

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD

BENCH : AT HYDERABAD

O.A.No. 458 of 1990

Dt. of Order: 26.6.1991

Between:-

V.Nageswara Rao .. Applicant
(died as per L.R.)
Smt.V.Anasuya Devi

[L.R. of applicant Smt. V. Anasuya Devi brought on record as per Court order dt 24.1.91 in m.A. bus/90.]
and

1. The Secretary (Establishment),
Railway Board, Rail Bhavan,
New Delhi..
2. The Chief Personnel Officer,
South Central Railway, Rail-
nilayam, Secunderabad.
3. Senior Divisional Commercial
Superintendent, South Central
Railway, Vijayawada.
4. Senior Divisional Personnel
Officer, South Central Railway,
Vijayawada.
5. Assistant Divisional Medical
Officer, Railway Health Unit,
South Central Railway, Tenali.

.. Respondents

Appearance:-

For the Applicant : Shri G.V.Subba Rao, Advocate.

For the Respondents : Shri N.R.Devaraj, Standing Counsel
for Railways.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HONOURABLE SHRI J.NARASIMHA MURTHY, MEMBER(J).

(ORDER OF THE DIVISION BENCH DELIVERED BY HONOURABLE)
SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.

1. The applicant was a former Railway employee and he has filed this application questioning the orders passed by the

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Chief Personnel Officer, South Central Railway, Secunderabad, in his letter dated 24-5-1989 rejecting his request for sanctioning pension to him.

2. The applicant states that he was appointed as a Commercial Clerk on 29-12-1948. He was afflicted with Rheumatic Spondalitis on 17-9-1975 and he has been confined to bed from that time onwards. The applicant was sanctioned leave continuously for the period 17-9-1975 to 4-6-1977 and he received salary for the said period according to the admissibility of leave on average pay and leave on half average pay. He submitted a representation to the Senior Divisional Commercial Superintendent, Vijayawada (3rd respondent) on 30-3-1977 seeking voluntary retirement, as he could no longer perform duties. The Senior Divisional Commercial Superintendent, Vijayawada, in his letter dated 18-4-1977 asked the applicant to submit his resignation as he cannot seek voluntary retirement because he did not complete 30 years of service. The applicant submitted his resignation letter on 4-6-1977. The Senior Divisional Personnel Officer, South Central Railway, Vijayawada (4th respondent), in his letter No.B/P 578/I/1, dated 25-8-1977 accepted the resignation of the applicant w.e.f. 25-6-1977. The applicant had also sent another letter dated 4-6-1977 wherein he desired to opt for pension, but no action was taken thereto. The applicant contends that his request was deliberately ignored by the authorities. He further states that the Senior Divisional Personnel Officer is not the controlling officer ^{of} the applicant and the Senior Divisional Commercial Superintendent (3rd respondent) is the authority to accept his resignation or voluntary retirement.

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3. The applicant states that the Railway Board in order to bring all the employees, who are governed by the State Railway P.F. Rules to the Pension Scheme have been extending the time limit to opt for pension scheme from time to time. In 1977 also the Railway Board vide their letter No.P(R.500)/PT VI, dt.24-1-77 notified through serial Circular No.2/77 regarding extension of time limit for exercising option to Railway servants governed by the SRPF (Contributory) Rules to come over to pensionable service and to the Family Pension Scheme 1964, which was originally fixed upto 31-12-76 was extended upto 30-6-77. This should have been notified to the applicant and it was deliberately suppressed. Subsequently the applicant was asked to attend the Pension Adalat and the applicant attended the same. The Divisional Railway Manager assured the applicant that his case would be considered, but no action has been taken by the authorities to grant him pension. The applicant also submitted a representation on 15-12-88 and on 29-1-89, and the Chief Personnel Officer, Secunderabad, without considering the various issues raised in the representations, rejected the claim of the applicant for granting pensionary benefits by his letter No.P(T) 500/T&C/561/Rep/89/VII, dt.24-5-1989. The applicant contends that this order is arbitrary and illegal.

4. The Respondents in their reply says that as the applicant had not completed 55 years of age or 30 years of service, he did not fulfil the conditions for voluntary retirement. His request for voluntary retirement could not be, therefore, accepted and he was informed accordingly (contd..on page 4)

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by their letter No.B/P.578/I/1, dated 18.4.1977. Subsequently the applicant submitted his application dated 4-6-1977 ~~and~~ requested for accepting his resignation and also for sanction of leave to his credit. His resignation was accepted vide Memo No.B/P.578/I/1, dt.25.8.77 duly sanctioning the leave due to him upto 25.6.1977. Thereafter the applicant in his letter dated 23.9.1977 requested for payment of settlement dues and he also stated in his letter dated 23.9.1977 as follows:-

"
Sub: Payment of leave salary and settlement dues.
Ref: Your letter No.B/P.578/I/1, dated 25.8.77.

With reference to your above cited letter, my resignation has been accepted with effect from 25.6.77. I worked at Tenali station since last 8 years. Due to my ill health and long sickness I applied for resignation and the same was accepted. I am a P.F. optee only.' "

Accordingly the settlement benefits due to the applicant under SRPF rules were arranged as under:-

Provident Fund (P.F.)	..	Rs. 6,474.63
P.F. Bonus	Rs. 11,073.00
Special contribution to PF		Rs. 7,000.00

The applicant never opted for pension rules and this is evident from his application dated 23.9.1977 wherein he has categorically stated that he had opted for P.F. only. The applicant having received the benefits under the P.F., consequent on his resignation in 1977, cannot after a lapse of 12 years re-agitate the matter. The question of payment of invalid pension does not arise as he was not medically decategorised and discharged from service.

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on that ground. The applicant had in 1985 filed a petition seeking the same relief as in this application in the Court of the Presiding Officer/Labour Court, Guntur, under CMP No.1985, I.A.1988. The said CMP was dismissed on 1-1-1988. Subsequently the applicant also attended the Pension Adalat on 15-12-88 at Vijayawada and represented his grievance to the Pension Adalat. His case was disposed of and he was replied by the Chief Personnel Officer, South Central Railway, in his letter No.P(C)/Misc.Rep/VN/BZA, dt.1/3-3-1990. For these reasons the respondents contend the applicant has not made out a case.

5. We have heard Shri G.V.Subba Rao, learned counsel for the applicant and Shri N.R.Devaraj, learned standing counsel for Railways. The applicant after he had filed the O.A., dies and his legal representative has been brought on record. In support of the claim of the applicant Shri Subba Rao makes the following points :-

1) the applicant wrote two letters dt.4-6-77 to the Divisional Commercial Superintendent, Vijayawada; one forwarded by the Divisional Commercial superintendent on 26-7-77 wherein he sought for early settlement of his accounts in which he has stated that he has not opted for pension and he is a P.F. optee and that he is eligible for the benefits under SRPF rules.

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He also wrote another letter on the same date in which he stated that he wanted to opt for pension and requested for sending necessary option forms. He contends that the respondents ought to have sent the applicant the option forms to exercise his option in terms of the Railway Board letter dt.3-1-77.

Shri Devraj counters ^{by} stating that the applicant had accepted all the benefits available to him under the SRPF rules. It is only after a lapse of 12 years, he is trying to open the case afresh stating that he had written another letter stating that he wants to opt for pension. Shri Deva raj therefore argues that the plea taken by the applicant at this distance of time cannot be accepted. We find considerable merits in the contention of Shri Devaraj. If the applicant was really keen on opting for pension, he ought to have pursued the matter immediately. In the circumstances we find that this contention of Shri Subba Rao has to be rejected.

2) The next point urged by Shri Subba Rao is that under rule 2046 the applicant is entitled to retirement even before completing 30 years of service or attaining the age of 58 years of age subject to

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To

1. The Secretary (Establishment)
Railway Board, Rail Bhavan, New Delhi.
2. The Chief Personnel Officer,
S.C.Rly, Railnilayam, Secynderabad.
3. The Senior Divisional Commercial Superintendent,
S.C.Rly, vijayawada.
4. The Senior Divisional Personnel Officer,
S.C.Rly, vijayawada.
5. The Assistant Divisional Medical Officer,
Railway Health Unit, S.C.Rly, Tenali.
6. One copy to Mr.G.v.Subba Rao, Advocate, CAT.Hyd.
7. One copy to Me.N.R.Devraj, SC for Rlys, CAT.Hyd.
8. One copy to Hon'ble Mr.J.Narasimha Murty, Member(J)CAT.Hyd.
9. One spare copy.

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the conditions that he may get priority for qualifying pension. The Respondents ought to have considered his request in accordance with these rules. He further contends that the applicant was not in a position to join the duty as required/under rule 91, para 2153 of the Indian Railway Establishment Manual, he should have been allowed to retire on medical grounds. Rule 91 of the Railway Establishment Manual reads as follows :-

" 91. Retirement on medical grounds:-

Where a competent authority has reason to believe that a Government servant is suffering from (a) contagious disease, or (b) a mental or physical disability, which in its opinion interferes with the efficient discharge of his duties, that authority may ask the Railway servant to undergo a medical examination and if he is declared unfit to continue in service, may retire him from service on medical grounds."

Shri Dev raj contends that though the applicant retired long back ^{and} this point was not urged by him at any earlier date. As already mentioned, the applicant accepted all the benefits under the PF scheme and it is not open to him at this distance of time to seek for pensionary benefits. We find considerable force in the points raised by Shri Devraj and we accordingly reject this contention also. In these circumstances the application is dismissed. No order as to costs.

B.N. Jayasimha
(B.N. JAYASIMHA)
Vice-Chairman

J.N. Murthy
(J.N. MURTHY)
Member (J)

Dated 20th June 1991

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Dated: 20th June, 1991.

bvt for only *20/6/91*

24/6/91
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TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

THE HON'BLE MR. D. SURYA RAO: M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)
AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 20.6.1991.

ORDER / JUDGMENT.

M.A./R.A./C.A. No. _____

in
T.A. No. _____ W.P. No. _____

O.A. No. 458/90 ✓

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

