

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 780 of 2000

Jabalpur, this the 20<sup>th</sup> day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.  
Hon'ble Shri J.K. Kaushik - Judicial Member.

S.D. Tripathi, S/o. late D.N. Tripathi,  
Aged 57 years, Junior Engineer (C&W),  
Central Railway, Jabalpur.

... Applicant

(By Advocate - Shri K. Pathak)

V e r s u s

1. Union of India, through its  
Secretary, Ministry of Railways,  
Railway Board, New Delhi.
2. General Manager, Central Railway,  
Mumbai, Chhatrapati Shivaji  
Terminus.
3. Divisional Railway Manager,  
Central Railway, Jabalpur.
4. Sr. Divisional Mechanical Engineer,  
Central Railway, Jabalpur.

... Respondents

(By Advocate - Shri S.P. Sinha)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri S.D. Tripathi has filed this original application assailing the impugned order forcing the applicant to voluntarily retire from service with effect from 31/08/2000 and to award the cost of the litigation.

2. The brief facts of this case are that the applicant was employed as Junior Engineer-I (C&W), Central Railway, Jabalpur. He was promoted to the post of Carriage Foreman with effect from February 1995 under restructuring scheme but was illegally reverted in April 1997 to the post of JE-I (C&W). He was left to serve for 2 years and 6 months to the date of attaining the age of superannuation and he ~~sought~~ to voluntarily retire with effect from 31/08/2001. In

February 2000 he was ordered to be transferred from Jabalpur to Satna. He challenged the said transfer order through OA No. 111/2000. The Tribunal was pleased to allow the original application and direct the respondents not to transfer him but to allow the applicant to voluntarily retire from service with effect from 31/08/2000.

3. The further case of the applicant is that the applicant wanted to retire voluntarily with effect from 31/08/2001 but there was some apparent error in the judgment dated 11/02/2000. Review application was filed and the Tribunal was pleased to correct the date of voluntary retirement so as to read it as 31/08/2001 in place of 31/08/2000 but the same was changed on the application of the respondents by recalling the order and the date was said to be 31/08/2000. Further a review application was filed by the applicant but the same was said to be not admissible. Since the applicant wanted voluntary retirement with effect from 31/08/2001, but to clear the mesh by cancelling all his previous request for voluntary retirement. The applicant therefore requested vide application dated 28/08/2000 to cancel his previous request for voluntary retirement and stated that the applicant did not want voluntary retirement with effect from 31/08/2000.

4. It has been further averred that despite the above withdrawal application, the respondent No. 3 proceeded to pass the impugned order dated 25/28-08-2000 and handed over the same to the applicant on 28/08/2000 itself forcing voluntary retirement on him on 31/08/2000. The protest was endorsed on the order dated 28/08/2000 as per Annexure A/4. Thereafter the applicant was allowed three days leave and from 01/09/2000 he was not allowed to resume his duties. The original application has been filed on multiple grounds mentioned in the original application and we shall examine

and discuss the grounds which the applicant has pressed during the arguments as indicated in the later part of this order.

5. The respondents have contested the case and have filed a detailed counter reply to the original application. It has been submitted that in pursuance to the application dated 28/02/2000 for seeking voluntary retirement, the same was accepted and his transfer order was cancelled and he has been retired from service as per his prayer from 31/08/2000. In OA No. 111/2000 the applicant submitted that he was making an application for voluntary retirement and on this basis this Tribunal accepted his contention without notice to the respondents, and ordered that the respondents shall consider for cancellation of his transfer and request of the applicant for voluntary retirement. As regards the actual date of retirement it was 31/08/2000 and the same has been affirmed by this Tribunal which was sought to be changed to 31/08/2001 by the applicant in a review petition. The order dated 25/08/2000 was received by the applicant on 01/09/2000 and he has been retired from that date. It has been submitted that the voluntary retirement can be withdrawn only with specific approval of the Appointing Authority. The applicant to avoid his relieving from due service resorted for 3 days leave from 29/08/2000 to 31/08/2000. The applicant has already withdrawn the 90% of the provident fund deposited which payable immediately before retirement. He is to receive his huge amount of gratuity and other benefits including the pension. The competent authority has not approved the withdrawal of the request for voluntary retirement. The applicant has suppressed the fact of obtaining benefits arising out of notice.

6. A detailed rejoinder has been filed controverting the

averments made in the reply to the original application and has maintained that he wanted only to retire from 31/08/2001.

7. A written argument has also been filed on behalf of the applicant.

8. We have heard the learned counsel for the parties and have carefully perused the records of this case. The learned counsel for the applicant has reiterated his pleadings and has submitted that he has no doubt submitted a notice for voluntary retirement but he wanted the voluntary retirement from 31/08/2001 and not from 31/08/2000. However he has also submitted that the applicant has submitted his request for withdrawal of the notice for voluntary retirement vide his letter dated 28/08/2000 (Annexure A/2) which was received in the office of the respondents but the same has not been considered and the applicant has been retired with effect from 31/08/2000. He has relied upon certain judgments of the courts including the Hon'ble Supreme Court, that one can withdraw the request for voluntary retirement prior to the date the voluntary retirement becomes effective and in the present case the applicant submitted his application for withdrawal of his voluntary retirement on 28/08/2000 i.e. much earlier to the date of effect of the retirement i.e. 31/08/2000. In this view of the matter the action of the respondents is illegal, arbitrary and in-operatice.

9. On the contrary the learned counsel for the respondents have opposed the contentions raised on behalf of the applicants and have reiterated the averments made in the reply. Our attention was drawn to Annexure R/1 dated 28/02/2000 wherein it has been stated that the voluntary retirement will be given effect from 31/08/2000. Our attention was also been invited to the following notices in

*[Handwritten signature/initials]*

Annexure R/1, Annexure R/2 and Annexure R/3. We have made specific query from the learned counsel for the respondents as to what happened to the letter of the so called withdrawal of the voluntary retirement. The learned counsel for the respondents was at difficulty to trace out the action taken on such application. However he embarked and stressed the point that in the first instance in the name of voluntary retirement the applicant got his transfer cancelled through the court and on the second instance he intended not to own a voluntary retirement. He has tried to circumvent the Department from even relieving him in as much as he resorted to take leave even on the last day of his work.

10. We have considered the rival contentions and carried out a close analysis of the sequence of the events which have taken place in the present case. While there is no doubt that the applicant's transfer order was cancelled only on the ground that he was seeking voluntary retirement, it is also true that he asked for voluntary retirement with effect from 31/08/2000. Still we find that some link in the matter is missing. The peculiar facts we observe are that Annexure A/4 is infact the covering letter by which the letter of voluntary retirement dated 25/28-08-2000 Annexure A/1 was annexed. But it seems that very cleverly Annexure A/4 has been filed separately and Annexure A/4 which was served to the applicant on 01/09/2000, since Annexure A/1 was annexed to this annexure, it is difficult to understand as to how the applicant has given the remarks on order dated 28/08/2000 (Annexure A/4) by mentioning the date as 28/08/2000. There is further doubt in the matter in as much as the respondents vide Annexure A/4 has filed the receipt of the order dated 25/28-08-2000 (Annexure A/1) and the applicant received this on 01/09/2000. It is also seen from Annexure A/4 that it refers

to the letter dated 28/08/2000 and in subject the number of the letter of acceptance i.e. dated 25/28-08-2000 has been referred, and the receipt of the same has been asked which has been given only on 01/09/2000. In this way perhaps there is some manipulation in the letter. Since such noting by the applicant would not have been made on the letter dated 28/08/2000, we find that the Annexure A/4 itself was received on 01/09/2000. Fabrication and manipulation is further evident from Annexure A/2. A copy of this has been said to have been received by some OS ~~XXXX~~ <sup>where</sup> also appears a stamp which has been deleted. It was told that the seal belongs to some other section. What it means that the OS belongs to the section of the applicant and the seal belongs to some other section. It is very doubtful that Annexure A/2 at all has been submitted <sup>to</sup> the respondents either on 28/08/2000 or even on subsequent date. The application has also not been marked as through proper channel. The officer of the Central Railway, Jabalpur forwarded it <sup>to</sup> respondent No. 2, then why it was not served in that office. In this view there may be possibility of some fabrication that the official working in the office of the respondents might have connived and there is very high probability of manipulation. The learned counsel was posed with a question in the matter and he has submitted that the position as regards to receipt of Annexure A/2, the same has not been denied by the respondents in their reply. <sup>any</sup> Thus there is no question of manipulation regarding the submission of the notice. We understand that there is no clear averments to this respect from the respondents side. However he was not able to submit any explanation as regard why Annexure A/4 has been separately filed despite that Annexure A/4 was only a covering letter for Annexure A/1.

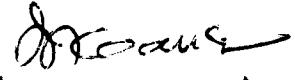
11. Now coming to the very application Annexure A/2 dated 28/08/2000. He has submitted that the applicant still want

the voluntary retirement from 31/08/2001 and he has also submitted that this date is being considered as 31/08/2000 which is not correct and that is why he has requested for getting the voluntary retirement applications cancelled and he has been insisting the date for voluntary retirement as 31/08/2001 only. This disputed fact that the matter was adjudicated before this bench of the Tribunal ~~xxxxxxxxxxxx~~ has so many so words after being reviewed held that his date of retirement as per his notice is 31/08/2000. Infact the applicant has created problems for himself by making the matter complicated and we smell some foul in the same by taking all the events together. However doubt has been caused with the contradictory averments made in para 4.5 of the OA wherein it has been stated that the order dated 25/28-08-2000 was handed over to the applicant on 28/08/2000 itself forcing voluntary retirement on him with effect from 31/08/2000 which is far from the truth. This letter was served to the applicant only on 01/09/2000 as is evident from Annexure A/1 which has been filed by the applicant himself and also from Annexure R/4 which has not been disputed. Thus the applicant has made false averments on the face of the records. He has also drawn his retiral dues without any protest.

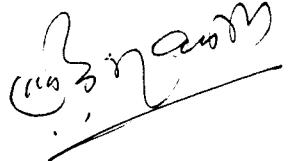
12. As a matter of fact and keeping in view our aforesaid analysis it would have been appropriate to order an enquiry in the matter but the very date of superannuation of the applicant was 28/02/2003 and that date is over so by now the applicant would have retired and there is not much scope now to order such enquiry. However the applicant cannot be given any relief in such situation, since he has not come out with clean hands. As far as the reliance and authority cited on behalf of the applicant are concerned the settled position of the law is that one can withdraw his notice of voluntary retirement prior to the actual date of retirement and there is no dispute on the same. But in the facts and

circumstances of the case, where itself the submission of the application for withdrawal of the voluntary retirement notice itself is suspicious. <sup>Thus</sup> the authorities being relied upon would be of no help to the applicant.

13. In view of the aforesaid discussion and our observations the original application has no merit and the same deserves to be dismissed, however with no order as to cost.

  
(J.K. KAUSHIK)

JUDICIAL MEMBER

  
(R.K. UPADHYAYA)

ADMINISTRATIVE MEMBER

पृष्ठांकन द्वारा/व्या. ...., जबलपुर, दि. ....  
द्वारा दिलेता वाचो शिक्षा:-

- (1) राजेश चतुर विजय वाचो एसोसिएशन, जबलपुर
- (2) अंदिल विजय वाचो ..... के काउंसल K. Patwari, Adv.
- (3) पद्मा विजय वाचो ..... के काउंसल S. P. Sinha, Adv.
- (4) विजय विजय वाचो एसोसिएशन

  
मी. विजय विजय  
22.5.03

Issued  
22.5.03  
Cm

"SA"