

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.892/2001

Date of Decision: 26.03.2002

Shri Babu Bashu & Ors.

Applicant(s)

Shri K.B. Talreja.

Advocate for applicant/s

Versus

Union of India & another

Respondents

Shri S.C. Dhawan.

Advocate for Respondents

CORAM: HON'BLE BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

*Shanta*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 892/2001

THIS THE 26 TH DAY OF MARCH, 2002

CORAM:

HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN  
HON'BLE SMT. SHANTA SHASTRY. MEMBER (A)

01. Babu Bashu,
  02. Uttam Bhagwat,
  03. Prakash Babu,
  04. Prakash Jayawant,
  05. Ashok Ramchandra,
  06. Keshav Pujaji,
  07. Kachroo Rakmaji,
  08. Namdeo Bhimrao,
  09. Shaikh Moinuddin,
  10. Bhimrao Keshu,
- (All the applicants are  
Assistant Guards, Under  
Divisional Railway Manager,  
Central Railway,  
Solapur.

... Applicants.

(By Advocate Shri K.B.Talreja)

v.

1. The Union of India,  
through the General Manager,  
Central Railway,  
Mumbai CST,  
Mumbai.
2. The Divisional Railway Manager,  
Central Railway,  
Solapur.

... Respondents.

(By Advocate Shri S.C.Dhawan)

: ORDER :

Smt. Shanta Shastri, Member (A),

Initially 12 applicants have filed this OA. However, later on by MP No.86/02 applicants No.8 and 10 sought withdrawal of their names with liberty to file separate OA as their cause of action is of redeploying them arbitrarily without assigning any reason, which was allowed on 31.01.2002.

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2. The remaining applicants are aggrieved that the respondents have not taken into account the letters of withdrawal of their applications/notice for voluntary retirement and have retired them with effect from 27.11.2001. The applicants have also challenged their redeployment as pointsman instead of retaining them as Assistant Guards.

3. It is the contention of the applicants that under threats/ allurements, that there would be no loss to them en-masse applications were obtained from them for voluntary retirement and the same were accepted with immediate effect without waiting for three months notice period even though they had withdrawn the same within seven days from the date of tendering of the applications. The applications for voluntary retirement was given on 10.10.2001. According to the applicants, they withdrew these applications on 17.10.2001. Therefore accepting their applications and retiring them vide order dated 27.11.2001 is inconsistent with rules.

4. The applicants belong to operating department under Divisional Railway Manager, Central Railway, Solapur Division. They were working as Assistant Guards. While selecting them for the post of Assistant Guards, it was specified that the incumbent selected shall not be allowed to go back to their own parent cadre as pointsman-A/ Lever man/ Cabin man etc. They would forego their further chance of promotion for the

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post of Switchman in the grade of Rs.1200-2040. The grade of Assistant Guard is in the pay scale of Rs.950-1500.

5. According to the applicants vide order dated 27.9.2001, they would be redeployed with immediate effect as pointsman - A, due to surrender of 18 posts of Assistant Guards. Therefore, they had given notice for voluntary retirement.

6. According to the applicants, there are no surplus posts. In fact there is increase in the number of trains. Each train is manned by Guard in the rear and the brakevan is attached in front manned by Assistant Guard. When the posts of Guards remain the same, there is no reason to surrender the posts of Assistant Guards. The applicants' contention is that the action of the respondents is inconsistent with Rules 1802 (1) (ii) (b) (i) and Rule 1803 (a) & (b) of the Indian Railway Establishment Manual (IREM) Volume II 1987 edition. It is also inconsistent with the FR 48-A (3-A) (A) & (b) of CCS (Pension) Rules. They have also referred to the Railway Board's consolidated instructions on redeployment of surplus staff issued vide letter dated 28.11.2000. According to the applicants none of the ingredients given in the definition of surplus is applicable in their case. The applicants' service could effectively have been utilised by sending them for pro-guards training.

7. The respondents submit that as per work study

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report, 43 posts of Assistant Guards were declared surplus. 25 posts were surrendered in the first phase and the remaining 18 posts in the next phase. Wherever possible those who had appeared for the pro-guard post and had passed, had been empanelled for the post of Guard. Since there were surplus Assistant Guards they had to be redeployed and accordingly they were redeployed in the post of pointsman - A which is of the same grade and carries the same pay scale as that of Assistant Guards. It is a policy matter.

8. The respondents have denied having received the withdrawal letter dated 17.10.2001 from the applicants as claimed by them. Their record shows that the applicants submitted their letters of withdrawal of voluntary retirement on 17.10.2001. However, the Chief Yard Master, Daund was sick and therefore, their letters were endorsed for further necessary action and were handed over to them to carry the same to the concerned authorities. However, these applications were not received by the respondents and therefore rightly they have retired the applicants voluntarily by the letter dated 27.11.2001.

9. The applicants kept insisting that they had submitted their applications on 17.10.2001 for withdrawal of the notice of voluntary retirement given on 10.10.2001. In this context they produced copies of letters bearing the endorsement of the Chief Yard

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Master, Daund. The respondents have categorically denied having received the same.

10. We have heard the learned counsel for both the sides. Before the question regarding whether the applicants' redeployment as Pointsman - A was justified or otherwise, it is to be seen whether the applicants had really withdrawn their notice of voluntary retirement. We accordingly called for the relevant record. It is seen from the relevant record that the applicants had submitted their applications for withdrawal of voluntary retirement notice on 17.10.2001. There is an endorsement of the Chief Yard Master, Daund which reads as follows:

आपके अगली आवश्यक कार्रवाई एवं स्वीकृती हेतु प्रेषित है । '

While, on some of the copies of the letters, the endorsement reads as aforesaid, on some other copies of the letter the endorsement merely reads as follows:

आपके अगली कार्रवाई के लिए प्रेषित है । "

It is seen from the record produced by the respondents there is a letter dated 29.12.2001 from the Chief Yard Master, Dound wherein, the investigation report regarding the applications of the applicants for withdrawal of the notice of voluntary retirement has

been submitted. According to this, "the letter dated 17.10.2001 <sup>for</sup> withdrawal <sup>of</sup> applications of seven Assistant Guards of the Daund depot, of voluntary retirement were submitted in that office. Since the Chief Yard Master, Daund was under sick leave and as per instructions SM/DD was looking after the duties of Chief Yard Master on 17.10.2001, all these applications were sent for the signature of SM / DD at SM's office, Daund, SM / DD signed the same. After the signature of SM DD, all of the above employees took these applications along with their office copy to submit the same at DRM (P), Solapur on their own risk without intimation to the office and after that the office of the Chief Yard Master, Dound does not know anything. Applications are not forwarded through proper procedure i.e. through covering letter from the Chief Yard Master Dound to DRM (P) Solapur."

11. The applicants have been unable to produce any proof of their having submitted their applications to the DRM (P) Solapur with the endorsement of the Station Master, Dound. We have also noted that though it is stated that the SM had signed those applications of the applicants, actually, the endorsement is under the signature and stamp of the Chief Yard Master, Daund and not SM DD. Also there is a difference in the signatures of the Chief Yard Master on the letters by which the

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letters dated 24.10.2001 of the applicants were forwarded for further necessary action and the signature on the letters dated 17.10.2001.

12. The applicants have claimed that even assuming that their letters of withdrawal had not been received by the respondents in time, they had given a representation on 24.10.2001 for sending them for pro-guards post training and had mentioned in their representation that they had withdrawn their letters of voluntary retirement, however, there was no response. The Respondents could certainly have noted and verified this. We however find that this representation is dated 28.11.2001 i.e. after the notice of voluntary retirement had been accepted by letter dated 27.11.2001. In this view of the matter, we have to hold that the applicants' alleged letters dated 17.10.2001 seeking to withdraw the notice of voluntary retirement had not been received by the respondents. This being so and the respondents having accepted the notice of voluntary retirement with immediate effect vide letter dated 27.11.2001, the same becomes final and the applicants cannot withdraw their notice of voluntary retirement after the same was accepted. Our view is supported by a judgment of the Jaipur Bench of this Tribunal in OA No.446/2000 decided on 19.7.2001 wherein a similar issue had arisen for consideration [2001 (3) ATJ 40]. The applicant therein had contended that he had withdrawn his offer of voluntary retirement before it was made

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effective. It was found that the alleged letter of the applicant seeking withdrawal of the offer of voluntary retirement on 31.1.2000 never reached the department before the voluntary retirement was made effective from 1.2.2000. As the applicant failed to establish the fact of his withdrawal, the Tribunal dismissed the OA. The case of the present applicants is squarely covered by the aforesaid judgment.

12. In the facts and circumstances of the case the question of applicants' redeployment does not survive. Accordingly, the OA fails and is dismissed. No costs.

*Shanta P*  
(SMT. SHANTA SHASTRY)  
MEMBER (A)

*B. Dikshit*  
(BIRENDRA DIKSHIT)  
VICE CHAIRMAN

Gajan

*dt 26/3/22*  
Order/Judgement: despatched  
to applicant/respondent (s)  
on 22/4/22

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