

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No. 77/97

Friday, this the 5th day of September, 1997.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER

A.P Thankamma,
W/o Late P. Kandankutty,
Ex- Pointsman, Southern Railway,
Residing at: Pranayil House,
Valiyakunnu P.O.,
Valancherry,
Malappuram District.

...Applicant

By Advocate Mr. T.C. Govindaswamy.

Vs.

1. Union of India,
Through the Secretary,
Government of India,
Ministry of Railways,
Rail Bhavan, New Delhi.
2. The General Manager,
Southern Railway,
Park Town P.O., Madras.
3. The Divisional Railway Manager,
Southern Railway,
Trivandrum Division,
Trivandrum.
4. The Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.


...Respondents

By Advocate Mr James Kurian, Addl.CGSC

The application having been heard on 13.8.97, the
Tribunal delivered the following on 5.9.1997.


O R D E R

The applicant seeks for a declaration that A-4 is
nonest, void, inoperative, and invalid, that her late
husband continued to be in railway service upto 26.3.93,
the date of his death, and for a direction to respondents
to grant all the consequential benefits like gratuity, group
insurance etc.



2. Applicant is the widow of P. Kandankutty, who was a Pointsman, Grade-I in the Southern Railway at Ernakulam Junction. The said Kandankutty died on 26.3.93. The applicant's husband while working at Ernakulam Junction fell ill on 16.7.91. He was taken to the Railway Hospital at Ernakulam Junction. After treating him there as in-patient for about a week, he was referred to the Railway Hospital at Palghat where he was under continuous medical treatment as in-patient. Applicant says that her husband continued to be a railway servant till the date of his death and she was informed by the respondents that her husband died after retirement when she applied for releasing certain money due to her and also for compassionate appointment to her son. In A-4, it is stated that 'the request for voluntary retirement has been accepted by the competent authority and his services will stand terminated on the afternoon of 28.2.93.' According to applicant, the contents of A-4 was not communicated either to her or to her husband.

3. Respondents say that the applicant having acted upon the claim of preferring the settlement benefits of her husband as a case of voluntary retirement cannot at this stage retrace her own action and claim the benefits as applicable to a case of death. Voluntary retirement of the applicant's husband was ordered as per his own written request. While the applicant's husband was undergoing treatment as he fell ill, he submitted an application seeking to retire voluntarily. The request for voluntary retirement was processed by the respondents and the same was accepted by the competent authority. A-4 order has been issued on acceptance of the



voluntary retirement of the applicant's husband by the competent authority which says that the employee's services would stand terminated on the afternoon of 28.2.93 on voluntary retirement. Copy of A-4 order accepting voluntary retirement was given to the applicant's husband. Applicant has accepted payments effected on finalising her husband's settlement on voluntary retirement and having received payments, cannot turn round and now come forward with a different claim.

4. Learned counsel appearing for the applicant argued that the provision contained in Section-4 of the Contract Act will apply here since the acceptance of the offer of voluntary retirement has not been communicated either to her or to her husband while alive. In Roshal Lal Tandon and another Vs Union of India and others (AIR 1967 SC 1889) it has been held thus:

"It is true that the origin of Government service is contractual. There is an offer and acceptance in every case. But once appointed to his post or office the Government servant acquires a status and his rights and obligations are no longer determined by consent of both parties, but by statute or statutory rules which may be framed and altered unilaterally by the Government. In other words, the legal position of a Government servant is more one of status than of contract. The hall-mark of status is the attachment to a legal relationship of rights and duties imposed by the public law and not by mere agreement of the parties. The emolument of the Government servant and his terms of service are governed by statute or statutory rules which may be unilaterally altered by the Government without the consent of the employee. It is true that Article 311 imposes constitutional restrictions upon the power of removal granted to the President and the Governor under Article 310. But it is obvious that the relationship between the Government and its servant is not like an ordinary contract of service between a master and servant. The legal relationship is something entirely different, something in the nature of status. It is much more than a purely contractual relationship voluntarily entered into between the parties. The duties of status are fixed by the law and in the enforcement of these duties society


has an interest. In the language of jurisprudence status is a condition of membership of a group of which powers and duties are exclusively determined by law and not by agreement between the parties concerned. The matter is clearly stated by Salmond and Williams on Contracts as follows:

"So we may find both contractual and status-obligations produced by the same transaction. The one transaction may result in the creation not only of obligations defined by the parties and so pertaining to the sphere of contract but also and concurrently of obligation defined by the law itself, and so pertaining to the sphere of status. A contract of service between employer and employee, while for the most part pertaining exclusively to the sphere of contract, pertains also to that of status so far as the law itself has been fit to attach to this relation compulsory incidents, such as liability to pay compensation for accidents. The extent to which the law is content to leave matters within the domain of contract to be determined by the exercise of the autonomous authority of the parties themselves, or thinks fit to bring the matter within the sphere of status by authoritatively determining for itself the contents of the relationship, is a matter depending on considerations of public policy. In such contracts as those of service the tendency in modern times is to withdraw the matter more and more from the domain of contract into that of status. (Salmond and Williams on Contracts, 2nd edition, p.12).


We are therefore of the opinion that the petitioner has no vested contractual right in regard to the terms of his service and that Counsel for the petitioner has been unable to make good his submission on this aspect of the case."

Hence, this argument cannot be accepted.

5. According to applicant only from A-4 she came to know about the acceptance of the offer of voluntary retirement of her husband and it is not known at what point of time her husband submitted the offer of voluntary retirement. This stand of the applicant cannot be accepted. A-1 dated 22.7.95 is a representation made by the applicant to the




2nd respondent for offering appointment to her son in the railways on compassionate grounds due to the death of her husband wherein it is stated that her husband seems to have submitted an application for voluntary retirement. A-2 dated 30.4.96 is a request made by the applicant to the 4th respondent for issuance of the service termination order of her husband. There also it is stated that her husband seems to have submitted an application for voluntary retirement. A-3 is the covering letter of A-4 order of termination of services of the applicant's husband. In A-4 it is stated that the request of the applicant's husband for voluntary retirement has been accepted by the competent authority and consequently, his services will stand terminated on the afternoon of 28.2.93. A-4 is dated 10.2.93. It is admittedly before the death of the applicant's husband. From A-1 and A-2 it is clearly seen that the applicant was well aware that her husband had sought voluntary retirement. According to applicant, acceptance of the voluntary retirement of the applicant's husband is not communicated. A railway servant giving notice of voluntary retirement, the acceptance of which requires the appointing authority's approval, may presume acceptance of the notice and retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of service which is three months. So, even if no order accepting the offer of voluntary retirement of the applicant's husband was communicated, it is to be presumed that the offer of voluntary retirement has been accepted unless an order to the contrary was issued by the competent authority. There is no case for the applicant that an order to the contrary was issued by the competent authority. That being so, it is to be presumed even in the absence of any communication



as to the acceptance of the offer of voluntary retirement by the applicant's husband that the same has been accepted by the competent authority.


6. A-4 says that the request for voluntary retirement made by the applicant's husband has been accepted by the competent authority. Learned counsel for the applicant argued that the request made by the applicant's husband for voluntary retirement has not been produced by the respondents and so also, the order of the competent authority accepting the request for voluntary retirement. It is true that the respondents have not produced the request made by the applicant's husband for voluntary retirement. So also, copy of the order accepting the voluntary retirement of the applicant's husband by the competent authority. At any way A-4 spells out that there was a request by the applicant's husband for voluntary retirement and the same has been accepted by the competent authority. There is a presumption that Official Acts have been regularly performed. There is no reason for the respondents to say in A-4, which is issued in pursuance of the request of the applicant as per A-2 wherein it is stated that her husband sought voluntary retirement, something which is not true and correct. The burden is on the applicant to rebut the presumption that Official Acts are regularly performed. The same has not been rebutted. Since A-4 was issued in pursuance to the request of the applicant as per A-2 wherein it is specifically stated that her husband had submitted an application for voluntary retirement, now she cannot turn round and say her husband had not applied for voluntary retirement and that he died while in service.



7. R-1 is the statement of salary bill showing the appointments, transfers, promotions, suspensions, reductions, dismissals, fines, debits, cautions, reprimands, case records, warnings etc. during the month from 26.2.93 to 25.3.93. There the applicant's husband name is seen at staff No.16878. In the remark column it is clearly stated that "voluntary retirement on 28.2.93".

8. Learned counsel appearing for the respondents made available certain other documents also in support of the respondents' case. One of those documents is pension payment advice. From the same it is seen that the applicant's husband was sanctioned monthly pension @Rs.562/- and in the event of the death of the pensioner, the family pension is also to be paid at the rate specified therein for the periods referred to therein to the applicant. From the same it is seen that the pension is ordered with effect from 1.3.93. So, it is clear that the applicant's husband retired from the service on the afternoon of 28.2.93.

9. Another document is the pension payment order. There in the column "reason for cessation" reason is shown as "voluntary retirement" and in the column "pension type" the type is shown as "retiring pension". It is also shown there that the employee has retired on 28.2.93 and the date of start of pension is 1.3.93. Family pension particulars are also shown therein. The name of the family pension beneficiary, the applicant, is also mentioned therein. So, it is clear from these documents that the applicant's husband sought voluntary retirement and retired on 28.2.1993.

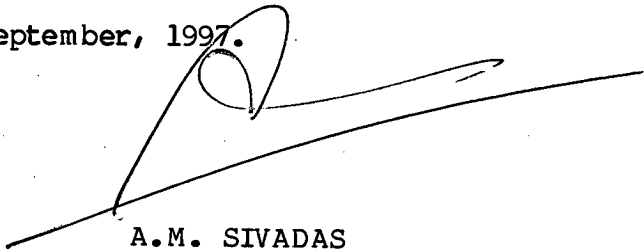


10. Another document is the Office Attendance Register. In the Register for the period from 11.2.93 to 10.3.93 the applicant's husband name is shown and there it is clearly stated that "the request for voluntary retirement has been permitted and service stand terminated on the A/N of 28.2.93." One another document is the Pay Bill for salaries and allowances of employees of Ernakulam Station for the period from 11.2.93 to 10.3.93. There also the applicant's husband name is shown and it is written that "due for Vol.retirement on 28.2.93. Separate bill will be submitted." All these would show that the applicant's husband sought voluntary retirement and the same was accepted by the competent authority.

11. Since the basis of the applicant's claim that her husband had not applied for voluntary retirement and even if he had offered for voluntary retirement the same has not been accepted by the authority competent and he was in railway service upto 26.3.93, the date of his death cannot be accepted and the applicant is not entitled to any relief.

12. Accordingly, the Original Application is dismissed.
No costs.

Dated the 5th of September, 1997.



A.M. SIVADAS
JUDICIAL MEMBER

LIST OF ANNEXURES

1. Annexure A-4: A true copy of the Appeal submitted by the Applicant to the General Manager, Southern Railway, dated 22.7.95.
2. Annexure A2: A true copy of the representation submitted by the applicant to the 4th respondent dated 30.4.96.
3. Annexure A3: A true copy of the Order No.V/P-721/Misc. dated 21.5.96 issued by the 4th respondent.
4. Annexure A-4: A true copy of the Order of Termination No.T.13/93/Gr.O dated 10.2.93 issued by the 4th respondent.
5. Annexure R1: True copy of extract of Absentee statement for the period from 26.2.93 to 25.3.93 of the Station Manager, Ernakulam Junction.

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