

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THE TENTH MARCH, 1987

Present: Hon'ble Mr Justice K.S. Puttaswamy Vice Chairman
Hon'ble Mr L.H.A. Rego Member(A)

APPLICATION NO. 71/1987

G. Anantharama Supaliga
Junior Stenographer
Office of the Dist.
Controller of Stores,
South Central Railway,
Gadag Road, Hubli.
(Shri Suresh S.Joshi ... Advocate)

..... Applicant

Vs.

1. General Manager,
South Central Railways,
Secunderabad.
2. Chief Personnel Officer,
Personnel Branch,
South Central Railways,
Secunderabad.
3. Assistant Personnel Officer,
South Central Railway,
Divisional Office,
Personnel Branch,
Hubli.
4. District Controller of Stores,
South Central Railways,
Hubli.
5. Divisional Railway Manager,
South Central Railway,
Hubli.

..... Respondents

This case has come up for hearing before Court
today, Vice Chairman made the following:-

O R D E R

In this application made under Section 19 of the
Administrative Tribunals Act of 1985(Act), the
applicant while challenging order no. H/P.535/VIII/1/
Stenos. dated 27.8.83 (Annexure 'I') of the Divisional
Railway Manager (Personnel), Hubli (DRM) and order no.

.....2/-

E/Stores/Misc dated 10-1-1986 of the Chief Personnel Officer, South Central Railway, Secunderabad(CPO) had sought for various other consequential reliefs as flowing from them.

2. The applicant joined service in 1964 as a Junior Stenographer (JS) in the South Central Railway. On or about 28-1-80, the applicant tendered resignation to the post he held. On 29.12.80, the DPO accepted the same from 28.2.80(Annexure G).

3. At any rate the applicant claims that he was suffering from serious mental illness from about January 1980 and the same continued till about the end of June, 1983. On recovering from his mental illness, the applicant on 17.7.83 approached the DRM to rescind his earlier resignation and take him to duty. On an examination of the same and all other factors pleaded by the applicant thereto, the DRM made an order on 27.8.83 (Annexure 'I') offering him a fresh appointment on the terms and conditions set out in that order which reads thus:-

"South Central Railway
No.H/P.535/VIII/1/Stenos.

Divisional Office
Personnel Branch
Hubli, Dt. 27-8-83

Sri G.Anantharama Sapaliga,
No. 37/1, Nehru Nagar,
Gadag Road, HUBLI-20.

Sub:- Request for putting back to duty -
Ref:- Your representation dt. 17-7-83

Your representation cited above has been considered by the DRM. It is regretted that you cannot be put back to duty in your present post giving continuity of past service rendered by you prior to resignation. However, it has been decided by the DRM that you may be re-employed as a Junior Stenographer in timescale Rs. 330-560(RS) on pay Rs. 330/- subject to the following conditions:-

(i) You should appear and pass the prescribed Medical examination for the post.

....3/-

(ii) Your new appointment is an entirely fresh one and it does not imply any continuity of service with the previous employment and no benefits or privileges will accrue on account of your past service.

(iii) Your re-employment being fresh in all respects, you will take seniority below all permanent, temporary/officiating Junior Stenographers in Grade Rs. 330-560(RS) from the date you join duty in the post.

(iv) You should produce documentary proof from the Life Insurance Corporation of India Ltd. that you have ceased to function as LIC agent.

(v) You should also refund the balance of Rs. 3870/- being the overpayment of leave salary drawn by you, as advised in this office letter No.H/P 578/VIII/T&S dt. 24.11.81.

If you are agreeable to the above terms and conditions of reemployment, you may call at this office on any working day before 10-9-83 for taking further action in the matter.

Sd/-
ASSISTANT PERSONNEL OFFICER
S.C. RLY., HUBLI."

On that very day, the applicant accepted this fresh appointment offered to him (Annexure 'J') and has thereafter produced the necessary medical certificate and has re-joined service in about August, 1983 or so and is working as a JS since then in the South Central Railway.

4. On rejoining service, the applicant made various representations to the DRM and his higher authorities urging them to recall or rescind the acceptance of his earlier resignation, treat his service from 1964 as continuous service and extend him all such benefits to which he was entitled to in law. On an examination of those representations, the CPO has rejected the same on 10.1.86(Annexure L) in these words:

"SOUTH CENTRAL RAILWAY

Headquarters Office,
Personnel Branch,
Secunderabad.
Dt. 10-1-1986

No.P/Stores/Misc.

Shri G.Anantharam Sapaliga,
Stenographer,

DCOS's office/S.C.Rly,
Hubli.

Thro: D.C.O.S-UBL

Sub:- Your representation dt. 7-12-85 regarding setting aside the order of acceptance of resignation.

Ref:- Your interview with G.M. on 16.12.85.

Your representation has been considered by the G.M. and he has ordered as under:-

"You have clearly indicated in your resignation letter dt. 28.1.80 that you are in sound mind and tendering resignation fully understanding that you cannot come up with a request for reinstatement in service. Subsequently, you have also sent letters dt. 8.6.81, 17.6.81 and 18.12.81 under your own signature requesting the Administration for the issue of salary certificate, repayment of overpayment of leave salary, payment of settlement dues etc. You have also produced with your letter dt. 27.8.83 a photostat copy of termination order dt. 11.8.83 from LIC/Dharwar. Hence, your plea that you were a mental patient and you were under treatment in the Mental Hospital/Dharwar from 19.9.80 till 26.6.83 is not tenable and your request to treat the letter of resignation as cancelled on the plea that you submitted the same in unsound condition cannot be accepted."

Sd/-
Chief Personnel Officer"

On 20.1.87, the applicant has approached this Tribunal challenging the orders dated 27.8.83 and 10.1.86(Annexures I and L) and for consequential reliefs set out at para 9 of his application on diverse grounds.

5. Shri Suresh S.Joshi, learned counsel for the applicant, contends that his client was mentally unsound and was not in a fit condition to tender resignation and therefore the resignation offered by him and accepted by the DRM on 29-12-80(Annexure 'G') with retrospective effect were illegal and invalid and that in any event, the orders made on 27.8.83 and 10.1.86 refusing to rescind his earlier resignation and treat his earlier service as continuous service were illegal, invalid, unjust and improper.

.....5/-

6. While noticing the sequence of events that led to the order made by the DRM on 27.8.83, we have also set out the same in its entirety. In his letter dated 27.8.83 addressed to the DRM, the applicant expressing his gratitude for the favour done to him has stated thus:- "I am agreeable to the conditions mentioned in your letter cited above." While so stating he has also stated that he will make representations on the continuity of service.

7. What is clear from his representations made on 17.7.83 and 27.8.83 is that the applicant had unequivocally accepted every one of the terms and conditions of the fresh appointment order given by the DRM on humanitarian grounds only and had joined service on the terms and conditions set out in his order. If that is so then the applicant who had accepted the same when he was mentally sound cannot at all challenge the same as also his earlier resignation accepted on 29-12-80. Even otherwise, the conduct of the applicant disentitles him to challenge those orders. On this short and substantial ground we find no ground to interfere with the orders of the DRM.

8. We will also assume that what we have held earlier is not correct and examine whether this application challenging the orders of the DRM made on 29-12-1980 and 27-8-1983 is in time or not.

9. After the DRM made his order on 27-8-83, the applicant made departmental or non-statutory representations which were finally rejected by the CPO on 10-1-1986. Shri Joshi also did not maintain that they were statutory and did not rely on any legal provisions providing for them. Any time

spent in pursuing non-statutory remedies in computing the period of limitation under Section 21 of the Act cannot be excluded - is well settled. If that is so, then this application made on 30-1-1987 challenging the orders dated 29-12-1980 and 27-8-1983 is clearly barred by time and cannot be entertained by us. We must reject the same on this ground also. Even if we hold that this application is in time, as erroneously found by the office, then also we are of the view that this is a fit case in which this Tribunal should decline to interfere with the order made by the DRM who had done full justice to the applicant examining all his conditions. We are also of the view that if this tribunal were to invalidate the order made by the DRM on 27.8.83 on super technical grounds, then the same would seriously erode the confidence of the litigant public and the authorities in this Tribunal and is not at all in the interests of justice.

10. When once we hold that the applicant had voluntarily accepted the order made by the DRM on 27.8.83 when he was mentally sound, his representations made for re-consideration or modification of that order, which we have held to be valid and legal cannot also be entertained. What the CPO had done on 10-1-1986 was only to re-iterate this position. From this it also follows that the question of this Tribunal examining the previous mental illness of the applicant, if any; the validity of his earlier resignation, or the terms and conditions on which he offered to accept the new appointment, do not at all arise. We therefore decline to go into all of them on which considerable time was expended by Shri Joshi.

11. Shri Joshi lastly contends that condition no. 5

imposed by the DRM, viz., that his client should refund the leave salary, was self-contradictory and manifestly illegal.

12. We have earlier held that the challenge of the applicant to the order dated 27.8.83 was barred by time and that in any event we should not interfere with the same. If that is the true position, then we cannot examine the validity of any of the terms and conditions found in the order of the DRM. We therefore reject this contention of Shri Joshi.

13. In the light of our above discussion, we hold that this application is liable to be rejected. We therefore reject this application at the admission stage without notice to respondents.

K. B. D. Murthy
VICE CHAIRMAN 18/2/89
[Signature]
MEMBER(A) 10.2.987

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