

(03)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. NO: 670/91
T.A. NO:

199

DATE OF DECISION

1.7.92

Shri M.L. Thadhani Petitioner

Shri R.G. Pundale Advocate for the Petitioners

Versus

Div. Railway Manager, Respondent
Central Railway,
Solapur.

Shri I.G. Sawant Advocate for the Respondent(s)

CORAM:

The Hon'ble ~~xxx~~ Ms. Usha savara, Member (A)

The Hon'ble Mr. J.P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

J. P. Sharma

(J.P. SHARMA) 1.7.92
MEMBER (J)

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(04)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.670/91

Shri M.L. Thadhani

... Applicant.

V/s.

Divisional Railway Manager,
Solapur, Central Railway.

Divisional Operating
Superintendent, Solapur,
Central Railway.

Chief Operating Superintendent,
Bombay V.T., Central Railway.

General Manager, Central Railway,
Bombay V.T.

Union of India through
respondent No.4.

.... Respondents.

CORAM: Hon'ble Ms. Usha Savara, Member(A)

Hon'ble Shri J.P. Sharma, Member(J)

Appearance:

Shri R.G. Pundale, for
the applicant.

Mr. J/G. Sawant, for
the respondents.

ORAL JUDGEMENT:

Dated: 1.7.92

¶ Per Shri J.P. Sharma, Member (J) ¶

The applicant was employed as Area Officer at Daund, in Solapur Division. He joined the Railways in 1956. In due course of tenure of service he got promotions at the different levels and finally in 1987 he was posted as Area Officer, Class II. The applicant has grievance, that under adverse circumstances of his ill-health he could not join as per telegram dated 4.5.89. His application for leave of 9th May and 10th May was regretted. It is said that on the spur of the moment, he made voluntary retirement written request dated 5/6-5-89. In this application the applicant has written to in his own words:

" I herewith request for voluntary retirement due to above condition with immediate effect after granting me one month's leave with effect from 8.5.89 as advised by you as per telephonic

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Conversation at 20.05 hrs, treating this period as a notice for voluntary retirement as per new rules.

My settlement papers may please be sent for necessary compliance at the earliest possible."

In this application filed on 9.10.91 before the registry of the Bench, the applicant had prayed for declaration that the conditional voluntary retirement dated 5/6.5.89 which was tendered by the applicant as such and its acceptance in Ex. B and C therein is null and void and of no consequence whatsoever with further consequential relief of reinstatement as Area Officer with back wages with effect from 4.1.89 and also a sum of Rs. 20,000/- or such other sum alongwith cost and expenses with interest of 18% per annum, also prayed.

We have heard learned counsel for the applicant at greater length. The provision of voluntary retirement has been laid down in rule 48(a) C.C.S. Pension rule 1972 sub-clause 1 to seek voluntary retirement. This can be done in writing to the competent authority and requires acceptance by the competent authority i.e. appointing authority to make up his mind within a period of 3 months from the date of notice and if acceptance is not communicated to the applicant the voluntary retirement desired from the day will be come effective. However at any time before acceptance the right has been given to such Government servant to withdraw such a request of voluntary retirement. The rules are statutory in nature. Principles of natural justice and equity cannot be dehors the rules.

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We have sympathetically considered the averments made in the application and the contentions raised by the learned counsel for the applicant. It is not in controversy at this stage, that the applicant was not keeping good health and appears to be under active medical surgical treatment. However, these cannot be even on the basis of magnanimity accepted in the present case, obviously because, firstly the applicant has never withdrawn his request of voluntary retirement made in writing on 5/6.5.89 to the respondents; secondly the applicant has already drawn all his retirement and terminal benefits in ordinary course which are payable to the retired employee and lastly the applicant for the first time woke nine months after and he made the representation only to assail that the said order of acceptance be not treated as valid order.

We have also considered the matter on limitation. Under section 21 sub-clause 1(a), the applicant has to come within one year from the date of his grievance which is raised by him. The impugned order of acceptance was communicated to the applicant by the order dated 15.6.89. In any case he could have made a representation thereafter and after waiting 6 months for a reply, within one year thereafter he could have filed the present application. As referred earlier this application has been filed in October 1991. We do not find that there was any hurdle in filing the application nor there was any reasonable and probable cause for not coming in time. There is also no such written prayer made under section 21 sub-clause 3 of Administrative Tribunal's Act 1985.

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In view of the above circumstances we find
the present application is totally stale and barred
by limitation and dismissed at the admission stage
itself.

J. P. Sharma
(J.P.SHARMA) 1.7.92
MEMBER (J)

U. Savara
(USHA SAVARA) 1.7.92
MEMBER (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

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RA 130/92 in OA 670/91

7-X-1992

Shri M.L. Thadhani Vs. Divisional Railway Manager, Central
Railway Solapur & Ors.

ORDER

The applicant, Shri M.L. Thadhani prayed for review of the judgement dt. 1.7.1992 on the ground that the said judgement contains mistakes, errors and omissions apparent on the face of the record. This was an oral judgement delivered in presence of the learned counsel for the applicant.

As provided by Section 23(3)(f) of the Act, the Tribunal possesses the same powers of review as are vested in a Civil Court while trying a civil suit. As per the provisions of Order XLVII, Rule 1 of the Code of Civil Procedure, a decision/judgement/order can be reviewed :-

- (i) if it suffers from an error apparent on the face of the record; or
- (ii) is liable to be reviewed on account of discovery of any new material or evidence which was not within the knowledge of the party or could not be produced by him at the time the judgement was made, despite due diligence; or
- (iii) for any other sufficient reason construed to mean "analogous reason".

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The applicant has stated certain facts in an argumentative manner in the Review Application and also advanced fresh arguments which is no ground for review. The short question that was considered in the judgement under review was that the applicant has made an application for voluntary retirement in writing on 5/6th May, 1989. The same was accepted and communicated to the applicant by the order dt. 15.6.1989. The applicant has filed this Original Application on 9.10.1991, i.e., two years and four months after the date of communication of the order. As observed in the judgement itself, no request was made by the applicant to withdraw the written request for voluntary retirement nor the case of the applicant falls in any of the grounds quoted above. The Review Application is, therefore, dismissed by circulation.

J. P. Sharma

(J.P. SHARMA)
MEMBER (J)

Usha Savara

(USHA SAVARA)
MEMBER (A)