

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, INDORE

O.A.NO.845/97
M.A.NO.813/01

This the 21st day of February, 03

Hon'ble Shri Justice N.N. Singh, Vice Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

1. Smt. Bhagwantibai w/o Harilal
r/o Ramganj Mandi, Biaor Road, Joshganj
Chourah, C.S.Colony, Quarter No.2061 Ajmer
2. Suresh s/o Harilal, Scheme No.9
Commercial Complex, Quarter No.2 Neemuch
3. Smt. Usha w/o Premprakash
r/o CRPF Group Centre, Band Talab
Jammutavi (J&K)
4. Rajan s/o Harilal r/o Q.No.15, Headmen Colony
CCI Nayagaon, Distt. Neemuch
5. Sunil s/o Harilal
r/o Labourer, Scheme No.9
Commercial Complex, Quarter No.2 Neemuch
6. Kamal s/o Harilal
Scheme No.9
Commercial Complex, Quarter No.2 Neemuch
7. Ranjeet s/o Harilal
Labourer r/o Ramganj, Biaor Road
Joshganj Chourah, CS Colony, Q.No.2061
Ajmer (Raj.)

..Applicants

(By Advocate: Shri D.M.Kulkarni)

Versus

1. Union of India through
General Manager, Western. Rly.
Churhgate, Mumbai

2. Divisional Rail Manager
Do Batti, Ratlam
3. Divisional Medical Officer
Divisional Office, Ratlam

..Respondents

(By Advocate: Shri Y.I. Mehta, Senior Advocate with Shri H.Y. Mehta)


ORDER

Shri Govindan S. Tampi:

This application filed by Shri Harijuman Mehta, being pursued after his death by his legal representatives Smt. Bhagwanti Bai and others, seeks a declaration that his resignation was a voluntary retirement, entitling him/them for all the pensionary benefits. The applicant borne on 18.7.1927, worked for six months as Safai Kamgar from 1.4.1947 in Western Railways, Neemuch, whereafter he became a Sweeper in which post he was confirmed on 1.4.1950. However (in terms of the respondents' record, he was appointed on 5.2.1950 and granted permanent status on 5.2.1952). After serving the respondents sincerely for 30 years, he submitted his resignation on 6.9.1981 due to ailing health, which was accepted by the DAM on 6.7.1985. He was, at the time of his resignation, drawing the basic salary of Rs.230/- in grade of 190-232/- and having worked for 30 years and 7 months, he was entitled to get all the pensionary benefits. The applicant's representation for grant of pensionary benefits did not meet with any favourable response by the respondents, who informed on 3.3.1995 that he had been paid all his dues. Whereafter, he filed a legal notice for enforcing

his rights. This OA is the fall out of the said notice. According to the applicant, the grounds, he relies upon in the OA, are that:

- a) having put in over 30 years, he was entitled to get the pensionary benefits having completed 30 years of service.
- b) being an illiterate person not aware of the technical differences between 'voluntary retirement and resignation', he had chosen the latter and the same could be correctly treated as the case of voluntary retirement, in view of the decision of the Hon'ble Supreme Court reported in 1997 AIR SCW 493, directing that once an employee had the minimum qualifying period for pension at his credit, he earned a right to get pension.
- c) there cannot be any automatic forfeiture of service and retiral benefits on resigning, as a resignation has to be accepted and the applicant had not intended to forgo his pensionary benefits.
- d) Hon'ble Apex Court had held in N.S. Pandukone Versus U.O.I. & Ors., [1987 5 ATC 559 {Hyd.}], the resignation submitted by the applicant, who has qualifying service of more than 30 years, cannot be considered as a reasonable.

 Shri Kularni, learned counsel forcefully reiterated the same during the oral submissions.

2. According to the respondents, the OA filed in October, 1997 to deal with the cause of action – resignation, which took place on 6.7.1985 was hopelessly hit by limitation. The applicant was appointed on 5.2.1952 and his resignation came to be accepted w.e.f. 6.9.1981. The applicant had remained under unauthorised absence for as many as 12 years and 8 months during his service. His net qualifying service was, therefore, 16 years and 8 months. As such, the applicant was entitled for pensionary benefits and other settlement dues. Applicant's representation dated 30.9.1994 had been duly replied by the respondents. The applicant could not be deemed to have voluntarily retired, as the condition precedent for accepting the request for voluntary retirement is that the person concerned had more than 28 years of qualifying service. As the applicant's qualifying service stood at 16 years and 8 months, therefore, his request for treating his resignation as retirement cannot be entertained. OA should, therefore, fail is what the respondents plead.

3. We have carefully considered the matter. The respondents' preliminary objection of limitation is referral on account of the fact that this issue relates to payment of pensionary benefits, which is a continuous cause of action and as such, getting the benefits of the judgment of the Hon'ble Supreme Court in M.R. Gupta Versus Union of India & Others. While the applicant is found to have joined the respondents on 1.4.1998 and obtained temporary status w.e.f. 5.2.1950. However, during the said period, the applicant was away from duty for 12 years and 8 months, which has effectively brought down in qualifying service to 16 years and 8 months. That

being the case, he has not fulfilled the condition for getting the benefit of pensionary benefits on voluntary retirement. The respondents, therefore, cannot be blamed for not agreeing to his suggestion for converting the status of his resignation to one of voluntary retirement, so as to give him the pensionary benefits.

4. In the above circumstances, we are convinced that the applicant has not made any case for Tribunal's interference. OA, therefore, fails and is accordingly dismissed. No costs.

Govindan S. Tampi
Member (A)

/sunil/

(N.N. Singh)
Vice Chairman (J)

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पतिलिपि अर्जित:-

(1) सचिव, उच्च न्यायालय बार एसोसिएशन, जबलपुर

(2) आवेदक श्री/श्रीमती/कु.....के काउंसल

(3) प्रत्यर्पि श्री/श्रीमती/कु.....के काउंसल

(4) कंय्यालय, के.ए.ए., जबलपुर न्यायापीठ
सूचना एवं आवश्यक कार्यवाही हेतु

28/2/03

Dr. Bhatt - D. N. Kulkarni, A.C. 2x0
y. T. Mehta, A.C. 2x0

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BS