

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 747/89

Transfer Application No:

DATE OF DECISION: 28-10-89

Smt. Palgibai Yenkoo Patil Petitioner

Shri. D.V. Gangal Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri. Subodh Joshi Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R. Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

M.R.Kolhatkar

(M.R.Kolhatkar)
Member (A)

J*

(9)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 747/89

Smt. Palgibai Yenkoo Patil ... Applicant

Vs.

1. Union of India through
General Manager, Central Railway
Bombay VT.

2. The Divl. Railway Manager
Central Railway, Bombay VT ... Respondents

CORAM : 1. Hon'ble Shri. B.S.Hegde, Member (J)
2. Hon'ble Shri. M.R. Kolhatkar, Member (A)

APPEARANCES

1. Shri.D.V.Gangal, Advocate
for applicant
2. Shri. Subodh Joshi, Advocate
for respondents

JUDGMENT

DATED : 28-10-94

X PER. Shri. M.R.Kolhatkar, Member (A) X

This is an application from the widow of Shri. Yenkoo Patil, formerly working as Gangman under Permanent Way Inspector, Central Railway, Thane. It is the claim of the applicant that her late husband worked in the Central Railway from 1952 till 2.9.1982. He expired on 6.8.1988. The applicant states that her husband was forced to resign in 1982 and thus denied pensionary benefits and consequently she has also been denied family pension. She further states that the immediate bosses of her husband wanted to get rid of him quickly and unceremoniously and that he was threatened with disciplinary

action, on unfounded grounds and allegations and hence her late husband had no option but to resign. Under the law, he should have been asked to seek voluntary retirement but that was not done. She states that he had completed being more than about 30 years of service and since an employee having 20 years of service, he was entitled to seek voluntary retirement, and hence the resignation of her husband should be treated and entitled to pension. as voluntary retirement. At Annexure 'A' is letter dated 2.9.1982 intimating the applicant's husband that his resignation is accepted with effect from 1.11.1982. At Annexure 'B' is the letter dated 7.4.1983 from the Permanent Way Inspector addressed to his counterpart at TMA stating that the settlement papers have been sent to that office on 22.10.1982 and he wants to enquire about the latest position regarding settlement of dues. Annexure 'C' is the death certificate and Annexure 'D' is lawyers' notice dated 10.4.1989. The prayer of the applicant is to hold and declare that the applicant's husband has resigned voluntarily with effect from 1.10.1987 and the applicant is entitled to pension, gratuity, Provident Fund, unpaid bonus, group insurance, leave salary, unpaid wages etc., with interest at the rate of 18% per annum.

2. The respondents, in their reply, have stated that the applicant has made false statements. The late husband of the applicant was employed in Railways in 1982 as Gangman and he worked till 26/6/1976 intermittently with innumerable unauthorised periods of absence. Thereafter he stopped coming to work altogether when after enquiry he was not found anywhere and then refused to attend duty. He was about to be terminated, when he tendered his resignation on 22/6/1982. At Exhibit 1 is the letter dated 22.6.82 bearing the left hand thumb impression of the applicant's husband witnessed by two persons and its contents are reproduced below :

I, the undersigned beg to state the following few lines for your kind consideration please.

I am working as a G/man, I have served the Rly., honestly, I have a small piece of land and there is nobody to look after the same.

In the above circumstances, I shall be highly obliged if you will kindly accept my resignation early, so that I can devote my attention to my agriculture.

At Exhibit 2 is the letter dated 8.8.82 from the applicant, which is in Marathi, stating that he has resigned, that he is prepared to forego gratuity and pension, that he has tendered ^{his own} ~~the letter at~~ free will and that his application should be accepted early. The respondents have stated that the applicant has not completed even 20 years of service and hence ~~the~~ question of treating his resignation as voluntary retirement does not arise. The respondents have, however not stated anything regarding the dues of the applicant other than pension.

3. Although the applicant states that her husband had put in 30 years of service, no evidence has been adduced in support of her statement. We are therefore, required to accept the statement of respondents which must be based on record that the applicant was employed in 1959. Although the respondents have alleged that he was irregular in attendance from 1976 onwards, no evidence in support of such allegation has been adduced. Therefore relying on Annexure 'A', we are required to take it as established that the applicant resigned from 1/11/1982. Therefore, the applicant can be said to have put in about 23 years of service. The applicant wants us to declare the letter of resignation as a letter of voluntary retirement alleging coercion. No doubt, if the coercion is proved, then the applicant's claim for considering it as a deemed application for voluntary retirement and for grant of pension according to rules could have been examined. But no evidence

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has been furnished in support of the claim that the applicant was coerced, apart from bare statements and allegations. In the application, reliance has been placed on the authority of the Supreme Court decision in Central Inland Water Transport Corporation Limited Vs. Brojnath Ganguli reported in 1986 ATC (S.C) 103 for the proposition that if the law or any action is shown to have violated Section 23 of the Indian Contract Act it can be declared as void. In our view, the ratio of Central Inland Water Transport Corporation does not come into play in the absence of any supporting material. The applicant then relies on the judgment of the Supreme Court in Sudhir Chandra Sarkar Vs. Tata Iron & Steel Co.Ltd. & Ors. (1984) 3 S.C, 369. This was the case in which the facts were that the appellant had rendered service of over 29 years. He was governed by Work Standing Orders and he was entitled to get gratuity in accordance with Gratuity Rules. it But was open to the Board of Directors under Rule 7 to fix when the gratuity became due and payable. In that case the Board of Directors had determined that the applicant has resigned from his post and therefore the gratuity was not due and payable. The Supreme Court interpreted the term 'retirement' which was defined to mean termination of service by reason of any cause other than removal by discharge due to misconduct. The Supreme Court noted that since the appellant was a permanent uncovenanted employee of the Company paid on monthly basis and he rendered service for over 29 years and since he was not removed by discharge due to misconduct, the appellant within the meaning of expression has retired from service of the respondents and is qualified for payment of gratuity in terms of Rule 6. It would thus be seen that the Hon'ble Supreme Court interpreted the term retirement and drew the consequences

within the frame work of the Rules applicable to the employee there, namely Work Standing Orders which were statutory conditions of service. In the present case, no evidence has been brought to our notice to persuade us that the letter of resignation of the applicant can be considered to be a letter of voluntary retirement in terms of the applicable Rules. We therefore consider the ratio of Sudhir Chandra Sarkar's case does not apply to the facts established and Rules applicable to the instant case.

4. The applicant has next relied on the judgment of this Tribunal in C.A .451/87 in Javojee Pavjee V. UoI, That was a Division Bench judgment pronounced on 11-2-1988 in which it was not disputed that the applicant had sent four applications for voluntary retirement, three of which were not replied to by the respondents and by the fourth one, the applicant was informed 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. There was also a question regarding regularisation of the period of absence of the applicant, namely 4-12-1978 to 31-3-1984. The Tribunal directed to regularise the same. By the combined application operation of the applicant's actual for voluntary retirement and the direction to regularise the period of absence, the Tribunal directed payment of pensionery benefits holding that the applicant has rendered more than 20 years qualifying service. It is thus clear that the facts of that case are entirely different and do not help the applicant.

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In this connection, we would also like to observe that we are required to interpret various terms in the Rules on the footing that they are distinct transactions/actions and carry different consequences. The tendency to obliterate the distinction between resignation and voluntary retirement which are different actions with different consequences, needs to be guarded against. In this connection, we would like to refer to a Division Bench judgment of this Tribunal in C.A. 957/89 (to which one of us were a party) namely Smt. Parvati S. Yadav Vs. Union of India (1994(2) SLJ 63) in which we have gone into the definition of resignation and related issues.

5. We are therefore not able to accept the contention of the applicant that her husband should be deemed to have voluntarily retired from railway service. We are therefore not able to give the relief of grant of pension to him and grant of family pension to the applicant. We, however regret to note that the reply of the Railways is also not quite satisfactory, in particular, we attach no significance to the statement (in Ex. II to reply) that applicant is prepared to forego his gratuity. The respondents have to application also not stated anything relating to Annexure 'B' which indicates that correspondence relating to settlement of dues of the applicant, other than pension, was going on. We therefore consider it to be only fair to direct the Railway Administration to give the requisite dues to the applicant to the extent she is entitled and to the extent they have not been paid.

6. We therefore dispose of this application by passing the following Order :

O R D E R

O.A is dismissed except that Respondents are simultaneously directed to ascertain and work-out the Due and Drawn statement in respect of the late-husband of the applicant on the footing that her husband retired from Railway Service with effect from 01/11/1982. Whatever dues by way of accumulated P.F and any other dues whatsoever other than pension which have not been paid, should be paid to the applicant after getting the requisite formalities completed, within a period of FOUR months from the date of receipt of this Order. No order as to costs.

MR Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A).

B.S. Hegde

(B.S. HEGDE)
MEMBER (J)

J*