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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : AT HYDERABAD

* * *

O.A. No. 940/90

Dt. of Decision : 4.11.93

S.S. Prayaga,

. . Applicant

Vs

1. The General Manager (G.M.)
South Eastern Railway (S.E.Rly)
Garden Reach, Calcutta-43.
2. Divisional Railway Manager (DRM)
S.E.Rly, Waltair, Visakhapatnam-4
3. Divisional Personnel Officer (DPO)
S.E.Rly, Waltair, Visakhapatnam-4.

. . Respondents.

Counsel for the Applicant

: Mr. M.B.K. Murthy

Counsel for the Respondents

: Mr. N.R. Devaraj
SC for Rlys.

CORAM:

THE HON'BLE JUSTICE SHRI V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

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Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

Heard Sri MB Krishna Murthy, learned counsel for the applicant and Sri N.R. Devaraj, learned standing counsel for the respondents.

2. The applicant a Chief Draughtsman in the Railways made a representation on 31-7-1987 praying for a voluntary retirement with effect from 1-6-1988. By that date he completed 55 years, when he was not permitted to retire voluntarily with effect from 1-6-1988, the applicant had not reported for duty from that date. He filed the OA. 139/89 praying for the following relief :

- "a) That his request for voluntary retirement submitted on 31-7-87 after attaining 55 years of age under FR.56(k) giving three months notice is effective proprio vigore and needs no acceptance in terms of orders in 1983 2 SLJ 418 (Del) (Union of India vs Hirendralal Bhattacharya) This is borne out by the fact that the Administration acquiesced in the fact when the applicant stopped attending his official duties with effect from 1-6-1988 duly notifying the same to the authorities concerned.
- b) That the untenable contention of the D.P.O., Waltair contrary to the directions issued on 24-2-1988 by his Head of Department (C.P.O., S.E.Rly, Calcutta) to accept this applicants voluntary retirement is derogatory of higher authority, deliberate, biased and illegal on the plea of recovery ordered in private and personal civil litigation for maintenance.
- c) That in the case of voluntary retirement having become fait accompli with effect from 1-6-1988 in the case of this applicant and the authorities concerned having acquiesced in it without objecting to it goes to prove

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that the request of the applicant for voluntary retirement is within the ambit of rules and as such withholding acceptance of the same is illegal and the Honourable Tribunal is requested to direct acceptance.

d) That when the voluntary retirement of this applicant is lawful and factual, withholding payment of settlement dues is illegal inasmuch as (1) Pension or gratuity is a right and the payment of it does not depend upon the discretion of Government as has been decided by judicial pronouncements, (2) PF is one's own contribution and should be paid on termination of service and cash value of terminal leave is payable under statutory rules.

Delay in settlement and payment of settlement dues is visited with the penalty of payment of interest at market rates as laid down under Railway Board's letter No.F(E)III. 79 PNI/15 dated 14-9-1984 and as such, it is illegal to make delay in payment of settlement dues and the Hon. Tribunal is requested to order payment immediately.

e) that it is contrary to statute to make recovery from pension, Gratuity, P.F. etc., and as such withholding payments thereof involving delay is in no way beneficial or helpful to wife of this applicant seeking maintenance which is a private and personal issue between the applicant and his wife and the same will be settled mutually but the respondents herein have no locus standi to withhold payment of the said settlement dues and therefore, this applicant beseeches the hon'ble Tribunal to order immediate payment of his legitimate claims regarding pension, gratuity, PF, encashment value of terminal leave and Insurance amount."

3. When OA.139/89 had come up for consideration on 29-9-89 before this Bench, neither the applicant nor his learned counsel was present and the then learned standing counsel for the respondents produced before this Bench a copy of letter dated 20-9-89 addressed by the applicant to the DPO Waltair and the relevant portion is as under :

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" I have filed the above case on the Hon. Central Administrative Tribunal, Hyderabad, for accepting my voluntary retirement from 1-6-1988, the date from which I am not attending the office.

The same was, however, not admitted on the Hon'ble CAT/ Hyderabad for not finalising in the High Court of my case in CRP 1931 of 1987.

I have however, accepted the voluntary retirement from 10-4-1989 the date from which the Administration has accepted my voluntary retirement. I am not going further for contesting to accept my voluntary retirement from 1-6-88. My earlier claim for accepting voluntary retirement from 1-6-1988 may please be treated as cancelled.

Necessary arrangement may please be made for payment of my settlement dues early as directed by the Hon. High Court, taking my voluntary retirement from 10-4-1989." On the absis of the same the said OA was dismissed as infractuous.

4. This OA was filed on 14-11-1990 praying for the following relief:

That the Honourable Tribunal may be pleased to order :

- I. Acceptance of voluntary retirement of this applicant from 1-6-1988;
- II. Payment of settlement dues of pension and commuted value of pension based on the date of notice of for voluntary retirement from 1-6-1988;
- III. Payment of interest for delay in arranging payment of the said settlement dues at market value beyond two months from the date of retirement, 1-6-1988;
- IV. Pyament of costs;
- V. Such other relief or reliefs the Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

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Copy to:-

1. The General Manager(G.M), South Eastern Railway, (S.E.Rly), Garden Reach, Calcutta-43.
2. Divisional Railway Manager(DRM), S.E.Railway, Waltair, Visakhapatnam-4.
3. Divisional Personnel Officer(DPO), S.E.Railway, Waltair, Visakhapatnam-4.
4. One copy to Sri. M.B.K. Murthy, advocate, 49-35-27, Abidinagar, Akkayyapalem, Visakhapatnam16.
5. One copy to Sri. N.R.Devaraj, SC for Railways, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare copy.

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(87)

5. Thus, in substance, the relief claimed in OA.139/89 and this OA is that his voluntary retirement has to be accepted from 1-6-1988. Ofcourse, the OA.139/89 was filed in February, 1989 and letter on the basis of which the said OA was dismissed is on a date later to 10-4-1989, the date from which he opted for voluntary retirement as per that letter.

6. But when the relief claimed is merged in the order dated 29-9-1989, in OA.139/89, it is not open to the applicant to file another OA for the same relief.

7. It is urged for the applicant that the letter referred to in the order dated 29-9-1989 was obtained by coercion. Then the relief that had to be prayed is by way of application for review under Proviso to Rule 15(2) and one cannot come up by way of fresh OA u/s 19 of A.T. Act to challenge the same.

8. It had to be further noted that the copy of the order dated 29-9-1989 in OA.139/89 was communicated to the applicant by covering letter dated 29-11-1989 of this Tribunal. Even this OA was filed more than 11 months after receipt of the same. Such inordinate delay in moving this Tribunal will be naturally a fact that may weigh against the applicant in regard to his plea that letter referred to in the order dated 29-9-1989 in OA.139/89 was obtained by coercion. Anyhow, as the same does not arise for consideration for disposal of this OA, we are not further adverting to the same.

9. In the result, the OA is dismissed. No costs.

[Signature]
(R.RANGARAJAN)
MEMBER (ADMN.)

[Signature]
(V.NEELADRI RAO)
VICE CHAIRMAN

Date : November 4, 93.
Dictated in the Open Court.

sk/vsn

O.A-940/90

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

R. Ranga Raju
THE HON'BLE MR. A. B. GORTHI : MEMBER (A)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (JUDL)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated: 4/11/ -1993

ORDER/JUDGMENT:

M.A./R.A./C.A. NO.

in

O.A. No.

9457 90

T.A. No.

(W.P.)

Admitted and Interim directions
issued

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Rejected/Ordered.

No order as to costs.

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