

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.756/96

Dated this the 11th day of April 2001.

CORAM : Hon'ble Shri B.N.Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member (J)

Prabhakar Vasudeo Upadhye,
R/o.C/o. M.R.Maokar,
5, Meghana Apartments,
Swastishree Society,
Ganeshnagar, Pune.

...Applicant

By Advocate Shri A.P.Lavathe

V/S.

1. Divisional Railway Manager,
(Personnel/Settlement),
Bombay Division, CST, Mumbai.
2. Senior Divisional Engineer,
Bombay Division, CST, Mumbai.
3. The Secretary,
Ministry of Railway,
Govt. of India, New Delhi.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative tribunals Act, 1985 for declaration that the applicant was on continues service upto 14.8.1995 as voluntary retirement proposal was extended upto 14.8.1995 with a direction to the respondents to draw the salary for the period commencing from 14.2.1995 to 14.8.1995 and pay the same along with retirement benefits accordingly.

S.L.Jain

..2/-

2. The applicant was working as Chief Permanent Way Inspector at Nagothane under Assistant Engineer at Panvel, Bombay Division of Central Railway. In pursuance of the Railway Board letter No. EC (P&A) I 90.RT.18 dated 6.11.1990 for voluntary retirement by giving three months notice, he served notice on the respondents dated 14.11.1994 to retire voluntarily from 14.2.1995. The request for voluntary retirement was accepted by the respondents vide Sr.D.P.O.No.P. Engg.624 Vol.Rtd. dated 31.1.1995 which was received at Nagothane on 11.2.1995 and received by the applicant on 13.2.1995 as he was on medical leave.

3. The applicant claims that on the very next day he approached the Respondent No. 2 who is the departmental incharge of the applicant personally and obtained oral permission to seek extension to the voluntary retirement from Respondent No. 1. The applicant submitted an application addressed to Respondent No. 1 through proper channel vide Annexure-'A-2'. The Respondent No. 2 directed the applicant to join the duties as the procedural aspect of getting an extension letter will take some time. Accordingly, the applicant joined the service on the very same day at Nagothane. On account of acceptance and oral order, he signed Muster Roll, signed on various office documents, carried out measurements, issued instructions to the Contractors and submitted report to higher authorities. The applicant was advised to undergo the Angiography, for that he was admitted in the Byculla Hospital, the declaration which was counter signed by the Respondent, i.e. Assistant Engineer at Panvel by putting

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..3/-

appropriate stamp. The applicant remained on the sick list. He represented the matter vide representation dated 14.6.1995 for drawal of salary from February, 1995 to June, 1995. The fitness certificate was provided on 12.8.1995. He approached the respondents for resuming the duty but he was refused for the same. The applicant submitted the letter dated 16.8.1995 and thereafter approached for the settlement dues. He further represented the matter on 2.10.1995 and 27.10.1995. The reply vide letter dated 8.12.1995 was received which is to the effect that applicant stands retired on 14.2.1995. Hence, extension notice dated 14.6.1995 cannot be accepted. Hence, this OA. for the above said reliefs.

4. The claim of the applicant is resisted by the respondents on facts by denying to have received letter of the applicant dated 14.2.1995 (Annexure-'A-2'), and any oral permission to extend the period of voluntary retirement of the applicant as alleged or otherwise was given by Respondent No. 2. On question of law, it is stated that there is no provision in law for extension of period of voluntary retirement as claimed by the applicant vide his letter dated 14.2.1995, the competent authority never accepted the request of the applicant for withdrawal of voluntary retirement. In fact, the applicant had made no application in writing for withdrawal of notice at any time before expiry of notice period of the voluntary retirement.

The request for voluntary retirement was duly accepted by the competent authority and conveyed to the applicant on or before the expiry of the notice period as stated above.

5. The facts alleged by the respondents are not rebutted by the applicant either by filing rejoinder or by placing the documents on record. As the respondents have not received Annexure-'A-2', question of considering the withdrawal of voluntary retirement does not arise. Even assuming that Annexure 'A-2' was received by Respondent No. 2, the Respondent No. 2 is not the competent authority and it was received after acceptance of the notice of voluntary retirement and even after service of the same, i.e. acceptance on the applicant.

6. The learned counsel for the respondents has relied on Exhibit 'R-1' Railway Board Circular No.196/90 which is to the effect that "A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appointing authority provided the request for such withdrawal is made before the expiry of the notice". In para 3, it is further laid down that the term "with the specific approval of appointing authority" clearly implies that the appointing authority has the power either to accept request for withdrawal of the notice for voluntary retirement or reject the same. The claim of the applicant vide Annexure-'A-2' is dated 14.2.1995 which is the date of voluntary retirement of the applicant. Hence, neither the said notice was before the expiry of the notice for voluntary retirement nor it was with the specific approval of the appointing authority by the Respondent No. 1.

7. It may be a fact as alleged and suggested on the basis of Annexures-'A-3', 'A-4', 'A-5' and 'A-6' that the applicant has signed the Muster Roll, issued the instructions to the Contractors and while seeking medical leave, his declaration is forwarded by the Controlling Authority with the remark on extension after voluntary retirement. A perusal of Annexure-'A-6 makes it clear that it does not amount to an order by the competent authority and/or the notice for voluntary retirement is extended, as there is no such provision and the competent authority has not passed any order in this respect.

8. In the result, we do not find any merit in the OA. which is liable to be dismissed and is dismissed accordingly with no order as to costs.

S. L. JAIN /

(S. L. JAIN)

MEMBER (J)

B. N. BAHADUR

(B. N. BAHADUR)

MEMBER (A)

mrj.