

CENTRAL ADMINISTRATIVE TRIBUNAL,
HYDERABAD BENCH: HYDERABAD

C.A. NO. 701 CF 1995

DATE OF DECISION: 11-6-98

95 G. DEENATAH

PETITIONER(S)

G.V. SUBBA RAO

ADVOCATE FOR THE
PETITIONER(S)

VERSUS

Divisional Opg. Manager, SC Rly & Ors.

RESPONDENT(S)

K. SIVA REDDY

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE SRI R. RANGARAJAN, MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR, MEMBER (JUDL.)

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 the judgement ~~xxx~~ is to be circulated to the other Benches?

M

JUDGEMENT DELIVERED BY HON'BLE SRI R. RANGARAJAN, MEMBER (A)

J2

HBSJP
M(J)

HRRN
M(A)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

DATE OF JUDGMENT: 15 JUNE, 1998

BETWEEN:

G.DEENIAH

.. APPLICANT

AND

1. The Divisional Operating Manager (Coaching),
South Central Railway,
Divisional Office,
Vijayawada 520 001,
2. The Divisional Railway Manager,
S.C.Railway,
Vijayawada 520 001.

COUNSEL FOR THE APPLICANT: Mr. G.V.Subba Rao

COUNSEL FOR THE RESPONDENTS: Mr.K.SIVA REDDY, Addl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGMENT

ORDER (PER HON'BLE SHRI R.RANGARJAN, MEMBER (ADMN.))

Heard Mr.G.V.Subba Rao, learned counsel for the applicant and Mr.K.Siva Reddy, learned standing counsel for the respondents.

2. The applicant in this OA was initially appointed on 26.4.1951 as Porter and later he was promoted as Gate Man in 1952 and worked at Mandavalli. Subsequently he worked as Gate Man in Nuzvid during 1953 to 1955. Later he

2
A

was promoted as Pointsman and posted at Vijayawada where he worked from 1955 to 1965. In 1965 he worked as Coupling Porter at Vijayawada. He was promoted in the year 1975 as Switchman at Nellore Railway Station.

3. While performing the duties as Switchman, the applicant became sick and he was directed by the Station Superintendent, Nellore to ^{appear before} the Medical Superintendent, Vijayawada for medical check up. The applicant submits that the Medical Superintendent, South Central Railway, Vijayawada recommended his case to the Divisional Office Superintendent (M), Vijayawada for light duties other than the duties of Switchman. As no action was taken to consider his case for light duties, the applicant submitted voluntary retirement letter dated 30.9.76. It is further averred by the applicant that the said voluntary retirement letter was not at all considered.

4. The applicant further adds that he was representing his case for light duties by his representations dated 11.11.78 followed by the representations dated 11.2.79, 18.8.80, 19.9.92, 16.7.83, 29.9.84, 17.12.85, 11.11.86, 27.5.87, 20.10.89, 16.6.91 and 28.8.93. But his grievance is that none of those representations evoked any response from the respondents.

5. In view of the above, the applicant submits that he was compelled to address a letter to the Cabinet Secretary with a copy to the General Manager and FA&CAO, S.C.Railway for grant of pensionary benefits to him as if he retired from service on 1.3.87 on superannuation. The

P *D*

applicant further submits that he was forced to file voluntary retirement letter on which no action has been taken by the administration. Inspite of the fact that the the medical authorities recommended his case for giving him light duties, the same was not considered by the administration.

6. The applicant was informed by the impugned letter No.B/P.578/VI/SWM dated 23.9.94 (Page 9 to the OA) that he was deemed to have resigned his job and ceased to be in employment with effect from 26.6.76 as he had absented himself unauthorisedly without proper sanction of leave or observing Railway Medical Attendance Rules or obtaining prior permission with effect from 26.6.76.

7. The applicant submits that the deemed provision that he had resigned from appointment and ceased to be in employment with effect from 26.6.76 is a punishment imposed on him without following the constitutional guarantee provided under Article 311(2) of the Constitution of India to the Civil servants. He also submits that such removal from service cannot be inflicted on him in view of the judgment of the Supreme Court reported in AIR 1964 SC 600 (Moti Ram Deka v. N.E.Frontier Railway and others).

8. A reply has been filed in M.A.No.1112/97 for condoning the delay in this OA (No.701/95). In the reply it is stated that the applicant was initially appointed as TS Porter on 26.4.1951 and later promoted and posted as Switchman to Nellore on 22.8.69. While working as such, the applicant fell sick and he was placed on sick list with

R *D*

effect from 29.5.75 by the Divisional Medical Officer, Vijayawada by his letter dated 14.11.75 advising the respondents to provide him light job for six months. As there was no light job available for Switchman, he was posted in the same capacity to Vedayapalem where the duties ~~where~~ ~~are~~ light in comparison to his previous station Nellore.

The respondents complain that the applicant did not report ~~for duty at~~ ~~to~~ Vedayapalem but remained on long unauthorised absence and the Department has no knowledge of his whereabouts. The respondents denied the receipt of any of his representations except his representation dated 14/17.6.91 which has been enclosed as Annexure I to the reply. It is further stated that even in this representation referred to above, the applicant did not refer to any of his alleged earlier representations as contended in the OA. On the basis of the representation which was examined by the respondents, the impugned memo dated 23.9.94 was issued.

9. The respondents further submit that he is not eligible for voluntary retirement from 30.9.76 as he had not completed 30 years of service or ~~have obtained~~ ^{at} 55 years of age to become eligible to seek voluntary retirement under Rule 2046 R.II. The above rule has been enclosed to the reply. The scheme of voluntary retirement on completion of 20 years of service had come into force only on 9.11.77 as per Establishment Serial circular No.140/77 dated 29.11.77. As the applicant was not governed by the voluntary retirement scheme in the year 1976, he cannot aspire to get any pensionary benefits.

10. The respondents further submit that the representation of the applicant submitted in the year 1991

2

2

clearly indicates that he had requested the medical authorities either for medical disqualification or for recommending voluntary retirement. The respondents are not aware whether the medical authorities have recommended for voluntary retirement and whereabouts of the applicant were also not known to them as the applicant went away without leaving any proper address and probably he went away roaming without any aim due to mental depression. When his representation dated 14/17.6.91 was received, every effort was made to examine his case by consulting records of 15 years old which resulted in issuing the impugned memo dated 23.9.94. The applicant was deemed to have resigned from service on account of his long, continued and unauthorised absence and that cannot be construed as his removal from service.

11. The Respondents conceded that the applicant is eligible for certain benefits and for which purpose he was required to execute necessary papers. As the applicant refused to execute the papers when he was contacted by the Welfare Inspector, the eligible benefits could not be granted to him. The Administration in principle agreed to grant whatever benefits the ex-employee (applicant herein) is eligible on execution of necessary papers.

12. A rejoinder has been filed in this OA. The applicant contradicts the submission of the respondents that his whereabouts are not known. He further submits that he has been removed from service without following the rules. His case was considered only when he approached the Cabinet Secretary. He insisted to grant him voluntary

N
D

retirement after completion of 20 years of qualifying service. He also submits that as he retired in 1987, he could be granted voluntary retirement benefits which came into force from 9.11.77.

13. We have considered the contentions raised by both the sides. The respondents have issued the impugned letter dated 23.9.94 stating that the applicant was deemed to have resigned his appointment and ceased to be in employment with effect from 26.6.76 due to his unauthorised absence. But this letter was issued on 23.9.94 i.e., 18 years after 26.6.76. If the respondents came to the conclusion that the applicant was unauthorisedly absence, a suitable remark should have been found way back in 1976 itself in the service record of the applicant. Hence we asked the learned counsel for the respondents to show such remark in the service register. But the learned standing counsel for the respondents fairly conceded that such remark was not made. The whereabouts of the applicant was also not known to inform the decision of the respondents, submits the learned standing counsel. It is not known why the respondents ~~cannot~~ ^{could not} issue a letter indicating unauthorised absence of the applicant to the last known address or at least informing the controlling officer under whom the applicant worked last to put up such notice on the notice board. But it appears that the respondents have taken no such action. If any such action ~~is~~ ^{had been} taken, this could have been easily borne by the records. As the records do not speak of such correspondence, it has to be held that the respondents kept silent till the receipt of his representation dated 14/17.6.91 and thereafter issued the

R
D

impugned letter dated 23.9.94. Hence issue of such impugned letter dated 23.9.94 without being supported by the proper records right from 26.6.76 onwards, cannot be taken as a regular letter indicating deemed resignation of the applicant. Hence, in our opinion, this letter cannot be taken note of to come to the conclusion that the applicant was deemed to have resigned from appointment with effect from 26.6.76.

14. Though the respondents in their reply submit that this is a belated case and the applicant had not explained the delay since 1976, this submission cannot be taken on the face value as the respondents themselves have not taken any action to inform the applicant after 1976 as indicated above. Had the respondents taken action to inform the applicant to his last known address or at least inform the controlling officer to suitably notify the unauthorised absence of the applicant, then the question of limitation ~~could have arisen~~ may have to be considered. In the absence of the inaction on the part of the respondents, the case cannot be dismissed on account of bar of limitation.

15. The applicant is also responsible for the situation ~~in~~ which he is placed now. If he has been recommended for light duties by the Medical authorities way back in 1975-76 and he had submitted his voluntary retirement letter dated 30.9.76, he could have approached the respondent-authorities to know the disposal of his case. But it appears that he took no such action. Though he submits that he had submitted representation dated 11.11.78 followed by several representations, he could not

32
D

produce the proof of having despatched those representations to the concerned authorities and also record to show that those representations were received by the respondents. In the absence of such proper records, the submission of the applicant in this connection cannot be taken as ^a legitimate one. No doubt, his representation dated 14/17.6.91 was received by the respondents and thereafter the respondents issued the impugned letter dated 23.9.94.

16. In the facts and circumstances of the case as stated earlier, the impugned letter dated 23.9.94 cannot be upheld. At the same time, the applicant cannot also be treated as having continued to perform his duties beyond 26.6.76 as the applicant had not produced any of his representations and also failed to contact the authorities if his representations are not replied suitably.

17. In the context of this case, the only direction that can be given which, in our opinion is justifiable, is to grant the applicant final settlement benefits for the service rendered by him from the date of his joining as TA Porter on 26.4.1951 till 26.6.1976 as per rules in force on 26.6.1976. If on that date i.e., on 26.6.1976 the applicant had full pay leave to his credit, the same should also be added to the period from 26.4.1951 to 26.6.1976 for counting the qualifying service for the purpose of granting the final settlement dues.

18. The applicant submits that his representation for voluntary retirement should have been accepted. But we find that this submission is not in order as on the date

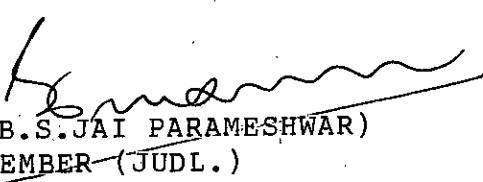
R
A

when he submitted his letter ^{for} of voluntary retirement, there was no scheme available and the voluntary retirement scheme after 20 years of service came into force only on 9.11.77. Hence the request of the applicant to grant him voluntary retirement after 20 years of service with effect from 26.6.76 cannot be accepted as no such scheme was in existence on that date.

19. In the result, the following direction is given:-

The qualifying service of the applicant should be counted from the date he joined as TA Porter i.e., from 26.4.1951 till 26.6.1976. If he had any full pay leave available to his credit on 26.6.1976, then the qualifying service should be increased to that extent of availability of full pay leave as on 26.6.1976 over and above the period from 26.4.1951 to 26.6.1976. The final settlement dues should be granted on the basis of the above qualifying service in accordance with the rules in force as on 26.6.1976.

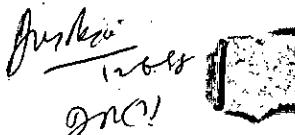
20. The OA is ordered accordingly. No order as to costs.


(B.S.JAI PARAMESHWAR)
MEMBER (JUDL.)

11.6.98

DATED: 11th June, 1998


(R.RANGARAJAN)
MEMBER (ADMN.)


R.RANGARAJAN
MEMBER (ADMN.)

vsn