

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 1788/2010

Reserved on: 06.04.2016
Pronounced on: 10.11.2016

HON'BLE MR. SUDHIR KUMAR, MEMBER (A)
HON'BLE MR. RAJ VIR SHARMA, MEMBER (J)

Shri Ajay Kumar Gupta,
Presently working as Chief Project Manager,
In Delhi Metro Rail Corporation,
Flat No.A-1, Plot No.30,
Shamnath Marg, Civil Lines,
Delhi-54.

... Applicant

(By Advocate Shri Nilansh Gaur)

VERSUS

Union of India through

1. The Chairman, Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
West Central Railway,
Jabalpur

... Respondents

(By Advocate Mr. Shailendra Tiwary)

ORDER

Hon'ble Mr. Sudhir Kumar, Member (A):

The applicant of this OA has challenged order dated 29.04.2009 through which impugned order, the respondents have, while accepting his resignation, forfeited his past service, as it had been stated that the "**Competent Authority**" had not agreed to forwarding of his application for his candidature to the Delhi Metro Rail Corporation (DMRC in short) on deputation/absorption basis. The applicant was an officer of Indian Railway Service of Engineers (IRSE in short), selected through UPSC Group 'A' Officer Engineering Service Examination 1988, and had

joined the respondents-Railways in January, 1990. He worked in various capacities from January 1990 to August 2004, firstly the Central Zonal Railway, and thereafter he was transferred on administrative grounds to West Central Zonal Railway, under the control of Respondent no.R-2, under the overall control of Respondent No.R-1. He has claimed that he had held outstanding performance during his career.

2. The respondent No.R-1 then brought out a vacancy notice no.76/2007 dated 15.06.2007, seeking applications for the post of Chief Engineer (Civil) in DMRC, against which vacancy notice, the applicant applied for the said post. His application was first kept pending by respondent No. R-2 and was then forwarded on 27.08.2007, more than two months after the closing date of receipt of applications, which he has alleged to have been done deliberately to mar the chances of his going on deputation to DMRC. Looking into this attitude of the respondents, and the manner in which they were treating him, the applicant realised that his request for deputation may not come through, and therefore, through his application dated 25.09.2007, he sought permanent absorption in DMRC on the same post.

3. On 28.09.2007, the DMRC wrote to respondent no.R-1 regarding their having received an advance copy of the applicant's application, showing his willingness to join DMRC on permanent absorption basis, and that he had been found suitable for the post of Chief Engineer (SAG) level on immediate absorption basis, and respondent no. R-1 was requested by

DMRC to forward his application through proper channel, and to agree for his immediate absorption in DMRC. The main copy of this application was forwarded by Respondent no. R-2 to Respondent no.R-1 on 29.10.2007, certifying that there is no departmental enquiry or vigilance and SPE cases pending against him. Thereafter, through its letters dated 14.11.2007 and 22.11.2007, the DMRC requested Respondent no.R-1 for relieving various officers for joining DMRC on immediate absorption basis, which included the name of applicant also.

4. On 17.12.2007 the applicant submitted his technical resignation for seeking permission to join DMRC on permanent/immediate absorption basis through Annexure A-9. However, on 14.01.2008, a letter from the office of the Respondent no.R-1 directed the Respondent no.R-2 that since the "**Competent Authority**" had not agreed for the applicant's permanent absorption in DMRC, he may resign from the Railway service, and then take up such employment, which was communicated to the applicant by Respondent no.R-2 on 25.01.2008 through Annexure A-10 (colly).

5. Pursuant to this, on 12.01.2008, the applicant submitted his conditional resignation, stating therein that since permission had been granted by the respondents for him to join DMRC, which is also a Government of India Undertaking, and it has been stipulated in the Rules that the applicant would be eligible for terminal benefits, that letter of resignation was forwarded by

Respondent no. R-2 to Respondent no. R-1 with his recommendation on 22.02.2008, also clarifying that the applicant has demanded terminal benefits.

6. In August, 2008, finally, applicant's resignation was accepted w.e.f. 21.08.2008 through Annexure A-13, and the respondents relieved him on 29.08.2008, to permit him to join service in DMRC through Annexure A-14. The applicant filled up various forms etc. in the office of Respondent no.R-2 on 17.10.2008 for release of his terminal benefits, however, certain clarifications were sought by Respondent no.R-2 from Respondent no.R-1 which were replied to through the impugned letter dated 29.04.2009 addressed by Respondent no.R-1.

7. The applicant, thereafter, initially gave two representations dated 19.06.2009 and 26.08.2009 through Annexure A-15 (colly) requesting the respondents to either release his terminal benefits, or otherwise to allow him to again rejoin the Railway Service. The applicant then again sought information relating to release of his terminal benefits, which reply to his RTI application was supplied to him on 18.01.2010 through Annexure A-16 (colly), being aggrieved with which, alongwith the impugned letter dated 29.04.2009, the applicant has filed the present OA.

8. The applicant has taken the grounds that the impugned action on the part of respondents are illegal, arbitrary and contrary to law and facts on record as well as the rules of the respondents themselves on the subject. He has taken the ground that firstly the respondents had allegedly withheld his application

for going on deputation to DMRC for two months beyond the closing date, and that the respondents could not have even rejected his claim to go on permanent absorption basis, as forwardal of such applications should be the rule, rather than exception. In this context, the applicant has produced the relevant portions of Codal provisions of 1401 and 1402 of Indian Railway Establishment Code as Annexure A-17.

9. The applicant has further taken the ground that since he had been relieved with proper permission, he is entitled to terminal benefits, and the respondents having accepted his conditional resignation, wherein he had categorically stated that he would claim his terminal benefits, they are now estopped from raising frivolous pleas to deny his legitimate claims. The applicant has sought shelter behind the personnel policy of the Government of India in general, issued through DoPT OM dated 31.01 1986 (Annexure A-18) which has not been followed by the respondents. He has further taken the ground of hostile discrimination, inasmuch as the respondents have granted terminal benefit to other similarly situated employees who had gone on permanent absorption basis, and had cited the names of some such officers, who had sought permanent absorption in another Corporation, namely, RITES also under the Railway Ministry.

10. The applicant has further alleged *malafide* against the superior officers who did not agree to the suggestion of the Deputy Secretary (Deputation) dated 17.12.2008, and of the Secretary, Railway Board dated 19.12.2007, both of whom had

recommended for his technical resignation to be accepted. It was submitted that Respondents no. R-1 and R-2 have deliberately suppressed vital facts regarding him while seeking permission of the Railway Minister, acting on behalf of President of India, in delegated capacity.

11. The applicant has further alleged the actions of the respondents to be highly unjust, improper, highhanded, arbitrary and against all canons of fair play, equity and good conscience, and has alleged having been harassed by different authorities on each and every issue while he had been repeatedly representing to the authorities concerned. Finally, the applicant has taken the ground that the Pension Rules of the respondents themselves, in Rule 41 (2), clearly lay down that a resignation shall not lead to forfeiture of past service, if such resignation has been submitted to take up, with prior permission, another appointment, whether temporary or permanent, under the Government, where also service qualifies for pension, which rules had been reproduced in Annexure A-19. In the result, the applicant had sought the following reliefs 8(i) and 8 (ii) and the alternative relief 8(iii) and general relief 8(iv), but during the arguments advanced by the learned counsel for the applicant, the prayers 8(i) and 8 (ii) have been pressed, and the alternative prayer 8(iii) was not pressed:-

- “(i) To call for the records of the case and allow the OA by quashing and setting aside the order dt.29.04.2004 bearing No.E (0)III-2008/RN/08 annexure as A1. (**PRESSED**)

- (ii) To direct the respondents to release the terminal benefits to the Applicant forthwith with interest @ 18% annum from the date of resignation till the date of payment. **(PRESSED).**
- (iii). Alternatively the respondents may be directed to permit the Applicant to rejoin the Railway service with continuity as the Applicant cannot forego /waive his terminal benefits and his 18 ½ years of continuous Railway Service. **(NOT PRESSED)**
- (iv) To award costs of this application and to pass and such further and other relief (s) as may be deem fit and proper in the matter."

12. The applicant's OA had been rejected as being without any merit and dismissed at the threshold through an order dated 16.07.2010 passed by a Coordinate Bench. Thereafter the applicant approached the Hon'ble High Court in Writ Petition (Civil) no.5673/2011, in which, through its order dated 03.04.2013, the Hon'ble High Court observed as follows:-

- "1. O.A No.1788/2010 filed by the petitioner has been dismissed by the Central Administrative Tribunal in limine vide impugned order dated July 16, 2010.
- 2. If nothing else, pleadings in paragraph-5 of the Original Application warranted a response on facts.
- 3. We speak no further, since we are remanding the matter to the Tribunal for fresh adjudication, lest either party be prejudiced.
- 4. Disposing of the writ petition, we set aside the order dated July 16, 2010 passed by the Central Administrative Tribunal. OA No. 1788/2010 is restored for fresh adjudication on merits. The Tribunal would grant an opportunity to the respondents to file a response to O.A.No. 1788/2010. Thereafter, the matter would be decided afresh uninfluenced by any observations made in the order dated July 16, 2010.

5. The parties shall appear before the Registrar of the Tribunal on April 30, 2013, who would list the O.A. before a Bench as per Roster, but after completing the pleadings."

13. Thereafter the case came to be restored before this Tribunal. After the case had been restored, the counsel for respondents put in their appearance, and sought time for filing counter reply and later on moved a Misc. Application No. 2893/2013, praying that the reply filed by respondents before the Hon'ble High Court in the above cited Writ Petition (against the earlier order of this Tribunal) may be allowed to be taken on record. The request was allowed and MA was disposed of accordingly, and that counter reply was ultimately filed by the respondents on 28.01.2014. There was a change in counsel for respondents thereafter, and the learned counsel for the respondents had sought time to produce the relevant Railway Board file for perusal, which file was produced when the case was finally heard and reserved for orders.

14. In their counter reply the respondents had submitted that the earlier order dated 16.07.2010 passed by the Tribunal suffered from no infirmity. It was submitted that the Tribunal had correctly examined the facts of the case, in sufficient detail, and, finding no merit in the case dismissed the OA, and had given a clear observation that the request of the petitioner herein for technical resignation had been correctly turned down, since he had resigned from the service, taking a conscious decision knowing all the consequences, and had joined DMRC, and that such a resignation does not tantamount to technical

resignation in terms of Rule 41(2) of Railway Services (Pension) Rules, 1993 and that the Rule 26 of the CCS (Pension) Rules, 1972, clearly stipulates that pensionary benefits are not payable in case of resignation.

15. However, we may observe here itself that since that earlier order of Tribunal dated 16.07.2010 had been set aside by the Hon'ble Delhi High Court, through its order dated 3.04.2013 (supra), and directions had been issued that this Tribunal would decide the matter afresh uninfluenced by any observations made in the Tribunal's earlier order dated 16.07.2010, we are totally bound with those directions.

16. It was admitted by the respondents in that counter reply that respondent no.R-1 had issued said Notification No.76/2007 dated 24.05.2007 for the post of Chief Engineer in DMRC, and that the application of the applicant was forwarded by respondent no.R-2 to respondent no.R-1 on 27.08.2007, but yet it was submitted that there had been no inordinate delay on the part of the replying respondents, as time was taken for completion of the procedural requirements. It was further submitted that the applicant had, vide his application dated 16.10.2007, requested the respondent no.R-1/Railway Board for his being relieved at the earliest, preferably before 30.11.2007 to join DMRC on immediate absorption basis.

17. It was further admitted that the Office of the Respondent no.R-1 had, through its letter dated 14.01.2008, informed that permission had not been granted for permanent absorption

of the petitioner in DMRC, and that he may submit his resignation to join DMRC, which was communicated to him vide letter dated 25.01.2008. The applicant had then submitted his resignation which was forwarded by Respondent no.R-2 to Respondent no.R-1 through letter dated 12.02.2008 with the request to accept it, as the applicant had to join the DMRC before 20.03.2008. Still, the Office of the Respondent no.R-1 replied only six months thereafter, through letter dated 21.08.2008, communicating the acceptance of the resignation of the applicant with the approval of the President of India, effective w.e.f.21.08.2008, after which the applicant was relieved on 29.08.2008, vide order dated 19.08.2008.

18. It was further submitted that the applicant was informed through letter dated 27.05.2009 (Annexure R1) that the amount payable to him was Rs.7,41,503/- and the deduction of dues against him was more, being Rs.8,98,985/-, and he was therefore, asked to deposit the said due amount, or give consent for deduction of the same from the arrears payable to him towards 60% arrears of salary on account of the acceptance of the recommendations of 6th Central Pay Commission. The applicant had thereafter represented regarding this on 26.08.2009, but through the impugned letter dated 29.04.2009 (Annexure A-1 and R-2) he was informed that the Respondent no.R-1 had rejected the request of applicant for release of his terminal benefits, stating that his resignation was accepted under the normal rules, which entailed forfeiture of past service, and, therefore, he was not entitled to pension as per the rules of

the Railways. It was submitted that since the applicant's resignation was accepted with the approval of the powers of the President of India delegated to the Railway Minister, therefore, he is not entitled for any relief as sought for by him through this OA. It was submitted that applicant had also been informed earlier vide letter dated 14.01.2008 from the office of Respondent no.R-1 that permission had not been granted for technical resignation for his permanent absorption in DMRC, and that he may join DMRC only after submitting resignation.

19. It was submitted that in spite of this the applicant had submitted his resignation w.e.f. 12.02.2008, which was accepted, and, therefore, he is not entitled for any relief as sought for by him. It was further submitted that his representation for withdrawal of his resignation was also duly examined, but the same was not acceded to as the Rule 4 (15) of the Pension Rules does not provide for the same and the decision of respondent no. R-1 dated 23.12.2009 was communicated to him through the letter of respondent no.R-2 dated 31.12.2009 (Annexure R-3).

20. It was submitted that notings on the file do not give rise to any right to any person, until and unless the final decision is communicated, and that there was no infirmity in the acceptance of applicant's resignation under the normal rules after the refusal by the office of the respondent No.R-1 for the acceptance of his technical resignation, and, thereafter, it was his conscious decision to resign from the service, and he has to accept the consequences thereof. It was, therefore, submitted that there

was no illegality in the actions of the replying respondents, and that none of the grounds taken by the applicant are tenable in the eyes of law in view of the facts and submissions, and that the grounds taken for filing this O.A. are liable to be rejected. It was once again mentioned that there was no infirmity in the earlier order passed by this Tribunal, even though the Hon'ble Delhi High Court had remanded the matter back to this Tribunal for afresh adjudication, with clear cut directions not to be influenced by the previous order, and later directions for deciding the OA a fresh, uninfluenced by any observations made in the earlier order of a Coordinate Bench of this Tribunal.

21. Heard. We have given our conscious consideration to the facts of this case and have also gone through the original file produced by the respondents.

22. Learned counsel for the applicant had on 22.02.2016 filed a copy of an order dated 09.11.2011 passed by Ernakulam Bench of this Tribunal in OA 453/2010 (**K.K.Mohanan Vs. UOI represented by the General Manager, Southern Railway and Ors**) and had submitted that the OA was also covered by the Ernakulam Bench orders in its OA nos. 838/2005, 839/2005 and 617/2007, which had attained finality, as well as the order dated 07.04.2010 in OA 567/2009, which were identical. As per para 7 of the Ernakulan Bench's order in OA no.453/2010, it is seen that in pursuance of the earlier order in OA 839/2005 (**G.Pradeepkumar Vs. Chief Workshop Manager, S&T Workshop, Podannur**), the respondents-Railway Board had issued a letter stating as follows:-

"As per Rule No.53 of the Rly Services (Pension) Rules 1993, a Rly. Servant absorbed in a body where there is a Pension Scheme, he shall be entitled to exercise option either to count the service rendered under Rlys, in that body for pension or to receive pro-rata retirement benefits for the service rendered under the Rlys, in accordance with the orders issued by the Rlys.

As such you are hereby advised to exercise an option within a period of one week from the date of receipt of this letter, for the grant of retirement benefits in clear terms without any ambiguity to process your case further."

(emphasis supplied)

23. Further, in para 8 of the Ernakulam Bench's order in OA 453/2010 -**K.K.Mohanan** (supra)), para 11 of the earlier order in OA 617/2007 was reproduced as follows:-

"11. In view of the above, the O.A is allowed. It is declared that the applicant had applied through proper channel when he wanted to join K.S.E.B. His services for 13 years in the Railways if adequate enough for qualifying for terminal benefits, the applicant shall be paid his dues in accordance with the rules. This order shall be complied with, within a period of four months from the date of receipt of a copy of this order. No costs."

24. In para 9, it was stated that in compliance of the directions issued by Ernakulam Bench in OA 617/2007, the following orders had been passed by the respondents:

"In terms of this office order No.47/99/RG(M) dated 8.12.99, resignation tendered by Shri N. Sankar, Sr. Goods Driver, Offg. as CRC/ERS in scale 5500-9000 vide his letter dt. 3.12.99 was accepted by the competent authority by waiving the notice period to join as Asstt. Engineer, KSEB of Kerala State and accordingly his services were terminated on the afternoon of 09.12.1999, Hon'ble Central Administrative Tribunal, Ernakulam Bench in OA 617/07 filed by Shri N. Sankar has passed orders declaring that the applicant had applied through proper channel when he wanted to join KSE B and to

pay him the dues considering his service in Railways.

Accordingly, the services of Shri N. Sankar is deemed to have been terminated with effect from 09.12.1999 for the grant of terminal benefits as per rules in force.

This has the approval of the competent authority."

25. Thereafter, the respondents had cited Rule 53 of the Railway Service (Pension) Rules, 1993, which provides as follows:-

"A railway servant , who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or substantially owned or controlled by the Central Government or a State Government or in or under a body controlled or financed by the Central Government or a State Government, shall be deemed to have retired from service from the date of such absorption and subject to sub rule (3), he shall be eligible to receive retirement benefits , if any, from such date as may be determined in accordance with the orders of the railways applicable to him."

26. It had further been noted in the same order of **K.K.Mohanan** (supra) dated 9.11.2011 that a Writ Petition (Civil) 20632/2010 challenging the order of the Tribunal had been filed before the Hon'ble High Court of Kerala, in which the High Court had, on 14.12.2010, passed the following order:-

"Writ Petition is filed by the Railways challenging the order of the Central Administrative Tribunal ordering pension to the first respondent for the period he served in the Railways which is 11 years. Admittedly, the first respondent after serving the Railways for 11 years left it and joined the Kerala State Electricity Board wherefrom he is said to have retired. The first respondent's claim is that either he should get pension from KSEB reckoning his past service in the Railways which involves pro-rata contribution by the Railways or otherwise he is entitled to pension independently from the Railways for the period he served. Counsel for the first respondent referred to Rule 53 of the Railway Pension Rules which provides

for Railways directly giving pension to those who left the services to join other Corporations or Departments under the control of the Government. Though counsel for the Railways referred to a Government Order produced in writ petition which fixes liability for payment of pension for the full service by the Corporation or organisation wherefrom an employee retires, respondent submitted that in several cases similar orders are passed in C.A.T and Railways have given pension. Since the organisation involved in this case, that is, Electricity Board, is under the State Government there is likelihood of their following State Rules so far as pension is concerned. What we feel is that the first respondent is entitled to pension, either independently from the Railways or he should get pension from the Electricity Board reckoning his service in the Railways as well. **We, therefore, dispose of this writ petition by directing the Railways to either grant pension in terms of Rule 53 of the Railway Pension Rules for the services the first respondent rendered in Railways and communicate the same to the Electricity Board or to make contribution if that is the procedure for K.S.E.B to give pension to the first respondent reckoning his service in the Railways also.** We direct the KSEB to co-operate with the Railways by furnishing all information required in regard to settling the pension claim of the first respondent in terms of the Tribunal's order modified by us as above. So far as the date of commencement of entitlement of pension is concerned, both sides do not know as to whether the first respondent is in service or already retired. It is for the Railways to consider as to the date of entitlement for pension with reference to the norms and grant pension, if already eligible, without any delay. **If pension is payable under the pension rules only after actual retirement of the first respondent from KSEB, then Railways can wait until such retirement and grant pension thereafter."**

27. Thereafter, the respondents in the case of **K.K.Mohanan** (supra) had been directed by Ernakulam Bench of this Tribunal on 09.11.2011 as follows:-

"10. The respondents are directed to either grant pension in terms of Rule 53 of the Railway Services pension Rules, 1993, for the service the applicant rendered in the Railway and communicate the same to the KSEB or

remit pro- rata pension liability in respect of the applicant to the KSEB, within 60 days from the date of receipt of a copy of this order."

28. The Original Service Book of the applicant had been submitted by the respondents for our perusal, which has since been perused by us. It is seen that the proposal for consideration of the applicant's request for technical resignation from the Railway service was examined from 5.03.2008 onwards. When the proposal was put up on file based on DMRC's letter dated 28.09.2007, the Section Officer of E (0)-II Section of the office of respondent No.R-1 wrote that it had already been **"decided by the Board"** not to agree for his permanent absorption in DMRC, and that the West Central Railway (respondent No. R-2) had already been advised that the officer can resign from service, and then take up employment with DMRC. With these comments, the file was again put up by the Section Officer of E (0) III Section on 31.03.2008. The Vigilance clearance was accorded on 03.04.2008, and as per the report dated 3.04.2008, no vigilance proceeding was found to be pending against the applicant.

29. Thereafter, on 15.04.2008, the file noting had started by reproducing portions from para 302 (1 & 2) of IREC Vol.1 from Chapter 3 of IREC, and it was suggested that since the applicant is free from vigilance angle, and his name did not figure in any Agreed/Secret List, and he is free from DAR/Vigilance/SPE angle, therefore, his resignation can be accepted by the President, whose powers were to be exercised by the Railway Minister, as

stipulated in para 4 (ii) of IREC, Volume-1, and that such resignation will be effective from the date it is accepted by the Minister for Railways on behalf of the President, and he is relieved of his duties, subject to clearance of dues, if any, with the Railways.

30. It is seen that the Minister for Railways, to whom the file was put up by the Member (Engineering) of the Railway Board on 23.04.2008, signed his approval only four months thereafter, on 21.08.2008. Thereafter, a letter was issued to the respondent No. R-2, General Manager (West Central Railway) on 25.08.2008.

31. In the noting which was then put up on 17.03.2008, it was noted that though in terms of extant instructions governing resignation of Government servants, resignation from a service or a post entails forfeiture of past service and no pension is payable in such cases, however, when such a resignation has been submitted to take up, with prior permission, another appointment, whether temporary or permanent, under the Government, where service qualifies, it shall not entail forfeiture of past service. However, somehow a view was taken that the applicant's resignation had been accepted under the normal rules entailing forfeiture of past service, as **"the Competent Authority had not agreed to the forwarding of applicant's candidature for DMRC on deputation basis"**, and, therefore, a question of review for reconsideration of his case does not arise.

32. The catch in the handling of the case of the applicant actually lies here. The **"Competent Authority"** in the case of the applicant, for all purposes, was only the President of India,

his Appointing Authority, and, as stipulated in para 4 (ii) of IREM-Vol. I, such powers of the President were to be delegated to the Minister of Railways. If such was the case, even the respondent No. R-1 Railway Board could not have been "**the Competent Authority**" for taking any decision in regard to the requests of the applicant. Therefore, the noting dated 28.03.2008, that the respondent No.R-1 Railway Board had decided not to agree for permanent absorption of the officer with the DMRC, and had advised the respondent No.R-2 West Central Railway that the officer can resign from service, and then only take up such employment with DPRC, was absolutely without any jurisdiction whatsoever.

33. Unfortunately, in the noting dated 20.03.2009, the Director (E) had also erred in treating the respondent No.R-1 Railway Board to be "**the Competent Authority**" for deciding regarding the case of the applicant, while it is absolutely clear under their own regulations that it was only the Minister for Railways who could have taken any decision whatsoever as the "**Competent Authority**" regarding the manner of treating any of the requests of the applicant.

34. In the noting dated 24.03.2009, the Section Officer of E (O) II had noted that the Cadre Controlling Authority did not agree for the permanent absorption of the applicant in DMRC. The Railway Board could rightly so, have been only the Cadre Controlling Authority, but not the "**Competent Authority**" to decide anything regarding the manner of acceptance of any of

the requests of the applicant, even the request for his deputation to DMRC on permanent absorption basis, which, according to the submissions of the respondents themselves, was taken at the level of the Cadre Controlling Authority Railway Board, and not by the "**Competent Authority**" the Minister of Railways, i.e., his Appointing Authority.

35. When the applicant further represented in this regard for withdrawing his accepted resignation, and allowing him to be taken back in service, his case was examined through the noting dated 10.11.2009, and, thereafter, at pages 8 to 10 of the note sheet of the file. However, at this stage also the file did not travel upto the "**Competent Authority**" i.e. the Minister of Railways, and travelled only upto the Joint Secretary level.

36. The noting of the Section Officer, E (O) III dated 10.11.2009 on pages 8 to 9 of the file, and of the Under Secretary (E) Spl. dated 17.11.2009, which was approved by the Joint Secretary (A), have also been perused by us. From the noting dated 27.11.2009 of JDF (E), it is seen that the first request of the applicant, for permitting his immediate absorption in DMRC, was not agreed to by only the Member (Engineering) of the respondent No. R-2 Railway Board, and not even the Cadre Controlling Authority, the whole Railway Board itself. Only when he was conveyed this decision as a decision of the Railway Board, under duress the applicant had to resign from the Railway service, in order to take up his employment in the DMRC, and

only at that time alone his file was put up for acceptance of his resignation upto the level of Minister for Railways, the **"Competent Authority"**.

37. It is thus clear from the notings dated 28.03.2008 of Section Officer (E)(0) II, Section Officer (E)(0) III dated 10.11.2009 and of JDF (E) dated 27.11.2009, that the initial decision to decline the request of the applicant for permission for his immediate absorption in DMRC, had neither been considered by his Cadre Controlling Authority, the Railway Board, nor had been considered at all by his Appointing Authority, the Minister for Railways, as the "Competent Authority", acting on behalf of the President of India, but was taken at the level of only one of the Members [Member (Engineering)] of the respondent No.R-2, Railway Board, who was totally without any powers or jurisdiction to take any such decision on the request of the present applicant.

38. It is trite law that a decision taken by an incompetent authority is no decision at all. Therefore, it is clear that the respondents can be allowed to deny the fact that the applicant's request for his permanent absorption in DMRC, by submitting his technical resignation from the West Central Railway, had been declined at by an incompetent authority, only the Member (Engineering) of the respondent No.R-2, Railway Board, while such a decision to decline his request for permanent absorption of his service under DMRC could only have been taken at the

level of the "**Competent Authority**", i.e. his Appointing Authority, the President of India, and by implication by the Minister of Railways, acting on behalf of the President of India. It is thus clear from the file notings that the initial request of the applicant, duly forwarded by the West Central Railway through their letter dated 20.02.2008, was declined in an improper and illegal manner, and therefore, it is ordered that the applicant's resignation, obtained under duress, shall not result in forfeiture of his past service with the respondents, and the respondents Railways are directed to grant to the applicant full benefit of his past service with the Railways.

39. In this context, we may borrow from the Hon'ble High Court of Kerala order dated 14.12.2010 in **K.K.Mohanan** (supra), and direct the Railways to either grant pension to the applicant in terms of Rule 53 of the Railway Pension Rules, for the service the applicant had rendered in the Railways, and communicate that decision to DMRC, or, if such pension is payable under the Pension Rules only after actual retirement of the applicant from the DMRC also, then the Railways can wait until such retirement, and grant pro-rata pension to the applicant accordingly, thereafter.

40. However, all other retiral benefits shall be made available to the applicant as if there had never been any forfeiture of his past service under the Railways, since he had duly applied for permission for taking up an employment with the DMRC, and his request was not agreed to by only one of the Members of respondent no.2, Railway Board, which full Board was his Cadre

Controlling Authority, and that his request was never put up before his Appointing Authority, the President of India, acting through the Minister for Railways, for appropriate orders at the appropriate point of time, as the "**Competent Authority.**"

41. Therefore, the reliefs as sought for by the applicant at para 8 (i) and 8 (ii) are allowed, except that the payment of pension liability on behalf of Railways shall start on the date of the applicant's actual retirement from the DMRC, as per the Kerala High Court order in **K.K.Mohanan** (supra), but all other retiral terminal dues, payable to him in the interregnum, alongwith interest shall be released to the applicant, with the rate of interest being as applicable to GPF from time to time.

42. The OA is allowed in the above terms, but there shall be no order as to costs.

(RAJ VIR SHARMA)
MEMBER (J)

(SUDHIR KUMAR)
MEMBR (A)

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