

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 338 of 2008

Friday, this the 12th day of December, 2008

C O R A M :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

Prasanth Kumar,
S/o. Chandradas,
Ex-Senior Ticket Collector,
Southern Railway, Mangalore,
Residing at C/o. Avinash,
D.No.211, Sakthi Ramesh Nilayam,
Sakthi Nagar, Bangalore – 43

... Applicant.

(By Advocate Mr. Martin G. Thottan)

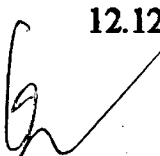
v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Headquarters Office,
Park Town, Chennai – 3
2. The Senior Divisional Commercial Manager,
Southern Railway, Palghat Division,
Palghat.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.
4. The Assistant Commercial Manager,
Southern Railway, Palghat Division,
Palghat.

.... Respondents.

(By Advocate Mr. Thomas Mathew Nellimoottil)

(The Original Application having been heard on 10.12.08, this Tribunal on 12.12.08 delivered the following):



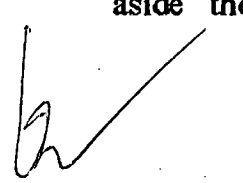
ORDER
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant claims that he having applied on 09-10-2006 for voluntary retirement from railway service, effective from 08-04-2007, under the provisions of Rule 67 of the Railway Services (Pension) Rules, 1993, in the absence of any refusal to grant permission, vide the proviso to the said Rule, the retirement became effective from the date of expiry of the notice period. However, the respondents have not treated him as a retired railway servant and no terminal benefits have been granted to him. Instead, they have issued a charge memorandum vide Annexure A-2. Hence, he has sought for the following relief(s): -

(a) To declare that the applicant has retired from the railway service w.e.f. 08.04.2007 and to direct the respondents to disburse the terminal benefits to the applicant with 12% interest w.e.f. 08.07.2007.

(b) To quash Annexure A-2 charge memo.

2. Respondents have contested the O.A. According to them, disciplinary proceedings had been contemplated against the applicant for irregularities and misuse of Excess Fare Ticket, while working as Senior Ticket Collector at Mangalore. The applicant was in fact suspended on this score and later the suspension was revoked. Earlier the applicant had filed OA No. 633 of 2005 against his transfer order dated 25-08-2005, and the Tribunal has quashed and set aside the said transfer order by judgment dated 19-07-2006. Railway



administration has filed appeal before the High Court of Kerala, through W.P. No. 29833/2006. On 11-02-2008, a major penalty charge sheet was issued against the applicant for unauthorized absence from 01-02-2006 to 15-01-2008 and the applicant had stated, "I deny charges framed against me and I would like to have an enquiry in the matter. The name and willingness of the defence helper to assist me in the disciplinary proceedings will be intimated to you within a couple of week." Annexure MA-R-1 refers. Later, the applicant made another representation stating that, "I am undergoing allopathic and ayurvedic treatment for my sickness at the above address.... Hence, I am not in a position to attend any enquiry if fixed at present. I am prepared to attend the enquiry after recovered and even getting improvement in health" vide Annexure MA-R-2. This proves that even the applicant accepts that he is in service.

3. Counsel for the applicant argued that the provisions of Rule 67 of the Railway Service Pension Rules are very clear. The same reads as under:-

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 the appointing authority, retire from service:

Provided that this sub-rule shall not apply to a Railway servant, including scientist or technical expert who is—

- (i) on assignments 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/ 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.

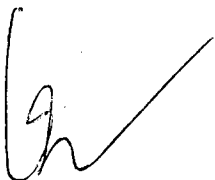
(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

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."

4. The Counsel submitted that the above rule, which alone applies to the case of the applicant, clearly provides that retirement under the above rule would be effective from the date specified in the notice unless there is a refusal to grant permission. In the instant case, admittedly, there has been no refusal and hence, the applicant stood retired from service w.e.f. 08-04-2007 and thus, not only that he is entitled to the terminal and retiral benefits from that date but also that the respondents cannot initiate any proceedings after the aforesaid date save with the specific sanction of the President of India. Thus, the charge sheet dated 11.02.2008 which is posterior to the date of retirement of the applicant and which has not been issued with the specific sanction of the President of India, is also liable to be set aside. Counsel for the applicant invited the attention of the Tribunal to the following decisions of the Apex Court to hammer home that once the notice period is over and there has been no specific refusal, there is no question of the applicant being in service beyond the date of retirement shown in the notice:-

(a) *State of Haryana v. S.K. Singhal*, (1999) 4 SCC 293

(b) *Tek Chand v. Dile Ram*, (2001) 3 SCC 290,

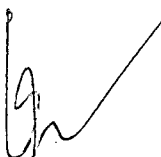


5. Counsel for the respondents submitted that in the case of *Dr. Baljit Singh vs State of Haryana* (1997 SCC (L & S) 313), it has been held that when serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or necessary disciplinary action should be taken under law. Therefore, mere expiry of three months' period of notice given did not automatically put an end to the jural relationship of employer and employee between the government and the delinquent official. Only on acceptance by the employer of resignation or request for voluntarily retirement their jural relationship ceases.

6. In his rejoinder, counsel for the applicant submitted that in fact the above decision of Dr. Baljit Singh was discussed in the other decision of S.K. Singhal (*supra*) wherein, it was observed that the Apex Court would follow the two Three-Judge judgments in preference to the two-judge judgment in Dr. Baljit Singh's case. As such, the decision in Baljit Singh has been impliedly over-ruled by the Apex Court.

7. Arguments were heard and documents perused. The decision in Singhal's case (*supra*) deals with the rule which is in pari material with Rule 67 of the Railway Service (Pensions) Rules, 1993. The Apex Court in that case held as under:-

"5. It is in the light of the above facts that it has to be considered if the respondent must be deemed to have retired. That is the crucial question. Question also arises whether the allegation that the respondent was 'not attending to duties' after notice was relevant



and could be a valid ground for refusing to permit the voluntary retirement coming into force under Rule 5.32(B).

6. The said rule 5.32(B) of the Punjab Civil Services Rules (Vol. II) reads as follows:

"5.32(B)(1) At any time a government employee 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. However, a government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor. On receipt of a request, the appointing authority may consider such request for the 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 government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

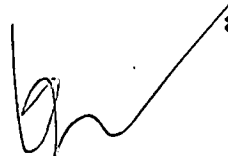
(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Services Rules Vol. II:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period:

Provided further that before a government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years' service qualifying for pension."

7. Rule 2.2(a) of the Punjab Civil Services Rules (Vol. II) referred to in Rule 5.32(B)(2) reads as follows:

"2.2(a) Future good conduct is an implied condition of every grant of a pension. The (appointing authority) reserve to itself the right of withholding or withdrawing a pension or any part of it if the pensioner be convicted of serious crime or be guilty of grave misconduct. The decision of the (appointing authority) on any question of withholding or withdrawing the whole or any part of pension under this rule shall be final and



conclusive."

8. It will be noticed that under Rule 5.32(B), a government employee who has completed 20 years of qualifying service may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service. There is provision for requesting for relaxation of the notice period of 3 months and for consideration thereof. As to what the appointing authority is to do is governed squarely by sub-rule (2). That sub-rule states that the notice of voluntary retirement given under sub-rule (1) "shall" require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Services Rules (Vol. II). Acceptance of the request is subject to Rule 2.2 of the Rules. But the proviso to sub-rule (2) of Rule 5.32(B) states that if the permission to retire is not refused within the period specified in sub-rule (1), the retirement shall become effective from the date of expiry of the period. Therefore, it is clear that if a person has completed 20 years' qualifying service and has given a notice under Rule 5.32(B) of 3 months (or if his request for relaxation of 3 months is accepted), then the request "shall" be accepted subject to invoking the provision of Rule 2.2 of the Punjab Civil Services Rules (Vol. II). Under Rule 2.2, the "future good conduct" of an employee is an implied condition of every grant of pension. In other words, what all it means is that even if the acceptance of the voluntary retirement is mandatory, there is an obligation cast on the retired employee to maintain good conduct after such retirement. The words "future good conduct" mean good conduct after retirement. If the employee does not continue to maintain good conduct after retirement, then the Government can withhold or withdraw the pension or a part of it in case he is convicted of serious crime or in case he be guilty of grave misconduct. Such a decision to withhold or withdraw the whole or part of the pension would be final and conclusive, that is to say, so far as the governmental hierarchy is concerned. It will be noticed that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on the expiry of 3 months and it only enables withdrawal or withholding of pension subject to certain conditions, to a retired employee." (emphasis supplied)"

8. In *Tek Chand v. Dile Ram*, (2001) 3 SCC 290, the Apex Court had occasion to analyze Rule 48-A of the CCS (Pension) Rules, which is in pari-materia with Rule 67 of the Railway Pension Rules. The Apex Court has held as herein under:-

"31. It is not disputed that the appointing authority did not refuse to grant the permission for retirement before expiry of the period

specified in the said application dated 5.12.1994 given by Nikka Ram. Further, no communication whatsoever was made to him within the said period. During the course of the argument before the High Court, the learned counsel for the parties referred to Rule 48-A of the Rules, of course, placing their own interpretation. Since the said Rule is material and has bearing on the question to be determined, it is extracted below:

"48-A. Retirement on completion of 20 years' qualifying service.—(1) At any time after a government 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:

Provided that this sub-rule shall not apply to a government servant, including scientist or technical expert who is—

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

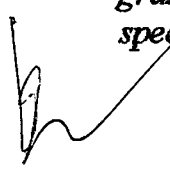
(ii) posted abroad in foreign-based offices of the Ministries/ Departments.

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the 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."

32. Under sub-rule (1) of the said Rule, at any time after completion of 20 years' qualifying service, a government servant could give notice of not less than three months' in writing to the appointing authority for retirement from service. Under sub-rule (2), voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. In the proviso to sub-rule (2) of Rule 48-A, it is clearly stated that in case 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.

33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If 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 sought for becomes effective from the date of expiry of the said period." (Emphasis supplied)

9. The Apex Court in the above judgment also considered the earlier decision in the case of State of Haryana vs S.K. Singhal (*supra*) and observed inter alia as under:-

" In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appointing authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntarily retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision". (Emphasis supplied)

10. Thus, the above authoritative pronouncements of the Apex Court make it abundantly clear that in the absence of refusal to accept the request for retirement within the notice period, the retirement becomes automatic. Telescoping this law on the facts of the case of the applicant, it is evident that since there had been no refusal for the retirement till the date of intended retirement i.e. 08-04-2007, the applicant automatically stood retired from that date. Once the retirement comes




into force, the respondents cannot initiate any proceedings against the applicant save as provided for in the relevant rules and the relevant rules provide for specific sanction of the President for initiation of proceedings. Hence, Annexure A-2 is also liable to be held as illegal and hence has to be quashed.

11. In view of the above, the OA succeeds. It is declared that the applicant stood retired from service w.e.f. 08-04-2007. Consequently, he is entitled to the terminal and other retiral benefits as per the extant rules. Further, it is declared that Annexure A-2 order has not been passed by the competent authority and hence, the same is quashed and set aside. However, this order would not preclude the respondents to initiate proceedings by following the relevant rules, if they so desire. Since, on the date of retirement no proceedings were pending, the applicant is entitled to the payment of all the terminal benefits and retiral benefits, which the respondents shall make within a period of three months from the date of communication of this order, subject to the applicant's filing the due papers for sanctioning of pension etc. Though interest has been claimed, since the non payment of the dues was on the genuine assumption that the applicant cannot have been treated as retired, no order is passed over the claim for interest.

12. No costs.

(Dated, the 12th December, 2008)



(Dr. K B S RAJAN)
JUDICIAL MEMBER

cvr.