

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.564/2007

Wednesday, this the 13th day of February, 2008.

CORAM :

HON'BLE SHRI GEORGE PARACKEN, JUDICIAL MEMBER

Oomman C.O.
Senior Clerk, Personnel Branch
Southern Railway/Palghat Division,
Residing at "Sankaramangalam"
Pathiri Road, Dhoni P.O.,
Palghat-9.

... Applicant

By Advocate Mr.T.C.G.Swamy

V/s.

- 1 Union of India, represented by
The General Manager, Southern Railway,
Headquarters Office, Park Town P.O.,
Chennai – 3.
- 2 The Senior Divisional Personnel Officer
Southern Railway, Palghat Division,
Palghat. ... Respondents

By Advocate Mr.Thomas Mathew Nellimoottil

The application having been heard on 28.1.2008 the Tribunal delivered the following on 13.2.2008:

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

The applicant was re-employed in the Railways on 26.9.1990. His date of birth being 16.4.51, he completed 55 years of age as on 16.4.2006. While working as a Senior Clerk in the Personnel Branch of Southern Railway, Palghat Division under the 2nd respondent he submitted the Annexure A1 application dated 30.4.2007 to the 2nd respondent, for voluntary retirement with effect from 1.8.2007. However, the respondents did not respond to his requests.



Hence, he has filed this OA seeking the following reliefs:-

- "(i) Declare that the applicant must be deemed to have voluntarily retired from service with effect from 01 August, 2007 under Rule 1802(b) of the Railway Establishment Code Vol.II.
- (ii) Direct the respondents to grant the applicant all consequential benefits of declaration in para 8(1) above, including monthly pension and other terminal benefits within a time limit as may be found just and proper by this Hon'ble Tribunal.
- (iii) Award costs of and incidental to this application.
- (iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

2 The facts in this case are not disputed. The respondents in their reply affidavit admitted that they have received the Annexure A 1 application dated 30.4.2007 from the applicant seeking voluntary retirement from service. According to them, an employee cannot seek voluntary retirement under Rule 1802(b) of IREC Vol.II. and under the said Rule, only the Railways can compulsorily or prematurely retire a Railway servant. They have further submitted that the Applicant's case was in fact, considered by the Senior Divisional Financial Manager, Southern Railway, Palghat in terms of Rule-67 of the Railway Service (Pension) Rules 1993 according to which a Railway servant should have completed 20 years qualifying service before seeking voluntary retirement. They have also submitted that they have returned his application stating that he had put in only 16.5 years of qualifying service against the minimum requirement of 20 years of qualifying service.

3 As seen from the above position, the applicant's contention is that he is entitled for voluntary retirement under Rule 1802(b) IREC Vol.II. On the other hand, the contention of the respondents is that the said rule is meant for only compulsory retirement and premature retirement and the cases of voluntary



retirement is covered by Rule 67 of Railway Service (Pension) Rules 1993.

4 We have heard Advocate Mr.T.C.G.Swamy for the Applicant and Advocate Mr.Thomas Mathew Nellimoottil for the Respondents. In the first instance, I shall extract aforesaid rules hereunder:-

Rule 1802(b) of IREC Vol.II -

"Any railway servant may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post (and had entered Govt service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years.

Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension who seeks to retire under this clause."

Rule 67 of Railway Service (Pension) Rules

" 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 the appointing authority, retire from service"

It is not necessary to interpret of the aforesaid rules as they are self explanatory. Moreover, the issue involved in this case has already been considered by this Tribunal in a number of cases earlier. In OA-35/2000, P.S.Haneefa Rawther V/s. Union of India & Ors decided on 17.8.2001, the applicant therein has sought a declaration that he deemed to have retired from service w.e.f. 14.11.1999 after attaining the age of 55 years and after serving three months advance notice w.e.f 10.8.99. He has also sought a direction to the respondents to grant him consequential benefits including monthly pension, retirement gratuity, etc. Same were the contention of the respondents in that case also. They submitted that that the applicant had served the Railway only




for a period less than 15 years and the requisite qualifying period for voluntary retirement is 20 years and therefore he was not entitled for voluntary retirement and other consequential benefits. Relying on the provisions of Rule 1802 (b) of IREC Vol.II, this Tribunal held that the said provision permits the Railway servant to retire from service after he has attained the age of 55 years. In OA 626/2006, T.N.Sivankutty Nair V/s. Union of India & Ors decided on 5.10.2006, this Tribunal considered the same question again. The applicant therein submitted his application for voluntary retirement and requested the respondent that he should be deemed to have retired from service from the date of expiry of three months notice period. In the said case also, the applicant was an ex-serviceman who joined the Southern Railway in 1998 and put in his papers for voluntary retirement giving three months notice after attaining the age of 55 years. The respondents have contested the OA again on the main ground that the applicant therein was not entitled to retire under the provisions of Rule 1802(b) of IREC Vol.II. However, the Coordinate Bench of this Tribunal observed that Rule 1802 (b) is in para materia with the Rule 56(a) of F.R and held that advance notice of three months given by the applicant met the requirement under the provisions of 1802(b) of IREC Vol.II and allowed the OA. Similarly in OA-421/2007 P.Raghavan Pillai V/s. Union of India and Anr decided on 23.10.2007, the applicant therein was a Group 'D' Senior Drainage Khalasi and was placed under a lower medical category. As he could not be provided with an alternate appointment, he was placed in a supernumerary post. However, vide application dated 20.2.2007, he requested for voluntary retirement with effect from 1.5.2007. His request was rejected by the respondents on the same ground that he had not completed 20 years of qualifying service. Relying upon the aforesaid two earlier decisions in OA 35/2000(supra) and 626/2006(supra),



this Tribunal allowed the OA and directed the respondents to pass requisite orders to make him available the pension and other terminal benefits.

5 It is an undisputed fact that applicant herein had completed 55 years of age when he has submitted the application for voluntary retirement to the respondents. The only ground for rejection of his request is that he has not completed 20 years of qualifying service and therefore he is not entitled for voluntary retirement and consequential benefits thereof under Rule 67 of Railway Service (Pension) Rules 1993. In my considered opinion, the present OA is factually and legally fully covered by the aforesaid decisions of this Tribunal in OA 35/2000, 626/2006 and 421/2007. Hence, I allow the OA and declare that the applicant must be deemed to have voluntarily retired from service w.e.f. 1.8.2007. Consequently, the respondents are directed to grant him the monthly pension and other terminal benefits as permissible under the rules within a period of three months from the date of receipt of the copy of this order. There shall be no orders as to costs.

Dated, the 13th February, 2008.


GEORGE PARACKEN
JUDICIAL MEMBER

abp