

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 722/2001

FRIDAY the 20th day of AUGUST 2004

CORAM: Hon'ble Shri Anand Kumar Bhatt - Member (A)
Hon'ble Shri S.G. Deshmukh - Member (J)

P. Paulraj
Residing at
C/o V.R. Mamamalgi
Foundation,
13, Vacharaj Lane,
Matunga (CR), Mumbai.Applicant.

By Advocate Shri R. Ramamurthy.

v/s

1. Union of India through
the General Manager,
Western Railway,
Churchgate, Mumbai.
2. The Chif Commercial Manager(PS)
Western Ralway,
Churchgate, Mumbai.Respondents.

By Advocate Shri Suresh Kumar.

ORDER (ORAL)

{Per Anand Kumar Bhatt, Member (A)}

The following reliefs have been sought by the applicant
in the present application -

a) That this Hon'ble Tribunal be pleased to hold and
declare that the applicant is to be treated as
voluntarily retired from railway service as per his
notice of voluntary retirement dated 29.10.2000 with
effect from 30.1.2001 and is entitled to all
consequential benefits flowing therefrom.

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- b) That this Hon'ble Tribunal be pleased to hold and declare that the respondents are bound to take into account the promotion to the post of Catering Inspector-I granted with effect from 3.10.1994 for the purpose of calculating the retiral dues payable on account of the voluntary retirement of the applicant.
- c) That the respondents be directed to calculate and pay the applicant all retiral dues on his voluntary retirement after taking into account the promotion as Catering Inspector -I with effect from 3.10.1994 along with interest @ 18% from 1.4.2001 till payment.
- d) That such other and further order or orders be passed as the nature and circumstances of the case may require.
- e) That costs of this application be provided for.
- f) That this Hon'ble Tribunal be pleased to hold and declare that the refusal to pay the retiral dues of the applicant as contained in the letter dated 22.1.2001 is illegal, bad in law and liable to be quashed and set aside and further declare that the respondents cannot refuse to pay the retiral dues of the applicant on his voluntary retirement.
- g) That this Hon'ble Tribunal be pleased to hold and declare that the letter dated 22.1.2002 is improper, illegal, unsustainable in law and liable to be quashed and set aside.
- h) That this Hon'ble Tribunal be pleased to quash and set aside the letter dated 12.2.2002 as also the letter dated 22.1.2001 and direct the respondents to treat the applicant as having voluntarily retired from service with effect from 29.1.2001 and pay him all retiral benefits with interest.

2. The facts in brief are that the applicant after completing 35 years of service, put an application for voluntary retirement on 29.10.2000. According to the applicant notice period was over and he had not received any communication and therefore his request for voluntary retirement was deemed to have

been accepted. He did not attend the office after that and vacated the quarter within 2 days of notice period. However on 12.2.2002 the respondents informed that they have rejected the application for voluntary retirement on 22.1.2001, before the expiry of the notice period. It was brought to our notice that applicant had completed 60 years of age on 30.4.2004.

3. The respondents' contention is that the request of the applicant for voluntary retirement was refused. It was sent to his residential address which could not be served. Later it was sent through an official which was again not served on him. They have also stated that applicant had come to the office on 30.1.2001 but he refused to accept the refusal order.

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4. We have heard Shri ~~Ram~~ Ramamurthy counsel for the applicant and Shri Suresh Kumar counsel for the respondents.

5. The short point involved in this case is whether voluntary retirement could be refused under the facts and circumstances of the case to the applicant who had sought voluntary retirement on completing 30 years of service. The contention of the applicant is that as per Rule 66 of Railway Services (Pension) Rules 1993 the claim for voluntary retirement

can be refused only if the applicant is under suspension which admittedly is not the case here. The respondents are relying on instructions issued by the Railway Board on 9.11.1977 (Ex. R-IV) where under certain conditions such application can be refused as provided in para 2 (vii).

6. We considered the rival contentions. After coming into force of the Railway Services (Pension) Rules 1993 the old instructions of 9.11.1977 do not have any force. The present case is of the year 2001. Rules 66 and 67 of the Pension Rules is as follows-

"66. Retirement on completion of 30 years qualifying service - (1) At any time after a railway servant completed thirty years qualifying service -

- (a) he may retire from service; or
- (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the railway servant shall be entitled to a retiring pension:

Provided that -

- (i) a railway servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and
- (ii) the appointing authority may also give a notice in writing to a railway servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:

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Provided further that where the railway servant giving notice under clause (i) of the first proviso is under suspension, it shall be open to the appointing authority to withhold permission to such railway servant to retire under this rule :

Provided also that the provisions of clause (a) of sub-rule (1) of this rule shall not apply to a railway servant, including Scientist or technical expert who is -

- (i) on assignment under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes;
- (ii) posted abroad in foreign based offices of the Ministries or Departments;
- (iii) on a specific contract assignment to a foreign Government.

Unless after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) (a) A railway servant referred to in clause (i) of the first proviso to sub-rule (1) may, make a request in writing to the appointing authority to accept notice of less than three months giving reason therefor;

(b) on receipt of a request under clause (a), the appointing authority may consider such request for curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(3) A railway servant who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from

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withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

Explanation- For the purpose of this rule, "appointing authority" means the authority which is competent to make appointments to the service or post from which the railway servant retires.

67. Retirement on completion of 20 years qualifying service - (1) At any time after a railway servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority retire from service:

Provided that this sub-rule shall not apply to a railway servant including Scientist or technical expert who is -

- (i) on assignment under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes;
 - (ii) posted abroad in foreign based offices of the Ministries or Departments,
 - (iii) on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of a post in India and served for a period of not less than one year.
- (2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period

specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) A railway servant referred to in sub-rule (1) may, make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A railway servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and death-cum-retirement gratuity of the railway servant retiring under this rule shall be based on the emoluments as defined under rules 49 and 50 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for the purposes of calculating pension and gratuity.

(6) This rule shall not apply to a railway servant who retires from railway service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

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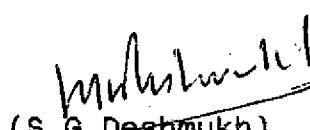
Explanation-For the purpose of this rule, "appointing authority" means the authority which is competent to make appointments to the service or post from which the railway servant seeks voluntary retirement."

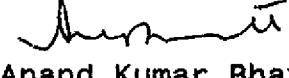
7. It is apparent that Rule 67 is applicable for retirement after completion of 20 years of qualifying service. Rule 66 is for those railway employees who have completed 30 years of qualifying service. Admittedly the applicant has completed 30 years of service, therefore Rule 66 and not Rule 67 would be applicable to him. The only provision for refusal of any notice for voluntary retirement under Rule 66 is when the employee is under suspension and in that case it would be open to the competent authority to withhold the permission for voluntary retirement under this rule. Therefore as per rule if the employee is not under suspension which is admittedly the case, the notice of voluntary retirement has to be accepted by the competent authority. Under the circumstances, rejection of the request of the applicant for voluntary retirement by the respondents vide letter dated 22.1.2001 (Annexure-A-12) and the subsequent letter dated 12.2.2002 is not sustainable and is quashed and set aside. The applicant is deemed to have been retired three months from the date of notice i.e. 29.1.2000. The applicant will be entitled to get the retirement benefit along with interest as per rules. The retirement dues with interest shall be paid to him within four months from the date of receipt of this order.

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8. The applicant has also sought promotion to the post of Catering Inspector - I w.e.f. 3.10.1994 and subsequent benefits in the retiral dues. This is entirely a different matter and the counsel for the applicant agrees that he will make a separate representation in this regard to the respondents. The applicant may make such representation to the respondents. If the applicant is aggrieved by the order of the respondents, he is at liberty to approach the appropriate forum as per law.

9. The OA is partly allowed as above. No costs.


(S.G. Deshmukh)
Member (J)


(Anand Kumar Bhatt)
Member (A)

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OA 722/2001

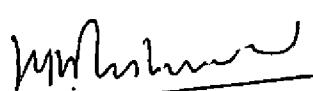
Dated: 12.1.2006

Applicant by Shri Ramesh Ramamurthy. Respondents by Shri V.S. Masurkar.

C.P. 25/2005 has been filed by the applicant for non-compliance of the order of the Tribunal dated 20.8.2004 given while disposing of OA 722/2001. The learned counsel for the applicant stated that in para 7 of the Tribunals Order it was held that the applicant will be entitled to get the retirement benefit along with interest. The learned counsel for the applicant stated that though the respondents have made some payment who have not yet paid the amount of interest.

Shri Masurkar counsel for the respondents submitted that the details of payment made to the applicant have been given at page 40 of the reply filed by the respondents which indicates that more than Rs.1.75 lakhs have been paid as interest on account of delayed payment.

After hearing the counsel and going through the material on record, we are satisfied that substantial compliance of the order of the Tribunal has been done. Accordingly C.P. is dismissed.


(S.G. Deshmukh)
Member(J)


(A.K. Agarwal)
Vice Chairman

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13/1/06