

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A.451/87

Javojee Pavjee,  
At: Borli,  
Post: Bhavli,  
Taluka: Igatpuri,  
Dist. Nasik.

.. Applicant

vs.

1. The Union of India,  
through  
The General Manager,  
Central Railway,  
Bombay V.T.
2. The Divisional Railway Manager,  
Central Railway, Bombay V.T.
3. The Permanent Way Inspector(West),  
Central Railway,  
Kalyan. .. Respondents.

Coram: Hon'ble Member(A)Shri L.H.A.Rego  
Hon'ble Member(J)Shri M.B.Mujumdar

Appearances:

1. Shri D.V.Gangal  
Advocate for the  
Applicant.
2. Shri P.R.Pai,  
Advocate for the  
Respondents.

ORAL JUDGMENT

Date: 11-2-1988

(Per M.B.Mujumdar, Member(J))

In this application, filed under Section 19 of the Administrative Tribunals Act, the applicant has made a number of prayers, but the main prayer is for directing the Respondents that he should be given pensionary benefits by accepting his request for voluntary retirement.

2. The relevant facts for the purpose of this judgment are these: The applicant was appointed as a Gangman on 24-7-1961 in Central Railway at Kalyan. According to the Railway Medical Rules he was required to be sent for periodical medical examination. Accordingly, he was directed to appear for the medical examination before the medical officers of the Railway on 4-10-1979. According to the respondents he did not appear for the medical examination on that date. Thereafter on his own request he was sent for the medical examination before the medical Board of the Railways on 4-2-1981. The certificate of the Medical Board of the same date shows that the applicant was a Malingeringer as his visual acuity is concerned. There is another medical certificate in the record of the respondents. It is dated 4-4-1981 and it shows that the applicant was declared unfit to perform his duties from 7-10-1979 to 4-2-1981. It does not say that he was sent for medical examination at any time thereafter.

3. The applicant, however, sent in all four applications for voluntary retirement. These applications were dtd. 31-3-1984, 16-6-1986, 22-9-1986 and 8-12-1986. The respondents did not reply to the first three applications but they replied to the last application on 12-12-1986. By that reply they informed the applicant that since he had not completed the minimum qualifying service of 20 years, required

for voluntary retirement his request for voluntary retirement could not be accepted. By the same reply they advised the applicant that he might resign from the railway service if he was not willing to work further. They pointed out that the resignation should be witnessed by two employees. As per that letter, the applicant submitted his resignation on 12-1-1987 duly attested by two railway employees. By letter dtd. 16-6-1987 the Railway authorities accepted the resignation with effect from 19-6-1987. In the meanwhile, the respondents had served a chargesheet dtd. 2-11-1986, upon the applicant for unauthorised absence from 4-12-1978. However, that enquiry was not pursued in view of the resignation of the applicant dtd. 12-1-1987.

4. The applicant has filed this application on 7th July, 1987. Though he has made seven prayers in the application in view of the arguments advanced before us he pressed only for the prayer for directing the respondents to accept his first application for voluntary retirement dtd. 31-3-1984.

5. In the application the applicant had not referred to the resignation dtd. 12-1-1987. Hence after the written statement was filed the applicant has filed amendment application which is numbered as Misc. Application No. 468/87. By the amendment, the applicant has denied and challenged his resignation dtd. 12-1-1987. On the assumption that we have <sup>allowed</sup> admitted the application the respondents have filed their reply to the amendments today.

But in view of the main point urged before us  
whether we need not consider the resignation was  
in fact given voluntarily or not.

6. As already pointed out, the respondents did not reply to the three letters sent by the applicant requesting for a voluntary retirement. In the reply to the last letter dtd. 8-12-1986, the respondents pointed out, that his request for voluntary retirement <sup>could</sup> ~~cannot~~ be accepted because he had not completed minimum qualifying service of 20 years. This reply was given because the applicant had not actually worked from 4-10-79. But the medical certificate issued by the Medical Officer of the Central Railway at Kalyan on 4-2-1981 shows that the applicant was unfit to perform his duties for the period from 7-10-1979 to 4-2-1981. This certificate will <sup>be</sup> ~~be~~ have to read with reference to another certificate dtd. 4-4-1981 issued by the Medical Board consisting of three Medical Officers which says that the applicant was <sup>on account of</sup> Malingering for lack of visual acuity. According to the Concise Oxford Dictionary, Malingering means a person who pretends, produces, or protracts, illness in order to escape duty. But from the medical certificate it is clear that the applicant suffering <sup>a</sup> ~~from a~~ <sup>was</sup> due to pathological defect, viz. defect in vision. It is true that the applicant was not examined by any Medical Officer or Board after April, 1981.

It is also true that he did not attend his duty at ~~the~~ <sup>most</sup> ~~behaviour~~ any time further. But we have no doubt this must be because of the defect in his vision. According to Rule 620(i) of the Manual of Railway Pension Rules, 1950, a railway servant can retire from service at any time after completing 20 years of qualifying service, provided that he shall give in this behalf a notice in writing to the appropriate authority at least three months before the date on which he wishes to retire. The term "qualifying service" is defined in Rule 401 of the said Rules. According to that definition "Qualifying Service" is the number of completed six-monthly periods of service which is taken into account, for determining the amount of pensionary benefits. Rule 420(iii) lays down that in respect of Railway Servants in service on or after 19th April, 1968, extraordinary leave may be allowed to count for pensionary benefits at the discretion of the competent authority in the following circumstances—namely (i) if it is taken on Medical certificate; (ii) if it is taken due to the inability of the person concerned to join or rejoin duty due to Civil commotion or natural calamity, provided that he has no other type of leave to his credit; or (iii) if it is taken for prosecuting higher scientific and technical studies.

7. In this connection we are concerned with Clause(i) of Rule 420(iii). As already <sup>was</sup> ~~the~~ pointed out, the applicant examined by Medical Board on 4-2-1981. According to them he was having defect in vision. Subsequent certificate

dtd. 4-4-1981 shows, that the applicant was found unfit to perform his duties for the period from 7-10-1979 to 4-2-1981. As already pointed out he had ~~not~~<sup>never</sup> appeared for medical examination at any time thereafter nor there is any evidence to show that he <sup>has</sup> taken any treatment for the defect in vision. All this in our opinion must be due to his utter poverty. It is also true that he had not applied for leave on the ground of illness, namely, defect in his vision. But again in our opinion this must be because of his ignorance and physical disability. We, therefore, propose to direct that the period of absence of the applicant from 4-12-1978 till 31-3-1984, that is the date on which he made his first application for voluntary retirement, should be treated by the respondents as extraordinary leave on the ground of illness on medical certificate. In view of the above, we propose to direct the respondents that they should treat the applicant's first application dtd. 31-3-1984 for voluntary retirement as accepted and give pensionary benefits to the applicant according to rules.

8 In result we pass the following Order:

(i) The respondents shall regularise the period of absence of the applicant from 4-12-1978 to 31-3-1984 by granting him extraordinary leave on medical certificate. The applicant will, however, be not entitled to any pay and allowances during that period;

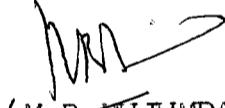
(ii) The respondents shall accept the applicant's application dtd. 31-3-1984 for voluntary retirement;

(iii) The respondents shall pay all the pensionary benefits <sup>to the applicant</sup> that are due to him according to rules on the above basis, by treating that the applicant has rendered more than 20 years of qualifying service;

(iv) The above directions should be implemented within three months from the date of receipt of a copy of this order.

(v) Parties to bear their own costs.

  
(L.H.A. REGO) 11.2.1985  
Member (A)

  
(M.B. MUJUMDAR)  
Member (J)