

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 1058 of 1998.

Dated this Friday, the 19th day of July, 2002.

M. K. Thakar. _____ Applicant.

Shri T. D. Ghaisas. _____ Advocate for the
Applicant.

VERSUS

Union of India & 3 Others. _____ Respondents.

Shri R. R. Shetty. _____ Advocate for the
Respondent Nos. 1 to 3.

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

Hon'ble Shri Shanker Raju, Member (J).

(i) To be referred to the Reporter or not ? Yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? Yes

(iii) Library ? Yes

B. N. BAHADUR

MEMBER (A).

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M. K. Thakar
Ex. Office Superintendent,
IRIEEN, Nasik Road,
Residing at - 5 Trinath Hsg. Scty.,
Datta Manadir Road,
Nasik Road - 422 101.

... Applicant

(By Advocate - Shri T. D. Ghaisas)

VERSUS

1. Union of India through
The Chairman,
Railway Board,
Ministry of Railways,
Railway Bhavan,
New Delhi - 110 001.
2. The General Manager,
Central Railway,
Mumbai C.S.T. - 400 001.
3. Divnl. Railway Manager,
Central Railway,
Bhusawal.
4. The Director,
IRIEEN, Nasik Road,
Pin - 422 101.

... Respondents.

(By Advocate Shri R. R. Shetty
for Respondent Nos. 1 to 3)

O R D E R

PER : Shri B. N. Bahadur, Member (A).

The facts of the case are in a narrow compass, in that, the Applicant who is the Ex-Office Superintendent with the Railways, was working in Indian Railway Institute of Electrical

... 2



Engineering Nasik Road (IRIEEN in short), on deputation. He decided to take voluntary retirement and made an application dated 22.09.1997 seeking therein voluntary retirement with effect from 22.12.1997. Before its acceptance, he submitted another application on 16.12.1997 to extend his notice period by about a month stating that his voluntary retirement should be accepted from 31.01.1998, instead of 22.12.1997, as initially requested. Applicant further states that Director of IRIEEN, Nasik Road, has turned down his request and the voluntary retirement has been accepted from the afternoon of 22.12.1997 i.e. original date. Applicant then cites reasons in his application and how he moved the matter to the Chairman, Railway Board on 23.12.1997. He states that he was, however, relieved on 22.12.1997. A further representation to the Chairman of Railway Board was made on 03.02.1998, this time to seek permission to take back his voluntary retirement and reinstate him with all consequential benefits. The Applicant then takes certain grounds, which were argued amongst others by his Learned Counsel, Shri T. D. Ghaisas.

2. The Respondents have filed a Written Statement of Reply taking the stand first that there is no provision for extending the notice period of voluntary retirement, as has been sought to be done by the Applicant. The later demand for complete withdrawal of retirement notice has also been contested. Parawise replies are then sought to be provided in the Written Statement. A rejoinder has also been filed by the Applicant.

... 3



3. We have seen all papers in the case and have heard the Learned Counsel on both sides. In fact, the matter was argued on both sides in the background of well established law by the Hon'ble Apex Court to the effect that a notice of voluntary retirement could be withdrawn, if such withdrawal was requested for before the date on which the Voluntary Retirement has been sought, in the initial notice. On this settled position there can be no doubt. The argument, therefore, made by the Learned Counsel for Respondents in this background was that, while a notice could be withdrawn, it cannot be deferred in the absence of rules. This is a question that will need to be decided. Upon consideration of all facts, the following questions can be posed for decision :

- (i) Whether in the background of law settled by Apex Court it could be concluded that the right for date of retirement sought could be deferred?
- (ii) If so, what would be the relief in the present case in specific facts and circumstances therein.

4. It must be mentioned here first that one of the main ground taken on behalf of the Applicant's Learned Counsel was that the acceptance of the notice came from the Institute where the Applicant was working on deputation, and that, such acceptance was bad in law, since it should have come from the original employer i.e. the Divisional Railway Manager. We have carefully considered this matter with reference to the documents to which the Learned Counsel took us over. In the first instance, this is a Railway Institute and in the second instance, there is a letter on record from D.R.M. to the Institute authorities clearly stating that they (Institute authorities)



... 4

could accept the voluntary retirement notice. More importantly, from the way the objection of technical nature is now being brought up is clearly seen in the nature of an excuse. No prejudice can be caused to him in a matter of voluntary retirement sought by himself vis-a-vis the acceptance. Such prejudice can be caused in case of penalty orders on departmental enquiries and other matters. This argument of the Learned Counsel for the Applicant, therefore, cannot help him in the facts and circumstances of the case.

5. We now come to the two questions posed (para 3) . It has been settled in various judgement by the Hon'ble Supreme Court that withdrawal of voluntary retirement can be made before the date that it is to take effect. In fact, in the case of Union of India and Another v/s. Wing Commander T. Parthasarathy reported at 2001 SCC (L&S) 180 it has been held that even in the case of resignation, this right has been established. In any case, it has been established that withdrawal is a right. Now to take the view that withdrawal is all right but not deferment, is begging the question. It does not stand to reason in the background of the law settled. If a person has said that he would retire from date "X", withdraws the notice, he is really deferring it to the date when he attains the age of superannuation, which may be away by several years. A deferment is merely setting another date, obviously before the date of superannuation. It does not need too much argument to conclude that the kind of argument that is being taken by Respondents cannot logically be taken in the background of the law settled by the Hon'ble Supreme Court. It is far too technical in nature. It also cannot cause prejudice

... 5



to the Administration in any case. The answer to the first question is, therefore, to be given by stating that it would be perfectly in order and in keeping with the settled law that an official seeking voluntary retirement from a particular date can defer the date of effect, provided such a request is made before the date set by him in his initial notice.

6. Now having settled this position above, the second question will need to be decided only in facts and circumstances of the present case. The important thing in settling the above position was to settle an issue remaining in doubt. What benefits the Applicant gets, if at all any, would depend on the peculiar facts and circumstances of a particular case. In this case, having been refused the request for voluntary retirement, he was made to hand over charge on 22.12.1997. His request was for retirement from 31.01.1998. Another point, however, which is clear is that the request made after his proposed date of retirement i.e. on 03.02.1998 for withdrawal of notice cannot be accepted. Hindsight thinking cannot provide any benefit.

7. The question, therefore, before us is how is the period between 22.12.1997 and 31.01.1998 be treated. It is a period of some 40 days or so. It will be difficult, however, to provide full salary for the period since he has not actually worked, even though this is a case of mistaken decision which was taken by the Railways. The most appropriate thing to do would be to provide him with any type of leave which is entitled, as per his choice. This is consciously being done in view of the fact that Earned Leave is now encashable and might have been encashed, and giving

... 6



the benefit of the interpretation made by us should not work obviously to the detriment of the Applicant. The Applicant is at liberty to apply for any form of leave that he wishes, as per title, within a period of two months from the date of receipt of this order, upon which, orders shall be made, subject to availability of title and rules by Railway Authorities within two months thereafter. It will also be open to the Applicant to make no application whereby status-quo would prevail. Ofcourse, this would imply that the retirement of the officer shall come about from afternoon of 31.01.1998. In case any increment happens to fall due, this could be provided and pension refixed. The matter will operate as per facts and circumstances on record based on the above principles. Applicant to make application within two months of receipt of copy of this order. Respondents to comply orders above within three months thereafter and communicate their decision, in clear terms, to Applicant.

8. The O.A. is partly allowed in terms of the above order (Para 7). There will be no order as to costs.

S. Raju

(SHANKER RAJU)
MEMBER (J).

B. N. Bahadur
19 July '02
(B. N. BAHADUR)
MEMBER (A).

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