

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDBAD BENCH**

ORIGINAL APPLICATION NO 393 OF 2018

Dated, this 28th day of September, 2018

**CORAM: HON'BLE MS ARCHANA NIGAM, MEMBER(A)
HON'BLE SHRI M C VERMA, MEMBER(J)**

Ajay Kant,
Son of Surya Kant Verma,
Aged 49 years,
Working as Senior Section Engineer (P.Way),
Residing at E-502, Aditya Greens,
Nr. Sahajanand City Bungalows,
New C.G.Road, Chandkheda,
Ahmedabad – 382 424. ... Applicant

By Advocate Shri Joy Mathew

V/s

- 1 The Railway Board,
Notice through the Chairman,
Room No.236, Rail Bhavan,
New Delhi – 110 001.
- 2 The General Manager(E),
Western Railway, Churchgate,
Mumbai – 400 020.
- 3 The Chief Administrative Officer (Const.),
Western Railway, 1st Floor, Station New Building,
Churchgate, Mumbai – 400 020.
- 4 The Deputy Chief Engineer (C) – III,
Near Shaharkotda Police Station,

Saraspur, Western Railway,
Ahmedabad – 380 002. ... Respondents

By Advocate Ms Roopal R Patel

O R D E R

Per : HON'BLE MS ARCHANA NIGAM, ADMINISTRATIVE MEMBER

- 1 The grievance of applicant in this O.A. against the respondents is as to not accepting his request for voluntary retirement from service. By the order dated 01.05.2018 (Annexure A/1), the respondents have informed the applicant that his voluntary retirement has not been accepted by the Competent Authority due to expanse of workload and existing vacancies in supervisory cadre.
2. Being aggrieved by the order dated 01.05.2018 vide which his request for voluntary retirement was rejected, applicant presented the instant O.A with the prayer to quash the same and for a direction to the respondents to accept the request made by the applicant for voluntary retirement and relieve the him as early as possible with a view to enable him to report at National High Speed Rail Corporation Limited (NHSRCL) on or before 1.9.2018.

3. When the matter was taken up for hearing on 26th September, 2018, the learned counsel for applicant submitted the following facts –

The applicant while working as Senior Section Engineer with the respondents applied for the post of Senior Manager (Track) in response to the advertisement issued by NCSRCL (PSU of Ministry of Railway) through proper channel as the post and pay offered was on a higher level. The application of the applicant was forwarded by respondent no.4 to the next higher office on 8.12.2017. After the completion of selection process NCSRCL issued appointment order dated 24.01.2018 appointing the applicant to the said post. Vide communication dated 31.1.2018 applicant requested for voluntary retirement from Railway Service w. e. f. 30.04.2018 and communication dated 02.02.2018 he informed the General Manager (HR), NCSRCL that as soon as his request for voluntary retirement is accepted, he would join the new post. The respondents completed all the formalities and issued a “No due certificate” in favour of the applicant with a view to settle his case.

When the applicant did not get the relieving letter from respondent Railway, on 01.05.2018 the applicant requested NCSRCL to extend the joining time by two months. After the expiry of the notice

period, vide letter dated 01.05.2018 (Annexure A/1), the respondent No.4 informed the applicant that his request for voluntary retirement had not been accepted by the competent authority due to expanse of workload and existing vacancies in supervisory cadre. Thereafter applicant filed an appeal dated 07.05.2018 to the Appellate Authority requesting him to consider his case for voluntary retirement.

In support of his request, applicant has pleaded that the respondent department had rejected the request for voluntary retirement on the ground of expanse of workload and existing vacancies in supervisory cadre. By an order dated 25.05.2018, the Deputy Chief Engineer, Ahmedabad published the details of number of sanctioned posts and number of posts operated (Annexure A/16). As per this order there are three sanctioned posts of SSE (P.Way) and against these three vacancies, four people are already in service. Therefore the stand of respondent in rejecting applicant's request for voluntary retirement is not in accordance with rules. Again applicant requested NHSRCL to grant him further two months extension up to 1.9.2018 for joining the organisation. As his appeal came to be rejected by the higher authority, applicant by representation dated 9.7.2018 approached the Railway Board requesting them to consider

his request for voluntary retirement but till date there he is not in receipt of any reply. Therefore, being aggrieved by the impugned orders dated 1.5.2018, 27.4.2018 and 9.7.2018 (Annexures A/1, A/2 and A/3 respectively), the applicant has filed the instant OA.

4 The respondents have filed their detailed reply rebutting the contentions raised by applicant and reiterating the fact that there was shortage of staff and projects had to be completed within the targeted time. In reply at para 26 it has also stated that "***the reason on which the application of the applicant was rejected, still holds and the exigent circumstances and conditions would change within a month, especially, qua the project as stated above.***"

5 Applicant has filed his rejoinder and pleaded that on receipt of the request for voluntary retirement, the respondents had stopped deducting PF contribution.

Learned counsel Shri Joy Mathew submitted that by an order dated 25.05.2018 the Deputy Chief Engineer has published the details of number of sanctioned posts and the number of posts operated. He invited out attention towards the said order of Deputy Chief Engineer which is annexed Annexure A/16 urged that there were three

vacancies of SSE (P.Way) and against those three vacancies four people were already in service. Learned counsel contended that from the above letter it is evident that there is no shortage of staff rather surplus staff is there. He also contended that rejection of request for VRS is not in consonance with rules the grounds supplied for rejection are also not germaine. He further placed details of other officers who were allowed to go out on VRS/Deputation/Technical Resignation.

6 Heard Shri Joy Mathew, learned counsel for applicant and Ms R R Patel, learned counsel for respondents and perused the pleadings on record. Learned counsel for respondents vehemently opposed and stated that the applicant had not applied through proper channel and also informed that in view of shortage of supervisory officers he could not be relieved from his post.

7 On the last two occasions when the matter was placed before the Bench on 11.09.2018 and 18.09.2018, the respondents counsel had sought time to file sur-rejoinder. Respondents have also filed sur-rejoinder which was taken on record today across the bar. In normal course the sur-rejoinder is to be filed in the Registry but given the urgency in the matter, the same was accepted across the bar. At para 4 of the sur-rejoinders respondents reiterated that the request of the

applicant for VRS could not be acceded to as the project work has been extended up to 2020 without specifying when the said decision for extension was taken. The respondents also admit in the sur-rejoinder that recovery of provident fund effected is absolutely a clerical error. In defence of their stand respondents further stated that ***“applicant had been assigned the very important safety activity relating to welding of rail which is defined as continuous activity.” It has not been clarified how the Railways depend upon only this applicant for such continuous safety activity.***

8 The relevant rules/instructions in the matter have been perused with reference to the present case and are as detailed below:-

The consolidated directions regarding forwarding of applications of government servants for outside employment issued by **DOP&T vide Office Memorandum dated 23rd December 2013** states points as under:-

(i) **Interpreting the term “PUBLIC INTEREST”**

The Heads of Departments should interpret the term ‘public interest’ strictly and subject to that consideration, the forwarding of applications should be the rule rather than an exception. Ordinarily, every employee (whether scientific and technical or

non-scientific and non-technical personnel) should be permitted to apply for an outside post even though he may be holding a permanent post.

(ii) Applications from permanent Government servants: Both permanent non-scientific and non-technical employees as well as permanent scientific and technical employees could be given four opportunities in a year to apply for outside posts, except where withholding of any application is considered by the competent authority to be justified in the public interest.

(iii) Circumstances in which application should not be forwarded:-

Application of a Government servant for appointment, whether by direct recruitment, transfer on deputation or transfer, to any other post should not be considered/forwarded if –

- (i) *He is under suspension; or*
- (ii) *Disciplinary proceedings are pending against him and a charge sheet has been issued; or*
- (iii) *Sanction for prosecution, where necessary has been accorded by the competent authority; or*
- (iv) *Where a prosecution sanction is not necessary, a charge-sheet has been filed in a Court of law against him for criminal prosecution.*
- (v) *Where he is undergoing a penalty - no application should be forwarded during the currency of such penalty.”*

not be forwarded are not established in the case of present applicant as he is not stated to be under suspension, nor are any disciplinary proceedings pending against him. It is also seen that the present applicant does not fall within the category of scientific or non-scientific employees where perhaps withholding of application could have been considered in public interest.

10 It is also to be noted from the pleadings that the case of the applicant was that all the formalities with regard to the Accounts was settled and 'No Due Certificate' was issued and also the deduction from PF from the salary of applicant was stopped. As also it is to be noted that none of the circumstances as mentioned by DOP&T exists under which the application should not be forwarded.

11 It appears from the facts as have been brought out in the pleadings and documents produced that applicant's case had been considered up to the stage of issue of No Due Certificate and needless to say without any speaking order having been given it is difficult to comprehend the reasons for the same

12 In view of the fact brought to our notice through submission of the learned counsel and on a Minute perusal of the documents and the Relevant rules regulating the subject matter, that the non acceptance

of the applicant's request for voluntary retirement as also the request of forwarding of his application by the respondent suffers from serious flaws. **Not only does it suffer from infirmity in the application of the relevant rule but the manner in which the Respondent department have conducted themselves give a hint of violation of the basic conditions of fair procedure and principles of natural justice.**

13 Given that the Railways have not been able to establish with any substance that the applicant's case is covered by the conditions for rejection listed out in OM No.14017/101/91-Estt (RR) dated 14th July, 1993.

It must be appreciated that annexure to DOPT OM No. 28020/1/2010/Estt (C) dated 23rd December 2013 read with OM No. 170/5/Ests, dated 21.10.1952, provides comprehensive guidelines and while defining "Public Interest", caution that the "**HOD should interpret the term Public Interest strictly and subject to that consideration the forwarding of application should be the rule rather than the exception**" Ordinarily, every employee (whether scientific and technical or non-scientific and non-technical) should be

permitted to apply for an outside post even though he may be holding a permanent post.

14 In conclusion, suffice to say that we are of the opinion that in the given facts and circumstances, VRS request should have been accepted. Therefore orders at Annexure A-1, A-2 & A-3 are quashed. Respondent department is directed to formally accept the VRS request of applicant and to relieve him from his present responsibility/post to enable him to join the new assignment within the time provided.

15 With the above direction the OA is disposed off. MA-342/18 pending adjudication does not survive for consideration. There shall be no orders as to costs.

16 Copy of this order be given Dasti Service.

(M C Verma)
Member(J)

(Archana Nigam)
Member(A)

abp

