

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.35/2000

Friday, this the 17th day of August, 2001.

CORAM

HON'BLE MR A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

P.S. Haneefa Rawther,
S/o N.S. Mohammed Rawther,
Assistant Station Master,
Southern Railway (Madurai Division),
Residing at: Thenginamukadiyil House,
Kadakad, Pandalam P.O,
Pathanamthitta District.

Applicant

By Advocate Mr T.C. Govindaswamy.

Vs.

1. Union of India represented by the General Manager, Southern Railway, Park Town P.O., Madras-3.
2. The Divisional Railway Manager, Southern Railway, Madurai Division, Madurai-10.
3. The Senior Divisional Operating Manager, Southern Railway, Madurai Division, Madurai-10.

Respondents

By Advocate Mr Mathews J. Nedumpara.

The application having been heard on 17.8.2001, the Tribunal on the same day delivered the following:

O R D E R

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

Applicant seeks to declare that he must be deemed to have retired from service on and with effect from 14.11.99 and to direct the respondents to grant him consequential benefits, including monthly pension/retirement gratuity etc. forthwith.

2. Applicant who is past 59 years of age, joined the Madurai Division of the Southern Railway on 16.4.1964 as an Assistant Station Master. He was issued with a major penalty

charge memo dated 2.3.85. He submitted a detailed reply. Apparently the proceedings initiated against him were dropped. Thereafter, the 3rd respondent issued another major penalty charge memorandum dated 20.1.93 once again alleging unauthorized absence. There was no order issued by the competent authority, validly terminating his services by any known process of law. He requested for voluntary retirement as per A2 dated 10.8.99. It was sent by Registered Post with A/D and was received by the 2nd respondent on 12th of August, 99. The three months period of notice has expired on 14.11.99. He was not under suspension at the material time. There is no order rejecting A2 issued by the 2nd respondent. Therefore, he is deemed to have retired from service on and with effect from 14.11.99, with all consequential benefits arising therefrom.

3. Respondents resist the O.A. contending that after a lapse of 20 years, the applicant made a requisition for his voluntary retirement on 10.8.99 to escape from his failure to resume duty pursuant to the issuance of the charge memo. Since the applicant has served the Railways for a period of less than 15 years and the requisite period for voluntary retirement is more than 20 years, he is not eligible for voluntary retirement and other consequential benefits.

4. In the rejoinder the applicant says that A2 was sent by Registered Post with A/D on 10.8.99. A3 is the true copy of the Postal receipt and A4 is the true copy of the acknowledgment. In the light of A3 and A4, the averment that A2 has not reached Respondents is only to be rejected.

5. Firstly, we shall deal with the question whether A2 has reached the respondents. Applicant has specifically stated in the O.A. the date on which A2 was sent by Registered Post with



A/D as well as the date of receipt by the 2nd respondent. Since it was denied by the respondents in the reply statement, the applicant has produced A3 and A4 in proof of the despatch and delivery of A2. A3 is the Postal Receipt copy and A4 is the copy of A/D. From A4 it is seen that it was received in the Office of the 2nd respondent on 12.8.99. Respondents have not filed any additional reply statement denying A3 and A4. A3 and A4 will prima facie go to show that A2 has reached the 2nd respondent. We asked the learned counsel appearing for the respondents what is the stand of the respondents after filing of the rejoinder accompanied by A3 and A4. Nothing was specifically stated and what was submitted is that what is the position as stated in the reply statement. What we sought from the learned counsel for the respondents is not what is stated in the reply, but what is the stand of the respondents after filing A3 and A4. Since A3 and A4 prima facie go to show the delivery of A2 and the same is not denied by the respondents, it is to be taken that A2 has reached the respondents.

6. Respondents say that the applicant has not completed 20 years of service and therefore, he is not eligible for voluntary retirement. This contention is met by the learned counsel for the applicant by relying on Rule 1802(b) of Indian Railway Establishment Code. The said provision says that 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. There is no dispute as to



the fact that the applicant attained the age of 55 years of age. That being so, in the light of the said provision, the 20 years' service has not got any significance. There is absolutely no case for the respondent that the applicant was kept under suspension at any point of time. That being so, the provision contained in Chapter 18 under para 1802 (b) of the Indian Railway Establishment Code is attracted and the applicant is entitled to seek voluntary retirement.

7. Respondents also raise a contention that the applicant is seeking voluntary retirement to escape from the disciplinary proceedings and it is the admitted case of both sides that disciplinary proceedings are pending against the applicant.

8. Then the question to be considered is that during the pendency of the disciplinary proceedings whether the applicant is entitled to seek voluntary retirement. In Union of India and others Vs. Sayed Muzaffar Mir [AIR 1995 SC 176] it has been held that:

"3. The learned Additional Solicitor General, Shri Ahmed appearing for the appellants, has contended that the right of premature retirement conferred by the aforesaid provision could be denied to a railway servant in case he be under suspension, as was the respondent at the relevant time. This is what finds place in the proviso to the aforesaid provision. The Additional Solicitor General also seeks to place reliance on what has been stated in Article 180 (d) which starts with non obstante clause and states that the competent authority may require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. Relying on these provisions the contention advanced is that though the respondent had sought premature retirement by his letter dated 22.7.1985 and though the three months period had expired on 21.10.1985, the Railways were within the rights not to permit the premature retirement because of the suspension of the respondent at the relevant time, which had come to be ordered in the course of a disciplinary proceeding which was then pending against the respondent.

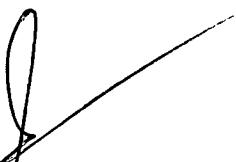
4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the Government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the concerned authority thought that it would be better to see off the respondent by allowing him to retire.

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 V. State of Assam, (1997) 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 premature 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 V. 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. In the light of the said judgment, the applicant is entitled to seek voluntary retirement.

10. As per A2 dated 10.8.99, applicant has stated that three months's period of notice may be calculated from 15th August, 1999 and he may be allowed voluntarily to retire from service with effect from 14th November, 1999. As the notice period is over and there is no order issued by the respondents rejecting the request of the applicant for voluntary retirement, it is only to be taken that the applicant is entitled to retire with effect from 14th November, 1999.



11. Accordingly it is declared that the applicant must be deemed to have retired from service on and with effect from 14.11.1999. He is entitled to consequential benefits as per rules in force and the respondents are directed to grant him the consequential benefits entitled to him.

11. The Original Application is disposed of as above. No costs.

Dated the 17th of August, 2001.



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

P.

LIST OF ANNEXURES REFERRED TO IN THIS ORDER

- A-2 True copy of the representation dated 10.8.99 submitted by the applicant to the 2nd respondent.
- A-3 True copy of the Postal receipt No.1082 dated 10.8.99.
- A-4 True copy of the Postal Acknowledgment Card.