

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.447/2013

Monday this the 29th day of September 2014

C O R A M :

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

P.O.Joshua,
S/o.K.Oommen,
Retired Head Goods Clerk,
Bilaspur Division, South East Central Railway.
Permanently residing at Payanivelayil Veedu,
South West Thazhave P.O., Kollam District, Kerala.Applicant

(By Advocate M/s.Varkey & Martin)

V e r s u s

1. The General Manager,
South East Central Railway,
Bilaspur Division, Chhattisgarh – 495 004.
2. The Divisional Railway Manager,
South East Central Railway,
Bilaspur Division, Chhattisgarh – 495 004.Respondents

(By Advocate Mr.K.M.Anthru)

This application having been heard on 22nd September 2014 the Tribunal on 29th September 2014 delivered the following :-

O R D E R

HON'BLE Mr.U.SARATHCHANDRAN, JUDICIAL MEMBER

Applicant was working as Head Goods Clerk in the Bilaspur Division of South East Central Railway. According to him, after rendering 30 years service he submitted Annexure A-1 request for voluntary retirement on 6.3.2000 stating that he desired to voluntarily retire from service from 1st



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September, 2000. Prior to that he had sought for a leave for five years to go abroad but he was granted only 90 days leave vide Annexure A-2. Without availing of the leave granted vide Annexure A-2, he decided to submit request for voluntary retirement. After expiry of 3 months after Annexure A-1, he went abroad and he sent representations from abroad praying for sanctioning retirement benefits. But there was no response from the respondents. Personal attempts made by him when he came to India also did not yield any result. Hence he sent Annexure A-3 lawyer notice. Since the same also was not responded to and as the applicant continued to be deprived of his retirement benefits, he filed this O.A praying for the following reliefs :

1. Declare that the applicant is eligible for all the retirement benefits as per the rules consequent upon his voluntary retirement w.e.f 1.9.2000.
 2. Direct the respondents to sanction and disburse the retirement benefits including the monthly pension to the applicant with all consequential benefits.
 3. Award costs of and incidental to this application.
 4. Grant such other relief, which this Honourable Tribunal may deem fit and proper in the circumstances of the case.
2. Respondents contended that O.A is highly belated and hence is not maintainable. According to the respondents Annexure A-1 is not a genuine document. Though it is seen that Annexure A-1 is dated 6.3.2000, at that time there was no procedure to forward the request for voluntary retirement directly to the Divisional Railway Manager. Annexure A-1 was not received by the Divisional Railway Manager or by his office. According to the respondents, in all probability applicant was not in India at that time. As



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the applicant was remaining unauthorizedly absent from duty from 6.9.2000 to 25.11.2001 disciplinary action was initiated against him which culminated in Annexure R-1 notice dated 19.9.2002 imposing penalty and accordingly applicant was removed from service with immediate effect.

3. A rejoinder was filed by the applicant. According to him, since leave was granted to him for 90 days vide Annexure A-2, he would have had leave from 8.6.2000 to 5.9.2000 to go abroad. But the applicant submitted Annexure A-1 request to 2nd respondent through his Station Manager, Bishrampur who forwarded it to 2nd respondent after affixing his sign and seal therein. He has produced Annexure A-4 Pay Slip for July, 2000 to indicate that he had worked in July 2000 also. Since the Annexure A-1 request for voluntary retirement was not refused by 2nd respondent till 1.9.2000 it came into effect from 1.9.2000 as per the proviso to Rule 67 of Railway Services (Pension) Rules, 1993 and consequently he did not work thereafter and informed the Station Master and left for Kerala without waiting for the salary for August, 2000 as he had to leave for U.S.A on 5.9.2000. Applicant was marked as absent on 6.9.2000 by the Station Manager as per the information the applicant received subsequently. He has produced Annexure A-5 copy of his Passport to indicate that he had left India on 5.9.2000. Applicant has also produced Annexure A-6 (a) and Annexure A-6 (b) two return receipts for international mail addressed to 2nd respondent and sent through international mail. According to the applicant, he is permanently residing in Kerala and occasionally goes to U.S.A.



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4. Heard Shri.Martin G Thottan for the applicant and Shri.K.M.Anthru for the respondents. Rule 67, Railway Services Pension Rules 1993 (RSPR) relied on by the applicant is a provision relating to retirement on completion of 20 years qualifying service. The relevant provisions in Rule 67 reads as follows :

67. Retirement on completion of 20 years qualifying service:

(1) At any time after a railway servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to appointing authority retire from service:

Provided that this sub-rule shall not apply to a railway servant including Scientists or technical expert who is -

(i) on assignment under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes;

(ii) posted abroad in foreign based offices of the Ministries or Departments;

(iii) on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of a post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

5. According to Shri.Martin G Thottan, learned counsel for applicant, when the applicant wished to go abroad to meet his relatives and applied for five years leave, the respondents granted only 90 days leave vide Annexure A-2. Therefore, applicant decided to avail of voluntary retirement and vide Annexure A-1 request dated 6.3.2000 he had expressed that he would like to retire voluntarily with effect from 1.9.2000. Learned counsel submitted that as per the aforequoted provision of Rule 67 if the authority is not responding to the request for voluntary retirement even after



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the expiry of three months of the notice, it would be deemed that the applicant has retired from the date he had indicated in Annexure A-1 ie. 1.9.2000. Learned counsel further submitted that applicant having completed 30 years qualifying service could very well avail of voluntary retirement invoking Rule 66 of RSPR also, after giving a notice in writing to the appointing authority 3 months before the date on which he wished to retire, in which case there was no need for the acceptance by the appointing authority. He referred to Annexure A-5, copy of Passport, and submitted that applicant left India from Nedumbassery Airport, Cochin only on 5.9.2000, obviously after the date of voluntary retirement indicated in Annexure A-1 ie. 1.9.2000.

6. Learned counsel for the respondents submitted that Annexure A-1 is a sham document and there is no record to show that the South Eastern Railway had received the same and was forwarded to Divisional Railway Manager (Respondent No.2), Bilaspur. Annexure A-1 is a photocopy of document wherein affixture of a seal of Station Manager, Bishrampur, S.E. Railway with an endorsement "forwarded DRM/BSL" is seen. According to the learned counsel for the respondents Annexure A-1 is a document which does not inspire confidence and cannot be indicative of the claim made by the applicant that he should be presumed to have been retired voluntarily from service with effect from 1.9.2000. Referring to Annexure A-6 (a) and Annexure A-6 (b) postal acknowledgements dated 25.8.2007 and 14.4.2010 learned counsel for the respondents submitted that it

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indicates that the applicant was living abroad after he left India and that there is nothing to show that he had come back during the period from 6.9.2000 to 25.11.2001. According to the counsel for respondents applicant has come up with a stale claim of pensionary benefits and hence this O.A is highly belated.

7. Learned counsel for the applicant argued that the salary and pension being matters which give rise to a continuous cause of action, the case of the applicant cannot be treated as hit by limitation. Though this Tribunal finds some force in that contention, the attending facts and circumstances strongly gives rise to skepticism as to whether the applicant had infact submitted Annexure A-1. Learned counsel for the respondents submitted that no records relating to the period mentioned in Annexure A-1 are available with the respondents because as per the Rules of Destruction of Records, the records belonging to the year 2000 have been destroyed and hence there is no proof to indicate that Annexure A-1 was indeed sent by the applicant through the Station Manager, Bishrampur, S.E. Railway. Learned counsel for the respondents submitted that a major charge sheet penalty was issued to the applicant for unauthorized absence from duty from 6.9.2000 to 25.11.2001 and accordingly a charge sheet was pasted on the notice board on 31.1.2002. It was further submitted by him that the ex-parte disciplinary proceeding so initiated ended up in Annexure R-1 notice imposing penalty of removal from service and therefore, applicant is not entitled to any retiral benefits.

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8. Learned counsel for the applicant argued that since no response was received from the respondents on Annexure A-1 notice of voluntary retirement till date of voluntary retirement indicated therein ie. 1.9.2000 under Rules 66 and 67 RSPR the request for voluntary retirement should be deemed to have been accepted by the authority and any proceeding initiated after 1.9.2000 will have no legal effect on the applicant. This argument of learned counsel for the applicant would have been acceptable provided it could be convincingly proved that Annexure A-1 request was duly received by the appointing authority. The mere fact that a seal of the Station Manager, Bishrampur S.E. Railway and a signature is seen on Annexure A-1 photocopy, the same cannot not be reckoned that the appointing authority ie. Divisional Railway Manager (2nd respondent) has indeed received it. Under Sub Rule 2 of Rule 67 it is a mandatory provision that notice of voluntary retirement shall require acceptance by the appointing authority. Though such express requirement of acceptance of notice is absent in Rule 66, it can be inferred from the Proviso(i) to sub-rule 1 of Rule 66 that it is obligatory on the railway servant to give a notice in writing before the date of his intended retirement. So long as there is no convincing proof for receipt/ acceptance of Annexure A-1 by 2nd respondent, it is difficult to presume that the applicant's voluntary retirement has come into effect on 1.9.2000. It is trite that one who asserts and claims is bound to prove the same especially when the matter is strongly refuted by the respondents.



9. As stated above, the mere endorsement, signature and a rubber stamp seen in Annexure A-1 which is only a photocopy does not inspire confidence as a proof that the original of the same was received / accepted by the appointing authority. Hence it appears that the preponderance of probabilities is in favour of the case of the respondents. There are strong indications in this case that applicant was determined to go abroad for five years. Records further reveal that the respondents have initiated disciplinary proceeding for unauthorized absence from 6.9.2000. There is no proof to show that applicant had come back to India before 25-11-2001. Obviously, as the applicant had already left India, respondents had to go ahead with the disciplinary proceedings *ex parte* which culminated in Annexure R-1 imposition of penalty of removal from service.

10. In the light of the above discussion, this Tribunal is of the view that applicant has not made out a convincing case that he had availed of voluntary retirement either under Rule 66 or Rule 67 of Railway Services (Pension) Rules, 1993. Therefore, it goes without saying that the O.A is only to be dismissed.

11. Accordingly, the O.A is dismissed. Party shall suffer their own costs.

(Dated this the 29th day of September 2014)



U.SARATHCHANDRAN
JUDICIAL MEMBER