiral benefits on 03.01.2003. But he has been retired with effect from 22.07.2003 and the period from 01.11.2002 to 22.07.2003 has been ordered to be treated as unauthorized absence. In this way, his retiral dues have been denied for the above

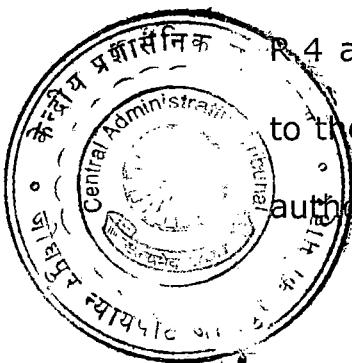


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said period and the said period has been treated as non-qualifying service and he has been granted the retiral benefits only on pro-rata basis. He contended that had the respondents have acted fairly, he would have got full pension. He has also submitted that the applicant has not concealed any facts since the very letters were not communicated to him and therefore there was no question of disclosing about those letters by him in the O.A.

9. On the contrary, the learned counsel for the respondents has submitted that as per the procedure in vogue any order to the railway servant was to be served through his controlling authorities and no signatures are obtained from the concerned railway servant in token of receipt of such letters. He has not been able to produce any receipt or proof of service on the applicant in respect of the orders like Annex. R.1 & R.3 etc. However, he has placed reliance on Annex. R.4 and has submitted that this was the communication with regard to the notice of voluntary retirement which has been accepted by the authorities.

10. We have considered the rival contentions raised on behalf of the parties. As far as the factual aspect of the matter is concerned, we can safely conclude that the applicant has not been served with any letter of refusal of voluntary retirement within the maximum period of notice i.e. three months. Further Annex. R.4 cannot be construed to be notice of voluntary retirement and the same has been written in reference to the earlier notices dated 01.10.2002 and 03.10.2002.



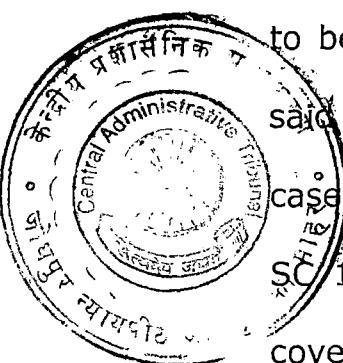
Even if the contention of the respondent was accepted that Annex R.4 dated 28.02.2003 was taken as a notice for voluntary retirement, the applicant ought to have been retired from 27.05.2003, i.e. after three months but he has been retired from service with effect from 22.07.2003. Therefore this contention of the respondents cannot be accepted. We are not satisfied and cannot subscribe to the version of the learned counsel for the respondents that Annex. R.4 was the actual notice for voluntary retirement.

11. Now, as regards the law position is concerned, where the appointing authority does not refuse grant of permission for voluntary retirement before the expiry of the notice period, the retirement shall become effective from the date of expiry of the said period. It is also settled position of law that the communication of rejection is required to be served to the concerned official within the notice period. The

said proposition of law is propounded by the Supreme Court in the case of **State of Haryana and others vs. S.K. Singhal** [AIR 1999 SC 1829]. The controversy involved in the instant case is squarely covered on all fours and in the present case the applicant shall be

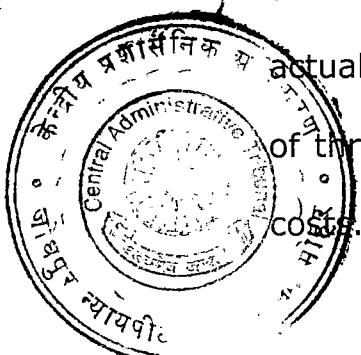
deemed to have been retired from service with effect from 02.01.2003 and shall be entitled to all retiral benefits from that date.

12. Though none of the party has put forward anything in their pleadings regarding the reason for not accepting the notice of voluntary retirement dated 01.10.2002 & 03.10.2002, but the sequence of events causes anxiety and doubt as to what was the reason for the same and what transpired subsequently when one day



in the fine morning the competent authority accepted the voluntary retirement on some odd communication/reminder. No doubt, it is the discretion of competent authority to accept or not, the notice for voluntary retirement but the discretion has to be judicious which in the instant case it seems to be not or else the respondents have withheld certain vital information from this Tribunal.

13. In view of what has been said and discussed above and the law laid down by the Apex Court, this O.A. is allowed. The respondents are directed to reckon the retiral benefits of the applicant by treating him as retired with effect from 02.01.2003. The applicant is also entitled to interest on the entire retiral benefits at the rate of 8% per annum, after the expiry of three months from 02.01.2003 till the actual date of payment. This order shall be complied within a period of three months from the date of receipt of a copy of this order. No



(G.R. Patwardhan)
Administrative Member.


(J.K. Kaushik)
Judicial Member.

Jsv.

S.12-103

RIC
S.12-103
01/12/03

Part II and III destroyed
in my presence on 17.10.13
under the supervision of
section officer (1) as per
order dated 03/10/13

D.K. Sharma
Section officer (Record) 17.10.2013