

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 856 of 2003

Indore, this the *10th* day of *January*, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

K. C. Venkateshwar Rao, S/o. Shri
K.A.V. Chalpati Rao, aged about 53 years,
Ex-Mail Guard, Central Railway,
Jabalpur, R/o. 2189, Bharat Colony,
Ratan Nagar Road, Jabalpur. Applicant

(By Advocate – Shri S.A. Dharmadhikari)

V e r s u s

1. The General Manager,
West Central Railways, Jabalpur.
2. The Divisional Railway Manager,
West Central Railways, Jabalpur.
3. The Chief Medical Officer,
Railway Hospital, Jabalpur. Respondents

(By Advocate – Shri M.N. Banerjee)

O R D E R

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main reliefs :

“(ii) to quash the impugned order dated 9.11.2001 (Annexure A-1) passed by the respondents,

(iii) to direct the respondents to conduct a medical board with regard to applicant's fitness and in case, he is found fit, he may be reinstated in service with all consequential benefits or in the alternative, direct the respondents to appoint one person of his family on compassionate ground.”



2. The brief facts of the case are that the applicant was initially appointed in the Railway Department in the year 1973. He was promoted from time to time. Thereafter, he was voluntarily retired vide order dated 9.11.2001 (Annexure A-1). He continued in service from 1973 to 2001 i.e. for a period of 29 years without any complaint whatsoever. Unfortunately the applicant suffered stroke of brain hemorrhage on 10.1.2001 and had to be admitted in a unconscious condition at Anant Hospital, Jabalpur which is the nearest hospital from his residence. His brother immediately informed about his illness on the same day to the Divisional Railway Manager, Jabalpur. On receiving information regarding the applicant's illness the Senior Divisional Manager, Railway visited Anant Hospital and examined the applicant thoroughly and advised to continue treatment at the same hospital. The applicant applied for loan from the provident fund account, which was duly certified by the Senior Divisional Manager, Railway on 15.1.2001. Thereafter the wife of the applicant was granted Rs. 39,000/- in presence of five witnesses as the applicant was in unconscious condition. The applicant continued his treatment at Anant Hospital, Jabalpur for about 65 days but his condition did not improve and the Doctor there suggested that he may be shifted to some other hospital outside Jabalpur like Mumbai, Delhi, Bangalore etc. Then the applicant was shifted to the Railway Hospital on 15.3.2001 for further treatment without referring him to any special hospital. After keeping the applicant for five days at the Railway Hospital, Jabalpur the Medical authorities of the Railway Hospital, advised the members of the applicants family to take him to home as his condition was not likely to improve and prescribed various medicines for his treatments. The respondents all of a sudden issued a certificate to the applicant on 9.11.2001 stating therein that he was fit but only was under semi-conscious condition. After declaring the applicant as fit on 9.11.2001, the respondents vide the impugned order dated 9.11.2001 retired the applicant voluntarily. The applicant never applied for voluntary retirement. He preferred representation dated 11.9.2003 which is still pending with the respondents for consideration.



3. Heard the learned counsel for the parties and carefully perused the records and pleadings.

4. It is argued on behalf of the applicant that the applicant has never submitted any application to the respondents for his voluntary retirement as alleged by the respondents. He was continuously and seriously ill from a stroke of brain hemorrhage since 10.1.2001 and had 65 days of treatment in Anant Hospital, Jabalpur. He was shifted from there with the advice of the doctors concerned that he be referred to any other hospital outside Jabalpur such as in Mumbai, Delhi, Bangalore etc. Thereafter he was admitted to the Railway Hospital, Jabalpur and after treatment of 5 days the doctors of the Railway hospital, Jabalpur discharged him with the observation that he is not curable and his family members were directed to take the applicant to his home and certain medicines were also prescribed. The applicant was not in a position to move any application for his voluntary retirement. As regards the payment of the retiral dues made by the respondents to the applicant is concerned this fact does not adversely affect the contention of the applicant. The applicant is still desirous to serve the respondents. Thus this Original Application deserves to be allowed.

5. The learned counsel for the respondents argued that while the applicant was sick he moved an application seeking voluntary retirement Annexure A-5 dated 12.9.2001. In this application he has made a request to waive of the statutory notice period and accept his application for voluntary retirement. The respondents accepted his application on 9.11.2001 (Annexure A-1). All retiral dues have been paid to the applicant and monthly pension is also being paid to him regularly. In paragraph 4.11 of the return, the respondents have mentioned all the details of retiral dues regarding provident fund, GIS, commutation of pension and DCRG which was paid to the applicant. This amount is to the tune of Rs. 5,56,978/-. He further argued that the request of the applicant for voluntary retirement was accepted without any malafide intention and it




was accepted by the competent authority on the request of the applicant and as per the rules. He further argued that if the applicant was not voluntarily retired from service then why he accepted the aforesaid retiral dues and why he is accepting the monthly pension which is being paid to the applicant regularly by the respondents. Thus, this Original Application is liable to be dismissed.

6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings, we find that the applicant suffered from a stroke of brain hemorrhage on 10.1.2001 and he was admitted in an unconscious condition in Anant Hospital, Jabalpur. He was kept under treatment for 65 days there and thereafter he was discharged and advised to go out side Jabalpur such as in Mumbai, Delhi, Bangalore etc. Soon after his discharge from Anant Hospital, Jabalpur he was admitted in the hospital of the respondents i.e. the Railway Hospital, Jabalpur and he remained there for 5 days under treatment of the Railway doctors but after 5 days the medical authorities of the Railway Hospital advised the members of the family to take him to his home as his condition was not likely to improve. The doctors also prescribed various medicines for his treatment. Thus the applicant was finally discharged from the Railway Hospital after 70 days from the date of his said stroke of brain hemorrhage on 10.1.2001. The applicant moved an application for voluntary retirement on 12.9.2001 (Annexure A-5) i.e. after about six months from 10.1.2001. The respondents have paid all the retiral dues like PF, GIS, commutation of pension, DCRG to the applicant which amounts to Rs. 5,56,978/-. No rejoinder is filed on behalf of the applicant to controvert the contentions of the return. The argument advanced on behalf of the respondents that if the applicant did not apply for his voluntary retirement then why he accepted all the aforesaid retiral dues is unanswerable so far by the applicant. We further find that the applicant is also accepting the monthly pension regularly. This fact strongly goes against the applicant's version.



7. Considering all the facts and circumstances of the case, we are of the opinion that the applicant has failed to prove his case and this Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”

पृष्ठांकन सं. ओ/सं. जयलपुर, दि.....

पटिनीति:

(1) सचिव, जयलपुर नगर पंचायत, जयलपुर

(2) आवेदन सं. के काउंसल

(3) प्रत्यक्षी/पी/न/सं. के काउंसल

(4) कंपनन, जयलपुर, जयलपुर नगरपालिका

सूचना एवं आगमन के संबंध में हेतु

मप रजिस्ट्रार

S.P. Dharmashikhar
M. R. Bawja

Issued
23.01.07
BS