

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.21/08

Friday this the 11th day of April 2008

C O R A M :

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

L.Mony,
S/o.Lakshmana Reddiar,
Loco Pilot (Passenger),
Southern Railway, Ernakulam Junction.
Residing at "Devi Nilayam", Thycoodam, Ernakulam District. ...Applicant

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum. ...Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 11th April 2008 the Tribunal on the same day delivered the following :-

ORDER

HON'BLE Mr.GEORGE PARACKEN, JUDICIAL MEMBER

The applicant's grievance is that in spite his Annexure A-1 notice dated 3.10.2007 the respondents have not acceded to his request for voluntary retirement from service with effect from 10.1.2008.

2. The brief facts of the case are that the applicant joined the Railway service on 1.7.1978 and attained the age of 55 years as on 11.12.2007. Due to his ill health and other personal problems, he gave the Annexure A-1 notice for voluntary retirement in terms of Rule 1802 (b) of the Railway Establishment Code Vol.II which is extracted below :-

"1802 (a) Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice :-

(i) If he is in Group 'A' or Group 'B' service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) In any other case, after he has attained the age of 55 years.

(b) (1) 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 Government 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.

(2) A railway servant, referred to in sub-rule (1) may make a request in writing to the appointing authority to accept a notice of less than three months, giving reasons therefore. On receipt of a request under this sub-rule, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and, if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months, on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months."

3. The contention of the respondents is that the applicant was to attain the age of 55 years only on 11.12.2007 and on the date of his Annexure A-1 notice (3.10.2007) he had not attained the age of 55 years. According to them, even if Annexure A-1 notice dated 3.10.2007 was accepted, the three months notice period will expire only on 10.3.2008. Therefore, under the aforesaid Rule 1802 (b) of the IREC Vol.II, he is not entitled to seek voluntary retirement with effect from 10.1.2008. They have also submitted that vide Annexure R-1 letter dated 27.12.2007 the DPO, Trivandrum



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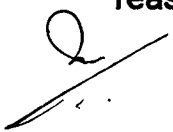
Division has informed the applicant's immediate supervisory official, namely, the Chief Crew Controller, Ernakulam that his request has not been accepted by the competent authority and the Chief Crew Controller, Ernakulam in turn vide Annexure R-2 letter dated 10.1.2008 intimated the position to applicant on 28.12.2007 itself and handed over a photocopy of the said letter. However, he refused to accept the same stating that the letter was not addressed to him. The Chief Crew Controller has, therefore, pasted the same on the notice board.

4. The applicant in the rejoinder has submitted that he is entitled to submit notice for voluntary retirement even before attaining the age of 55 years in terms of Note (3) in the concluding part of Chapter 18 of the Establishment Code Vol.II which reads as under :-

"The three months notice referred to in these rules may be given before the railway servant attains the age specified in clauses (a) and (b) of Rule 1802 or has completed 30 years of service specified in clauses (a) and (b) of Rule 1803 or has completed 30 years of service specified in clauses (a) and (b) of Rule 1804 ;

Provided that the retirement takes place after he has attained the relevant age or has completed 30 years service as the case may be."

5. The applicant has also denied the submission of the respondents that the Chief Crew Controller took a photocopy of Annexure R-1 letter and handed over the same to him but he refused to accept it and therefore it was pasted on the notice board. According to the applicant, there was no additional copy of Annexure R-1 letter to be served upon him. However, he submitted that in any case Annexure R-1 letter does not contain any valid reason for rejection of his request for voluntary retirement.

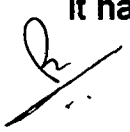


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6. When this case was initially listed before this Tribunal on 10.1.2008, after hearing the counsel for both the parties, this Tribunal restrained the respondents from compelling the applicant to discharge his duties on and with effect from 10.1.2008. Accordingly, the applicant is neither in service nor he has been admitted to voluntary retirement. He is waiting for the order of this Tribunal regarding his entitlement for seeking voluntary retirement from service and the validity of his Annexure A-1 notice dated 3.10.2007.

7. I have heard Shri.T.C.Govindaswamy for the applicant and Shri.Varghese John, proxy counsel for Shri.Thomas Mathew Nellimoottil. A plain reading of Paragraph 1802 (b) of IREC Vol.II would show that a railway servant can give notice of not less than three months in writing to the appropriate authority to retire from service after he attains the age of 55 years. According to the said provision, the applicant could not have given the notice for voluntary retirement before he has attained the age of 55 years on 11.12.2007 but he had submitted his Annexure A-1 notice for voluntary retirement prior to that date i.e. 3.10.2007. However, the respondents themselves had clarified the aforesaid rule position in Note (3) in the concluding part of Chapter 18 of the Establishment Code Vo.II stating that the employee can give three months notice for voluntary retirement even before he attains the specified age but the retirement would take place only after he has attained the relevant age. Obviously while issuing the Annexure R-1 letter dated 27.12.2007 the aforesaid aspect has not been taken into consideration by the respondents. In any case, no reason was given in the Annexure R-1 letter as to why his notice for voluntary retirement could not have been accepted by the respondents.

It has been explained only in the reply statement filed by them stating that



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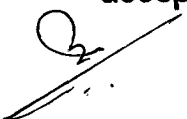
as on the date of submission of notice for voluntary retirement, he has not attained the age of 55 years.

8. Since the applicant has attained the age of 55 years on 11.12.2007 and he has sought the voluntary retirement only from 10.1.2008, the respondents ought to have accepted his request for voluntary retirement from service with effect from 10.1.2008 in terms of the aforesaid Note (3) in the concluding part of Chapter 18 of the Establishment Code Vo.II. The counsel for the applicant has also rightly relied upon the judgment of the Apex Court in Union of India Vs. Sayed Muzaffar Mir reported in AIR 1995 SC 176 in which it has been held that where the Government servant seeks pre-mature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. The relevant portion of the judgment is reproduced as under :-

"5. The second aspect of the matter is that it has been held by a three Judge Bench of this Court in Dinesh Chandra Sangma Vs. State of Assam, (1977) 4 SCC 441 : (AIR 1978 SC 17), which has dealt with a pari materia provision finding place in Rule 56 (c) of the Fundamental Rules, that where the Government servant seeks pre-mature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three Judge Bench in B.J.Shelat Vs. State of Gujarat, (1978) 2 SCC 202 : (AIR 1978 SC 1109).

6. The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 4.11.1985, we hold that the Tribunal had rightly come to the conclusion that the order of removal was non est in the eyes of law."

9. Taking into consideration the aforesaid facts and circumstances of the case and also the aforesaid judgment of the Apex Court, I allow this O.A. There is no valid justification on the part of the respondents to deny acceptance of Annexure A-1 notice dated 3.10.2007 seeking voluntary



.6.

retirement from 10.1.2008. Accordingly, the respondents shall admit the applicant for voluntary retirement from 10.1.2008 and all the retirement benefits as admissible under the rules shall be paid to him within a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

(Dated this the 11th day of April 2008)


GEORGE PARACKEN
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 21 of 2008

Wednesday..., this the **8th** day of **July**, 2009

C O R A M :

HON'BLE Dr. K B S RAJAN, JUDICIAL MEMBER
HON'BLE MS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

L.Mony,
S/o.Lakshmana Reddiar,
Loco Pilot (Passenger),
Southern Railway, Ernakulam Junction,
Residing at "Devi Nilayam", Thycoodam,
Ernakulam District.

...Applicant.

(By Advocate Mr.T.C.Govindaswamy)

Versus

1. Union of India represented by the General Manager,
Southern Railway, Headquarters Office,
Park Town P.O., Chennai – 3.
2. The Divisional Railway Manager,
Southern Railway, Trivandrum Division,
Trivandrum.

...Respondents.

(By Advocate Mr. Alexander Thomas, Spl. Counsel) *with*
Mr Thomas Mathew Nellimoottil.

This application having been heard on 17th April, 2009 the Tribunal on **8/7/2009**.. delivered the following :-

ORDER

HON'BLE Dr. K B S RAJAN JUDICIAL MEMBER

This OA was earlier considered and was allowed vide order dated 11th April 2008. However, when the respondents had filed a review and the same was considered, the Review application was allowed and the afore said order was recalled. Thus, the case was again re-heard and after hearing both the parties, this order is made.



2. The facts of the case in nutshell are as under: -

(a) he applicant joined the Railway service on 1.7.1978 and attained the age of 55 years as on 11.12.2007. Due to his ill health and other personal problems, he gave the Annexure A-1 notice for voluntary retirement in terms of Rule 1802 (b) of the Railway Establishment Code Vol.II which is extracted below :-

"1802 (a) Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months pay and allowances in lieu of such notice :-

(i) If he is in Group 'A' or Group 'B' service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) In any other case, after he has attained the age of 55 years.

(b) (1) 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 Government 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.

(2) A railway servant, referred to in sub-rule (1) may make a request in writing to the appointing authority to accept a notice of less than three months, giving reasons therefore. On receipt of a request under this sub-rule, the appointing authority may consider such request for curtailment of the period of notice of three months on merits and, if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing

authority may relax the requirement of notice of three months, on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months."

(b) The contention of the respondents is that the applicant was to attain the age of 55 years only on 11.12.2007 and on the date of his Annexure A-1 notice (3.10.2007) he had not attained the age of 55 years. According to them, even if Annexure A-1 notice dated 3.10.2007 was accepted, the three months notice period will expire only on 10.3.2008. Therefore, under the aforesaid Rule 1802 (b) of the IREC Vol.II, he is not entitled to seek voluntary retirement with effect from 10.1.2008. They have also submitted that vide Annexure R-1 letter dated 27.12.2007 the DPO, Trivandrum Division has informed the applicant's immediate supervisory official, namely, the Chief Crew Controller, Ernakulam that his request has not been accepted by the competent authority and the Chief Crew Controller, Ernakulam in turn vide Annexure R-2 letter dated 10.1.2008 intimated the position to applicant on 28.12.2007 itself and handed over a photocopy of the said letter. However, he refused to accept the same stating that the letter was not addressed to him. The Chief Crew Controller has, therefore, pasted the same on the notice board.

(c) The applicant in the rejoinder has submitted that he is entitled to submit notice for voluntary retirement even before attaining the age of 55 years in terms of Note (3) in the concluding part of Chapter 18 of the Establishment Code Vol.II which reads as under :-

"The three months notice referred to in these rules may be given before the railway servant attains the age specified in clauses (a) and (b) of Rule 1802 or has completed 30 years of service specified in clauses (a) and (b) of Rule 1803 or has completed 30 years of service specified in clauses (a) and (b) of Rule 1804 ;

Provided that the retirement takes place after he has attained the relevant age or has completed 30 years service as the case may be."



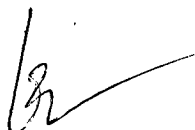
(d) The applicant has also denied the submission of the respondents that the Chief Crew Controller took a photocopy of Annexure R-1 letter and handed over the same to him but he refused to accept it and therefore it was pasted on the notice board. According to the applicant, there was no additional copy of Annexure R-1 letter to be served upon him. However, he submitted that in any case Annexure R-1 letter does not contain any valid reason for rejection of his request for voluntary retirement.

(e) When this case was initially listed before this Tribunal on 10.1.2008, after hearing the counsel for both the parties, this Tribunal restrained the respondents from compelling the applicant to discharge his duties on and with effect from 10.1.2008. Accordingly, the applicant is neither in service nor he has been admitted to voluntary retirement. He is waiting for the order of this Tribunal regarding his entitlement for seeking voluntary retirement from service and the validity of his Annexure A-1 notice dated 3.10.2007.

3. In their additional reply statement, the respondents have spelt out the details as to the applicant's entry into service under the Reserved category (ST) and also the details of the enquiry that has been conducted in respect of the community which applicant claims to belong to and thus have stated that the applicant has suppressed the material information and hence, he is not entitled to the relief sought for.

4. In fact, the finding of the Tribunal in the order on review application itself is to the following extent: --


"I therefore, hold that the applicant has suppressed the very vital facts regarding the pending dispute about the status of his caste



which has an impact on his service, from this Tribunal. "

5. Counsel for the applicant argued that the case relating to the caste of the applicant has nothing to do with the applicant's request for retirement under the provisions of the Railway Code. He has asserted that the respondents themselves, in their counter did not come up with this reason to have the case dismissed. The reason for refusal to permit the applicant to retire voluntarily is that there is shortage of loco pilots and hence, permission was not granted. A vested right is available with the applicant under the provisions of Rule 1802(b) of the Indian Railway Establishment Code Vol II (extracted above) and this right is subject to the conditions prescribed thereunder and as long as those conditions are fulfilled, there cannot be any embargo from retiring from the service.

6. Counsel for the respondent submitted that caste certificate was obtained by the applicant by playing fraud and the same could cost the very job of the applicant, in which event, the applicant would not become entitled to any pensionary or other terminal benefits. But if the applicant is permitted to retire, then he would be enjoying the terminal benefits, which should not be permitted as his appointment ab-initio itself would be void once it is established that he does not belong to that community which he claims and on the basis of which he came to be appointed. That the sister of the applicant in postal service is also facing such enquiry has also been referred to by the counsel.



7. Arguments were heard and pleadings perused. Also the departmental records had all been scanned.

8. It is very much essential to know the sequence relating to the applicant's applying for voluntary retirement and action taken on the same by the department. The same are as in the succeeding paragraphs.

9. It was on 3rd October 2007 that the applicant first applied to the DRM, Trivandrum in regard to his intended retirement from service. The said application reads as under: -

" 03-10-2007

To : DRM, Trivandrum

I joined in Railways on 01-07 1978 and attaining 55 years of age on 31-12-2007. Due to personal reasons and ill health, I am volunteering myself to retire from Railway Service on attaining the age of 55 years. I may be allowed to retire voluntarily with effect from 10-01-2008.

I do declare that I will not seek re-appointment or appointment of my wards on compassionate grounds on this score and oblige.

Sd/xxxxx "


10. The following are the communications in the wake of the aforesaid letter of retirement:

(a) Vigilance clearance was sought for in the following manner:-

05-10-2007

Shri L. Money Loco Pilot (Passenger) Gr. II/ERS in scale Rs 5500 - 9000 vide his application dated 3-10-2007.

Kindly advise whether any DAR/SPE/Vig. Case are pending



against the employee to process further.

(b) The Vigilance Branch responded as under: -

SOUTHERN RAILWAY

VIGILANCE BRANCH
HQ OFFICE
CHENNAI 600003

VO/MG/56/M/782/2007

DATE: 17-10-2007
5-11-2007

With reference to your above letter the status of Vigilance/SPE cases for following employee is as under:

<u>Sl No.</u>	<u>Name & Designation</u>	<u>Remarks</u>
1)	MONEY L LOCO PILOT/II/ERS	-NIL-

(No. of employee : 1)

Information regarding the disciplinary action have to be obtained from DAR section.

(c) Note to Vigilance :-

S.Rly.

V/P579/VI/Rg/IV

DPO/O/TVC
18/11/07

Note

Kindly advise whether there are any DAR/SPE/Vig. cases pending against the following employees who have requested for voluntary retirement from service.

- (1) Shri. L. Mony, Loco Pilot (Pass) ERS
- (2) Shri K.R. Kamaladharan, Sr.LP(Shg)
ERS

DPO/TVC

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(d) Letter from Division Office to Sr. Div. Finance Manger:-

Divisional Office,
Personnel Branch,
Trivandrum - 14.

No.V/P.579/VI/Rg/IV

Dated: 16.11.2007.

Sr.DFM/TVC

Sub:- Regarding voluntary retirement of
Shri. L. Money, LP (Pass) II/ERS.

Shri. L. Money, LP (Pass) II/ERS in scale Rs.5500-9000 has requested for voluntary retirement from service w.e.f. 10.01.2008.

Date of Birth .. 11.12.1952

Date of Appointment .. 01.07.1978

He is having more-than 20 years of qualifying service as on date of his application.

Kindly certify his qualifying service for pension for processing further Service Register and Leave Chart is enclosed.

Encl : One SR
One LC.

Divisional Personnel Officer.

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(e) Letter from Sr. Div. Finance Manager to Sr. DPO :-

TRIVANDRUM DIVISION

P.500/TVC/PENSION

O/o. of the Sr. Divl. Fin. Manager
Trivandrum
05/12/2007

Sr. DPO/TVC



Sub : Certification of qualifying service for voluntary retirement.

Ref : Your office Lr. No. V/P579/VI/Rg/IV
Date 16/11/2007.

The Qualifying service of the following employee's/
has/have been verified and their qualifying service is as follows.

Sl. No.	Name	Desig.	Station	Q.S.		
				Y	M	Dys
1	L. Money	LP	Pass II ERS	28	9	22
2						
3						

The SR & Leave chart/s are returned herewith.

Sr. DFM/TVC

Encl : As above

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(f) Notings of decision of the competent authority on applicant's request:-

M 19 : Ref. Folios (16) and (19)

The following employees have requested for voluntary retirement from service, vide folios under reference w.e.f. dates mentioned against each.

		<u>w.e.f.</u>
<u>F.19</u>	(1) Shri. L. Mony, LP(Pass) ERS	10.01.08
<u>F.16</u>	(2) Shri K.R. Kamaladharan, Sr.LP(Shg) ERS	26.12.07

They are having more than 20 years of qualifying service and the same has been certified by Sr. DFM vide folios 32 and 33.

They are free from DAR/SPE/Vig. cases as per folios 21, 23 and 24.

Sr.DOM is the competent authority to accept the request for voluntary retirement.



For orders please, whether their request for voluntary retirement can be accepted. If so the dates from which the same is accepted may also be mentioned.

SR and leave charts for the employees are also enclosed for perusal.

Submitted please.

OS/Mech/

For approval please reg. acceptance VR in r/o. the above mentioned two employees.

APO/M

DPO May kindly see for orders.

Sr. DOM

As on date there are over 55 vacancies in the Drivers' cadre, which increases to over 70 with the implementation of the new crew links of HQRS. We are not in a position to relieve any one on VR at this stage since the situation is so acute that practically every day, there are detentions on account of crew. We may advise both employees they cannot be relieved at present.

DRM

I agree. We cannot dispense with their services.

Sr.DOM

For n.a. please.

DPO

In connection with the above, a letter to CRC/ERS is submitted at F.34 for 'S' please.

For inf. please.

Pl. advise the employees suitably.

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(g) Intimation regarding service of communication :-

Southern Railway

DRM(P) TVC.

No. V/P579/VI/RG/IV

Dt. 27.12.2007

CRC/ERS

Sub : Request for voluntary retirement from Shri K.R. Kamaladharan, Sr. LP(Shg) ERS and Shri L. Mony, LP(Pass) ERS.

Request for voluntary retirement in favour of the above named employees have not been accepted by the competent authority.

Letter follows.

DPO/TVC

Copy to : Sr. DOM/TVC for information please
Sr. DME/TVC.

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(h) Intimation to the applicant :-

SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum-14.

No.V/P.579/VI/RG/N

Date : 10.01.2008.

Shri. L. Mony,
Loco Pilot (Pass),
CCRC/O/ERS.

Thro' CCRC/ERS

Sub : Request for voluntary retirement.

This has reference to your letter dated 10.1.2008 received through FAX from CCRC/ERS. CRC/ERS has



already been advised vide this office letter of even No. Dated 27.12.2007 that your request for voluntary retirement has not been accepted by the competent authority. It has been reported by CCRC/ERS that you have been notified of this by serving a copy of the abovesaid letter but you have refused to acknowledge the same.

You are hereby once again advised that your request for voluntary retirement has not been accepted by the competent authority and therefore you should report for duty immediately. If you do not report for duty it will be treated as unauthorised absence.

DPO/TVC

Copy to: Sr. DOM/TVC for information please.

.....

(i) Intimation regarding service of communication:-

S. RAILWAY

No. ERS-50

Office of the CCRC

ERS


Dated : 10.01.2008

Sr. DPO/TVC, Sr. DOM/TVC

I humbly submit that the intimation letter addressed to me with letter No.V/P.579/VI/RG/IV was informed to Shri L. Mony, LP/Passenger on 28.12.2007 itself in connection with non acceptance of Voluntary retirement. I handed over a photostat copy of the same to him. But he stated that as the letter was not addressed to him or a copy for him, he refused to acknowledge. So I pasted the same on the notice board. Now on 10.01.2008 he submitted a letter stating that as no formal intimation addressed to him was issued by Sr. DPO/TVC, he retires from this date voluntarily. The letter is forwarded herewith for necessary action please.

CCRC/ERS

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(j) Intimation from the applicant :-

From :

L. Mony,
Loco Pilot (Pass),
CCRC/O/ERS.

To

Divisional Personnel Officer,
Southern Railway,
Trivandrum.

Through : CCRC/ERS

Respected Sir,

In terms of my request dated 3-10-2007 I had requested for voluntary retirement w.e.f. 10-01-2008. The said request having not been rejected as on 9-1-2008. I am deemed to have retire from service w.e.f. in the mid night of 9-1-2008, that is 10-1-2008, hence this fact may be intimated to all concerned and step be taken for settlement of my pension and other retirement benefits.

Thanking you,

Yours faithfully,

L. MONY

Date : 10-01-2008

Place: Ernakulam

.....

(k) Communication regarding interim relief :-

SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum-14.

No.V/P OA 21/2008/4

Date : 16.01.2008.



NOTE

Sub :- OA No.21/2008 filed by Shri. L. Mony, Loco Pilot/
P/ERS before the Hon'ble Tribunal/Ernakulam Bench
- Interim order in the OA - reg.

In the above OA, filed by Shri L. Mony, LP/P/ERS,
seeking voluntary retirement with effect from 10.01.2008,
the Hon'ble Tribunal passed an interim order on 10th
January 2008 directing the respondents not to compel the
applicant to discharge his duties on and with effect from
10.01.2008.

A copy of the interim order dated 10th January 2008
is enclosed herewith for compliance.

Encl : As above

Divisional Personnel Officer

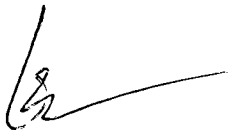
Sr. DOM/TVC

OS/Mech/PB

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11. All the above would go to show that at the time when the applicant applied for voluntary retirement, the very respondents, did not view the case of the applicant from the angle that he had played fraud in getting his employment by producing a fake community certificate.

12. The DRM was informed by the concerned officers/staff that in view of the fact that there has been shortage of staff, permission be refused and the same was approved by the DRM as could be seen from the noting portion of the file.



13. Neither the counter filed by the respondents in reply to the OA contained any inkling that the applicant may lose even his job nor was there any whisper at the time of hearing the OA originally.

14. In fact, a part file made available for perusal contains the following complaint:-

" Confidential

SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum-14.

No.V/P.227/Misc/LM
Date : 09.09.2008.

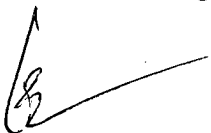
The Commissioner & Secretary,
Scheduled Castes and Scheduled Tribe Development (E) Deptt.,
Government of Kerala,
Thiruvananthapuram.

Sir,

Sub :: Claim as belonging to Kondareddy(ST) community –
Shri. L. Mony, Loco Pilot of S. Rly – reg.

A complaint has been received in this office that Shri. L. Mony, Loco Pilot of this Railway Division who was appointed on ST quota, does not belong to ST community and that his case may be investigated.

While scrutinising the old records that have now been traced out it is seen that there was an order from the Govt. of Kerala issued by the Commissioner & Secretary, Scheduled Castes and Scheduled Tribe Development (E) Deptt., by Order of the Governor of Kerala State, as per No.GO(Rt)646/92/SCSTDD dt.9/12/1992, as per which it was declared that Smt. L. Usha Devi, Smt. L. Rani and Shri. L. Mony, children of Shri V. Lakshmana Reddiar, Manoj Nivas, West Fort, Mavelikkara, are not members of the Kondareddy(ST) community and that action may be taken



against them for usurping the benefits of STs. It is further seen that Smt. L. Usha Devi (working as Postal Assistant) filed OP No.961/93 before the Hon'ble High Court of Kerala. Shri. L. Mony had also filed OP No.1460/1993 before the Hon'ble High Court of Kerala in this matter.

It is requested that this office may kindly be advised of the latest position as regards caste/community status of Shri. L. Mony of this Railway and others.

Kindly treat the matter as **most urgent** as a Contempt Petition filed by Shri. L. Mony is pending before the Hon'ble Central Administrative Tribunal, Ernakulam Bench.

Yours faithfully,

(N. Govinda Karnavar, IRPS)
Divisional Personnel Officer
for Divisional Railway Manager

Copy to :- File No.V/P.OA 21/2008"

15. It is the above complaint that had made the respondents to realize that there has been a case going on with regard to the caste of the applicant.

16. The respondents had then filed a review application along with an application for condonation of delay on 5th November, 2008. And simultaneously, the respondents had taken action vide communication dated 19.09.2008 addressed to the Commissioner & Secretary, SC & ST Development (E) Department, Government of Kerala, Thiruvananthapuram and the same reads as under:-



" Confidential

SOUTHERN RAILWAY

Divisional Office,
Personnel Branch,
Trivandrum-14.

No.V/P.227/Misc/LM

Date : 19.09.2008.

The Commissioner & Secretary,
Scheduled Castes and Scheduled Tribe Development (E) Deptt.,
Government of Kerala,
Thiruvananthapuram.

Sir,

Sub :: Claim as belonging to Kondareddy(ST) community –
Shri. L. Mony, Loco Pilot of S. Rly – reg.

Ref :: This office letter of even No. Dated 9.9.08.

Kindly refer to this office letter cited above (copy enclosed)
requesting to advise the Caste/Community status of Shri. L. Mony.

On further enquiry with Postal authorities it has come to the knowledge of this office that OP No.961/1993 filed by Smt. L. Usha Devi, before the Hon'ble High Court of Kerala, had been disposed of and thereafter she had filed CA No. 255/2004 before the Hon'ble Supreme Court. In CA 255/2004, the Hon'ble Apex Court directed the Committee to determine the question "for ascertaining the genuineness of the status of ST" as expeditiously as possible. In this connection, the copies of the judgements in OP No.961/1993, OP No.1460/1993 and CA No.255/2004 are enclosed for kind reference.

Kindly arrange to advise whether inquiry had been held as directed by the Hon'ble Supreme Court and decision arrived at regarding the Caste/community status of Shri. L. Mony, for taking further action.

Thanking you,

Yours faithfully,

Encl : As above

(N. Govinda Karnavar)
Divisional Personnel Officer
for Divisional Railway Manager

Copy to :- File No.V/P.OA 21/2008 "



17. Now, the question involved is whether on account of suppression of the vital information the applicant is or is not entitled to any relief.

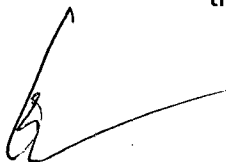
18. On the matter relating to "suppressio veri" a few decisions of the Apex Court would be apt to be referred to. And the same are as under:-

(a) In ***Organo Chemical Industries v. Union of India, (1979)***
4 SCC 573, the Apex Court has observed as under:-

"3. The petitioners are guilty of suppressio veri and this, by itself, was sufficient to dismiss the writ petition, but, since it involves a point of importance which was argued at length, we will have to deal with the same."

(b) In ***Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav, (2003)***
3 SCC 437, the Apex Court observed as under:-

"12. The object of requiring information in columns 12 and 13 of the attestation form and certification thereafter by the candidate was to ascertain and verify the character and antecedents to judge his suitability to continue in service. A candidate having suppressed material information and/or giving false information cannot claim right to continue in service. The employer having regard to the nature of the employment and all other aspects had the discretion to terminate his services, which is made expressly clear in para 9 of the offer of appointment. *The purpose of seeking information as per columns 12 and 13 was not to find out either the nature or gravity of the offence or the result of a criminal case ultimately. The information in the said columns was sought with a view to judge the character and antecedents of the respondent to continue in service or not.* The High Court, in our view, has failed to see this aspect of the matter. It went wrong in saying that the criminal case had been subsequently withdrawn and that the offences, in which the respondent was alleged to have been involved, were also not of serious nature. In the present case the respondent was to serve as a Physical Education Teacher in Kendriya Vidyalaya. The character, conduct and antecedents of a teacher will have some impact on the minds of the students of impressionable age. The appellants having considered all the aspects passed the order of dismissal of the



respondent from service. The Tribunal after due consideration rightly recorded a finding of fact in upholding the order of dismissal passed by the appellants. The High Court was clearly in error in upsetting the order of the Tribunal."

(c) In ***B.R. Chowdhury v. Indian Oil Corpn. Ltd.,(2004) 2 SCC 177***, the Apex Court has stated as under:-

"This Court in *Kendriya Vidyalaya Sangathan v. Ram Ratan Yadav* while dealing with the effect of suppression of material information took a view that the purpose of seeking information cannot be defeated which has bearing on the selection. Added to this, if only the appellant had given correct information about the status of his occupation as on the relevant date, as rightly held by the learned Single Judge, which view was affirmed by the Division Bench of the High Court, possibly the position would have been different."

(d) In ***Tirupati Balaji Developers (P) Ltd. v. State of Bihar,(2004) 5 SCC 1***, the Apex Court observed that :

"It is obvious that any person approaching this Court by indulging in misadventure of *suggestio falsi* or *suppressio veri*, would suffer the consequences but that would be only after the facts have been ascertained."

(e) In ***A.P. Public Service Commission v. Koneti Venkateswarulu, (2005) 7 SCC 177***, the Apex Court has held as under:

"That there has been *suppressio veri* and *suggestio falsi* is incontrovertible. The explanation that it was irrelevant or emanated from inadvertence, is unacceptable. In our view, the appellant was justified in relying upon the ratio of *Kendriya Vidyalaya Sangathan* and contending that a person who indulges in such *suppressio veri* and *suggestio falsi* and obtains employment by false pretence does not deserve any public employment.

(f) In ***V. Venkata Subbarao v. State,(2006) 13 SCC 305***, the view of the Apex Court is :

"Conduct of the officers of the respondent who had taken recourse to *suppressio veri* deserves serious condemnation."



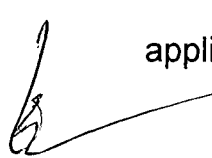
(g) In ***Dilip N. Shroff v. CIT***, (2007) 6 SCC 329, the view of the Apex Court is :

"suppressio veri would amount to concealment".

19. In all the above, the seriousness of *suppressio veri* had been clearly brought out. But, simultaneously, the fact that the information must have direct bearing to the subject matter of the case has also been emphasized, as for example, where the information wanted is about conviction, that a case was under prosecution cannot be said to be directly related and suppression of the said fact cannot be said to be fatal to the case.

20. The applicant has, of course, not come out with the fact that some case relating to the caste at the time of filing of the OA. But the same could have been brought to the notice of the Tribunal by the respondents in their reply. Blissfully, they too have not brought out the same. It is only at the review stage that the said fact has been surfaced by the respondents.

21. The contention of the respondents is that the matter under inquiry against the applicant, may result in the dismissal of the applicant, in which event, the applicant cannot get his pension and other terminal benefits, and as such, the applicant cannot be allowed to retire. But Rule 1802 (b) of the Code is a statutory provision and all that has to be seen is whether the conditions therein have been fulfilled. If so, the applicant is through once he fulfills the conditions and if not, the applicant cannot retire under the said provision. That far and no further. The respondents have stated that the applicant has suppressed a vital information. But that information if spelt



out cannot disable the applicant from availing of the provisions of Rule 1802 (b). Even if there be a departmental proceedings in this regard, as long as the individual is not under suspension, and the applicant gives three months' notice, no other circumstances could disable the applicant from seeking retirement under this clause. Thus, suppression of vital information relating to the continuance of an inquiry with regard to the caste/community of the applicant cannot for the purpose of considering his entitlement to invoke the provisions of Rule 1802 (b) be treated as fatal to his entitlement. The case could well be considered and if he fulfils the conditions, he is entitled to the benefit of the said provision.

22. It is in the above backdrop that the case of the applicant has to be considered.

23. The anxiety of the respondent is well appreciated. If ultimately the applicant is found to be guilty of having furnished a false caste certificate, as held by the Apex Court in various cases the applicant's very appointment would become void ab-initio. In this regard the decision of the Apex Court in the case of ***R. Vishwanatha Pillai v. State of Kerala, (2004) 2 SCC 105***, would be relevant to be mentioned. The Apex Court in this case has held as under:-

" Finding recorded by the Scrutiny Committee that the appellant got the appointment on the basis of a false caste certificate has become final. The position, therefore, is that the appellant has usurped the post which should have gone to a member of the Scheduled Castes. In view of the finding recorded by the Scrutiny Committee and upheld up to this



Court, he has disqualified himself to hold the post. The appointment was void from its inception. It cannot be said that the said void appointment would enable the appellant to claim that he was holding a civil post within the meaning of Article 311 of the Constitution of India. As the appellant had obtained the appointment by playing a fraud, he cannot be allowed to take advantage of his own fraud in entering the service and claim that he was holder of the post entitled to be dealt with in terms of Article 311 of the Constitution of India or the Rules framed thereunder. Where an appointment in a service has been acquired by practising fraud or deceit, such an appointment is no appointment in law, in service and in such a situation Article 311 of the Constitution is not attracted at all."

24. But the fact is that it has not been conclusively proved that the applicant has procured the appointment by producing any false or fake certificate. The sequence of events in this regard could be seen from para 3 to 7 of the additional reply, which is reproduced below:-

"3) It is humbly submitted that the applicant Shri L. Mony claiming to be belonging to Kondareddy community which is recognised as Scheduled Tribe (ST) was appointed as Apprentice Fireman/Diesel Assistant against a vacancy reserved for ST. On the basis of the orders of the Government of Kerala dated 09/12/1992 communicated by the Commissioner & Secretary, SC/ST Development (E) Department, the applicant herein was given a Show Cause Notice as per letter dated 05/02/1993. As per this, it was advised that Shri L. Mony was appointed on consideration as a member of the Kondareddy (ST) community and action may be taken against him for usurping the benefits of ST. In the said report it was stated that the finding was on the basis of an investigation conducted by the Kerala Institute of Research, Training and Development Studies for SC/ST (KIRTADS) subsequent to a reference from the Postal Department, where one of the sisters of the Respondent by name Smt. L. Usha Devi was working. In terms of the report "it is declared that Smt. L. Usha Devi, Smt. L. Rani and Shri L. Mony, children of Shri V. Lekshmana Reddiar, Manoj Nivas, West Fort, Mavelikkara, are not members of the Kondareddy (ST) community, but belongs to Reddiar community." This being so it is evident that the applicant who was appointed in Railway Service against ST quota and who has availed the benefits of Reservation, not actually due to him, is not eligible for any



service benefits also as it has been stated in the Government Order. In the meanwhile Shri L. Mony had filed OP No.1460 of 1993 before the Hon'ble High Court of Kerala challenging the Order of Government of Kerala dated 09/12/1992. Against the same order, Smt. L. Usha Devi, sister of the applicant working in Postal Department, had also filed OP No. 961 of 1993 before the Hon'ble High Court of Kerala. As per the judgment dated 30th Jan., 2002 (Annex. R-4), the said OP was allowed with the following observation:-

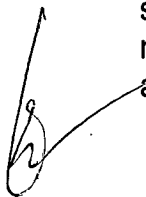
"In the result, we set aside the order of the State Government at Ext.P-18 and leave the respondents to have the Caste claim of the petitioner verified by resort to the machinery prescribed under the Kerala (Scheduled Castes and Scheduled Tribes) Regulation of Issue of Community Certificates Act 1996 by following the procedure prescribed under the Act. ----"

4) Later, OP No.1460 of 1993 filed by the applicant was also disposed of by the Hon'ble High Court of Kerala on 22/09/2006 (Annex. R-5) following the judgment in OP No.961 of 1993. While this is so, the judgement in OP No.961 of 1993 was challenged by Smt. L. Usha Devi before the Hon'ble Supreme Court of India in CA No.255 of 2004. The Hon'ble Supreme Court as per their common judgment dt. 27-4-2007 (Annex. R/6) in CA 255 of 2004 along with connected CAs, dismissed the Civil Appeal directing the Committee to determine the question (for ascertaining the genuineness of the status of ST) as expeditiously as possible.

5) In the meanwhile, on the basis of the Annexure-R3, Railways had made a reference to the District Collector, Tirunelveli Kattabomman District, Tirunelveli, as per letter NoV/P.227/Misc/LM dt. 19/04/1994. It is submitted that the District Collector, after a detailed hearing in which the applicant was given a personal hearing on 7/8/1995 and thereafter did not respond in spite of many chances given to prove his claim as belonging to Kondareddy (ST) community, issued a proceedings as per NO.B4.45565/94 dated 12/11/95 (Annex. R/7) cancelling the Community Certificate No.1170/73 dated 1/9/73 issued by the Tahsildar, Nanguneri, to the applicant herein. Challenging the proceedings, the applicant filed WP No.17569 of 1995 before the Hon'ble High Court of Madras and the said WP was disposed of by the Hon'ble High Court as per the judgment dated 01/11/2002 (Annex. R/8) directing the District Collector, Tirunelveli Kattabomman District, Tirunelveli, to refer the matter to the appropriate Scrutiny Committee. As a follow up action, Railways also sent the letter NoV/P.353IWP NO.17569/95 dated 18/12/2002 (Annexure-R9), requesting the Collector to refer the matter to the Scrutiny Committee.



6) It is humbly submitted that after coming across the judgment of the Hon'ble High Court of Kerala in WP(C) NO.23269 of 2008, on 02/09/2008, the Railways sent letters on 9/9/2008 (Annex. R-10) to the Commissioner & Secretary, Scheduled Castes and Scheduled Tribe Development (E) Department, Thiruvananthapuram, and (Annex. R/11) to the Director of Posts, Thiruvananthapuram, with copy to the Regional Manager, Canara Bank, Madras, in order to ascertain the latest position as regards the caste status of Shri L. Mony and others. It is humbly submitted that the Commissioner and Secretary, Scheduled Castes and Scheduled Tribes Development (E) Department, Thiruvananthapuram, was again addressed on 19/9/08 (Annex. R-12) in the matter. It is now informed to the Railways that the Principal Secretary to Govt. of Kerala, SC/STDD Department, who is the Chairman of the Scrutiny Committee constituted under the relevant Act governing the field, has issued notice No.23813/G3/2008/SCSTDD dt. 20-10-2008 directing the applicant herein to be present before that officer on 5-11-2008 for personal hearing in relation to the finalization of the proceedings of bogus ST claim (Annex. R-13). It is further learnt that the State of Kerala which has been duly authorized to frame enactment to implement the directions of the Hon'ble Supreme Court in Madhuri Patel's case relating to bogus SC/ST claims, has now promulgated the Kerala (SC and ST) Regulation of Issue of Community Certificates (Amendment) Ordinance 2008 (Ordinance No. 37 of 2008) incorporating certain amendments to the Principal Act. The said amendment ordinance (Annex. R-14) has come into force w.e.f. 1-2-2007 and Sec.16A has been incorporated by amendment into the Principal Act, which has statutorily empowered the pension sanctioning authority/competent authority concerned to defer and withhold pensionary benefits of the incumbent pending decision of the Govt. or the scrutiny committee in respect of the bogus SC/ST claim issue. It is learnt that the applicant is not co-operating with the adjudication proceedings by the statutory scrutiny committee and is adopting such an approach to evade and indefinitely postpone the finalization and conclusion of the proceedings before the scrutiny committee, in order to claim that he should not be asked to wait for claim of voluntary retirement benefits till the conclusion of the scrutiny committee proceedings. As the matter before the scrutiny committee is directly and substantially connected to his claim for voluntary retiral benefits made in this OA before this Hon'ble Tribunal, this aspect of dilatory tactics adopted by the applicant to evade and postpone the conclusion of the scrutiny committee proceedings may be seriously viewed by this Hon'ble Tribunal and discretionary relief may be refused to the applicant for such dilatory tactics. It may also be noted that in view of the direct nexus between his claim



for retiral benefits and the finalization of the scrutiny committee proceedings, this Hon'ble Tribunal may direct the finalization of the scrutiny committee proceedings within a reasonable time limit and with strict directions to the applicant to sincerely co-operate with the scrutiny committee for adjudication proceedings and with consequential directions that retiral benefits may be deferred till conclusion of such scrutiny committee proceedings and that the retiral benefits may be sanctioned and disbursed only if the applicant is exonerated on such conclusion of the scrutiny committee proceedings. In this connection, it may also be noted that the Hon'ble Supreme Court in the decision reported in (2004) 2 SCC 105, para 19 has held that in such cases where the employee obtains appointment against a post for a reserved candidate by producing a false caste certificate, such appointment is void and nonest and that right to pension after retirement flows from a valid and legal appointment and that the consequential right of pension and monetary benefits cannot be given to any such person whose appointment was found to have been obtained fraudulently and rested on a false caste certificate and that no sympathy or indulgence can be shown to such a person by the Court. Moreover, the relevant enactment as per the amended Ordinance governing the field, has empowered the authorities concerned to defer and withhold pensionary payments to such persons whose SC/ST claims issues are pending before the Govt. or the scrutiny committee, as can be seen from the mandatory provisions of Sec.16 A of the relevant enactment.

7) Inasmuch as Annexure R6 judgment of the Hon'ble Supreme Court is very much applicable to the brother of Smt. L. Usha Devi, who is the Railway employee, the Railway administration is in quandary to effect his settlement as the genuineness or otherwise of the ST status of him is a crucial factor for determining his service benefits in Railways. It is humbly submitted that in case it is once again proved that he does not belong to ST community, he will forfeit all his service benefits and accordingly the settlement which he is claiming in the OA have to be reconsidered. "

25. With the above situation, the respondents cannot do anything but have to wait for the outcome of the inquiry. That stage having not been reached, it cannot at this juncture be stated that it is not a distant astrology but an imminent futurology.

26. The applicant is eagerly awaiting his terminal benefits. Pension or gratuity, as held in the case of D.V. Kapoor is not a bounty. It is the right of a Railway/government servant. In this regard, the observations of the Apex Court in the following cases are appropriate to be cited:-


(a) D.V. Kapoor v. Union of India, (1990) 4 SCC 314,

"The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Article 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right."

(b) Poonamal v. Union of India, (1985) 3 SCC 345,

"As already held by this Court in numerous judgments pension is a right not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the relevant rules and anyone entitled to the pension under the rules can claim it as a matter of right. (Deoki Nandan Prasad v. State of Bihar , State of Punjab v. Iqbal Singh and D.S. Nakara v. Union of India .) "

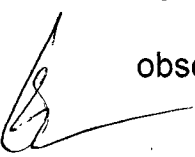
26. Thus, the case of the applicant has to be viewed with the present position. Notwithstanding the fact that the enquiry is going on, the applicant's case has to be considered in accordance with the provisions of Rule 1802(b). The conditions attached to it would go to show that permission could be refused only when the applicant is under suspension and this is not the case here. Therefore, the applicant is entitled to the concessions available to him. Accordingly, it is held that the applicant is



deemed to have retired from service w.e.f. 10-01-2008. Consequently, he is entitled to the benefits as available to any other individual.

27. Before parting with the case, it has to be held here that there appears to be a communication gap between the vigilance section and the section which deals with the State Government. It is not that the matter has cropped up only with the receipt of the complaint from some one, as stated in one of the previous paragraphs. The Railways have been party to the proceedings before the High Court, vide Annexure R-5. For this communication gap, perhaps no one could be held responsible unless it is proved that some one interested had deliberately eclipsed the position relating to the case and proceeded to deal with the application for retirement independent of the pending inquiry relating to caste. If in due course, the inquiry results in the fact that the applicant has produced a false certificate, which would result in the very employment being declared as void right from inception, as held in the case of Vishwanathan Pillai (supra), in which event, the applicant would not be entitled to any terminal benefits, necessary action to withdraw the pension could well be taken. **If rules permit, and conditions for the same are fulfilled**, respondents could well withhold the terminal benefits (save provident fund) and make the pension only as provisional. Otherwise, the respondents shall have to treat the case of the applicant as one of normal case.

28. In view of the above, the OA is allowed subject to the above observation. Necessary action in regard to completion of other formalities



for retirement may be taken forthwith. The applicant is not entitled to any interest on the terminal benefits, if the same are paid to him, as the delay in payment has not been caused due to any deliberate inaction on the part of the respondents. This drill shall be completed within a period of two months from the date of communication of this order. No costs.

Dated, the 8th July, 2009)



(K. NOORJEHAN)

ADM, INISTRATIVE MEMBER



(DR. K B S RAJAN)

JUDICIAL MEMBER

CVR.