

(89)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.94/94

date of decision : 9-12-94

Between

N. Veera Reddy, : Applicant

1. Secretary
Min. of Railways
Railway Board, Rail Bhavan
New Delhi

2. General Manager
SC Rly., Rail Nilayam
Secunderabad

3. Chief Admn. Officer(Constructions)
Divnl. Offices compound, S8 Rly.
Secunderabad

4. Chief Project Manager(constructions)
Guage conversion, CAO Office
Divnl. Offices Compound
SC Rly, Secunderabdd

5. Dy. Chief Engr.(Construction)
Guage Conversion, SC R.Offices compound
Opp. Rly. Station
Vijayawada : Respondents

Counsel for the applicant : V. Rama Rao, Advocate

Counsel for the respondents : N.V. Ramana, SC for Railways

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HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. RANGARAJAN, MEMBER (ADMN.)

OA.94/94

Judgement

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

Heard Sri Sarma, for Sri V. Rama Rao, learned counsel for the applicant and Sri N.V. Ramana, learned counsel for the respondents.

2. This OA was filed praying for quashing the charge memo dated 18-12-1991 by declaring it as null and void, illegal, arbitrary and for a direction to the respondents to settle the retirement benefits, of the applicant and to pay pension from 2-9-1985 declaring that the benefits including interest of 18% p.a.

3. While the applicant was working as Inspector of Works Grade I in Construction Division, Jaggayyapeta, in Krishna District, ^{he} absented himself from 8-5-85. It is stated for the applicant that due to sickness, he could not attend to duty from 8-5-1985 and he submitted leave application with medical certificate by sending the same in post on 8-5-1985 itself. But it is stated for the respondents ^{that} such leave letter was not received to that effect.

4. But on 2-9-1985 the applicant intimated the Senior Divisional Engineer (Construction), Krishna Bridge, that he would retire voluntarily on completion of three months from that date, by addressing the said letter to his immediate superior. It was also stated therein that he completed 20 years qualifying service and hence ~~he~~ is entitled to retire voluntarily.

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5. While it is stated for the respondents that the applicant was not permitted to retire voluntarily by order dated 17-9-1985 on the grounds that the applicant had not handed over the record, it was stated for the applicant that he has not received that order. The further case of the applicant is that when he received notice dated 24-2-86 requesting him to handover the record, he had gone to the office and handed over the record. The applicant had not attended to duty from 8-5-1985 onwards.

6. A complaint was given to the police against the Asstt. Engr. (Construction), Contractor, and another on the allegation of tampering with the records and the same was registered as FIR dated 20-11-1984. The applicant did not figure in the said FIR dated 30-11-1984. But applicant herein figured as A-2 in CC15/89 on the file of Spl. Judge for CBI and SPE cases, Vizag, filed after investigation in FIR dated 30-11-1989. When it was pleaded for the applicant before the Special Judge that there was no material evidence against him, and when the same was accepted, the applicant was discharged under Section 239(1)CRPC by order dated 27-2-1990. The other accused in CC.15/89 were acquitted after trial by order dated 28-11-1991.

7. It is stated for the respondents that charge memo dated 1-5-1991 was issued against I.O.W. who was one of the accused in CC.15/89 on the basis of the very allegations on which the chargesheet was filed in that case it is also stated for the respondents that against some of the accused in CC.15/89 similar charge memos were issued.

8. The charge memo dated 18-12-1991 was issued against the applicant basing on the very allegations on which the charge sheet was filed in CC.15/89 and the same was served.

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on the applicant on 3-1-1992. He submitted explanation dated 27-3-1992 and the Inquiry Officer was appointed on 22-7-1992. Later there was change in the Inquiry Officer, and the present Inquiry Officer is the Third one.

9. In terms of Railway Ministry's letter No.E(P&A)I-77/RT:46 dated 9-11-1977 Railway servants who have put in not less than 20 years of qualifying service have to give notice of three months in writing, to the appointing authority for retiring from service voluntarily. It is not in controversy that the applicant had more than 20 years qualifying service by the time he addressed letter

(Construction) that he would retire voluntarily on completion of three months from the date. It was forwarded to the appointing authority. As already observed the same was rejected on the ground that the applicant had not handed over the record.

10. Para3 of Sub para (iii) of Railway Boards letter dated 9-11-1977 referred to supra lays down that the acceptance for voluntary retirement has to be generally given in all cases except in the cases :

- a) In which disciplinary proceedings are pending or contemplated against Railway servant for imposition of major penalty, and appointing authority having regard to the circumstances of the case is of the view that the imposition of the penalty of removal or dismissal from the service would be warranted in case, or
- b) In which the prosecution, may be contemplated or may have been launched in Court of law against the Railway servants concerned.



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11. The name of the applicant was not referred to in the FIR dated 30-11-1984. It is not even the case of the respondents that the applicant was referred to as one of the accused during the course of the investigation by the date of refusal of voluntary retirement or atleast by 2-12-1985 by which three months expired. Thus, it is a case where neither disciplinary case nor criminal prosecution was contemplated against the applicant by the relevant date. When the Railway Board's letter dated 9-11-1977 confers the right upon the Railway servants to retire voluntarily after completion of 20 years of qualifying service and when it is stated that the said right can be deemed only on the ground that the disciplinary action/criminal prosecution was initiated/launched or contemplated, the said authority cannot reject it on any other ground. Hence, refusal of the competent authority has to be held as illegal. Further, as the case of the applicant that he had not received the said order was not challenged, it has to be held that the voluntary retirement had come into effect on completion of three months from the date of letter of voluntary retirement, as para 3(vii) of Railway Board letter dated 9-11-1977 ~~states that~~ "even where the notice of voluntary retirement given by a railway servant requires acceptance by the appointing authority, the railway servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice."



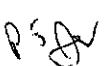
12. The Supreme Court held in 1994 (5)SLR 567 (Union of India vs. Syed Muzaffar Mir), while construing para 802(b) of Indian Railway Establishment Code that when the order was not passed refusing voluntary retirement of a Railway servant eventhough under suspension, it has to be presumed that his voluntary retirement was accepted.

13. It is true that by the date the applicant sent the letter of voluntary retirement, he was not attending to the duty from about three months. But he did not cease to be a railway employee. The concerned authority had not taken any steps to initiate disciplinary inquiry for unauthorised absence. Railway letter dated 9-11-1977 does not indicate that a railway employee who was under unauthorised absence cannot avail the benefit of voluntary retirement conferred under the said letter. Para-3(iv) of the said letter shows that a railway employee who is availing leave not due is also having a right to retire voluntarily if he satisfies the conditions referred to in the letter dated 9-11-1977.

14. Hence, on the basis of material on record, we have to hold that the applicant retired from service with effect from 2-12-1985.

15. The learned counsel for the respondents submitted that the relief of declaration that the applicant was deemed to have retired voluntarily on 2-12-1985 is barred by limitation as this OA was filed in 1994. Such a plea was not taken in the reply statement. But argument was advanced in regard to the same.

16. It is stated for the applicant that as he is challenging the issue of chargememo dated 18-12-1991 as illegal on the ground that there is nothing on record to indicate that





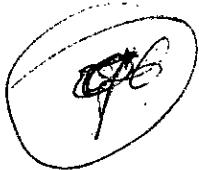
order of discharge was looked into before the issue of the said charge memo, it has to be quashed and as he is also claiming the terminal benefits, it is open to him to contend even though it was not specifically urged that the said charge memo is also barred by limitation. It may be noted that the claim for pension is continuing right. It is also stated for the applicant that he made representation in regard to the terminal benefits.

17. When the applicant had submitted for voluntary retirement and when he made representation requesting authorities to pay him pension and terminal benefits, he was not informed that he is not entitled to the same as he is still in service. Whether he is entitled to pension or not depends upon the question as to whether the applicant retired from service or whether he is still in service. Letter dated 9-11-1977 of Railway Board makes it clear that the railway servant may presume that he is permitted to retire voluntarily if he is not informed that it was refused. Hence, there is no need to claim specifically for declaration that he retired from service voluntarily.

18. Proviso B(ii) of Para 2308 of IREC states that no disciplinary action shall be taken against a retired employee in respect of any event which takes place more than four years before such institution. The charge memo dated 18-12-1991 was issued to the applicant in regard to an incident which took place in 1984. As we held that the voluntary retirement of the applicant had come into effect on 2-12-1985, it is a case of initiating disciplinary proceedings against the applicant after his retirement and as the charge memo is in regard to the incident which had

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taken place about seven years prior to the issue of charge memo and hence more than four years prior to the date of the said charge memo dated 18-12-1991, it has to be quashed, as being barred by time.

19. When payment of pension or the terminal benefits is not by way of grace, and when the same can be treated as the savings of the employee, for his entire period of service, it is not just and proper to dismiss the OA in regard to the claim for terminal benefits merely on the ground that such claim was made at a belated stage. But in such a case interest will not be allowed.

20. Pension is a continuing right. This Bench is ordering the monetary benefit from the date of filing of the OA, in case of monetary claims on the basis of continuing right. As such it is just and proper to order even in this case to direct the respondents to pay the pension with effect from 1-1-1993 (This OA was presented on 20-1-1994).

21. The amount of pension due to the applicant on the basis of his qualifying service upto 1-12-1985 and the average pay drawn for the 10 months prior to 1-12-1985 has to be finalised within six months from the date of submission of pension papers for the applicant. After the said pension amount was quantified, the applicant should be given an opportunity to submit for commutation. If he is going to submit for commutation within three months from the date of receipt of intimation of fixation of pension, his application for commutation has to be considered as if he submitted it on or before 1-12-86. The amount due to the applicant if any towards encashment

of leave has to be paid to the applicant by 31-1-1995 and his own contribution towards GPF also has to be paid by 31-1-1995. The gratuity due to the applicant on the basis of his retirement as on 2-12-1985, has to be paid within one month from the date of finalisation of pension. The pension alongwith dearness relief over the same same has to be paid to the applicant for the period from 1-1-1993. The said pension and the arrear of pension finalisation of pension. If there is delay in payment of any of the amounts referred to, the same carry interest at 12% p.a. from the dates they are payable as per this order.

22. Charge memo dated 18-12-1991 is quashed.

23. The OA is ordered accordingly. No costs. /

(R. Rangarajan)
Member (Admn)

(V. Neeladri Rao)
Vice Chairman

Dated : December 9, 94
Dictated in Open Court

Ambr 3-1-95
Deputy Registrar (J) CC

To sk

1. The Secretary, Min. of Railways, Railway Board, Railbhavan, New Delhi.
2. The General Manager, S.C.Rly, Railnilayam, Secunderabad.
3. The Chief Admn. Officer(Constructions), Divisional Offices Compound, SC Rly, Secunderabad.
4. The Chief Project Manager(Constructions) Guage conversion, CAO Office, Divisional Offices Compound, S.C.Rly, Secunderabad.
5. The Deputy Chief Engineer(Construction) Guage Conversion, SC Rly. Office compound, Opp. Rly. Station, Vijayawada.
6. One copy to Mr.V.Rama Rao, Advocate, CAT.Hyd.
7. One copy to Mr.N.V.Ramana, SC for Rlys, CAT.Hyd.
8. One copy to Library, CAT.Hyd.
9. One spare copy.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

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

AND

THE HON'BLE MR.R.RANGARAJAN : M(ADMN)

DATED: 9 - 12 - 1994

ORDER/JUDGEMTN:

M.A. / P.A. / C.A. No.

in

O.A. No. 94/94

T.A. No. (w.p.)

Admitted and Interim directions issued.

Allowed.

Disposed of with directions.

Dismissed.

Dismissed as withdrawn

Dismissed for default.

Ordered/Rejected

No order as to costs.

DVM

