

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI BENCH**

O.A.No.1618/2018

Dated Monday, the 10th day of December, 2018

PRESENT

Hon'ble Mr.R.Ramanujam, Administrative Member

&

Hon'ble Mr.P.Madhavan, Judicial Member

A.Jones Wilfred Vought,
Med.Decategorised (Mail/Exp.Guard)
Madurai Division, Southern Railway,
Madurai.

...Applicant

By Advocate M/s Ratio Legis

Vs.

1. Union of India, rep., by
the General Manager, Southern Railway,
Park Town PO, Chennai 600 003.

2.The Divisional Personnel Officer,
Southern Railway, Madurai Division.

...Respondents

By Advocate Mr.P.Srinivasan

(Order: Pronounced by Hon'ble Mr.R.Ramanujam, Member(A))

Heard. The applicant has filed this OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:

“To call for the service records of the applicant including the posting orders issued to the applicant on medical de-categorization and quash the impugned No.U/P.579/II/Guard/VR dated 30.08.2018 and to direct the respondents to accept the VRS and to arrange to pay pension and other retirement benefits in terms of chapter 9 of Indian Railway Establishment Manual Vol.I and Rule 49 of the Railway Services Pension Rules, 1993 with all the consequential benefits and to make further order/orders as this Hon'ble Tribunal may deem fit and proper and thus render justice.”

2. It is submitted that the applicant was medically decategorized while working as a Guard Mail/Express in 2012 whereafter he continued in a supernumerary capacity. A re-medical examination was sought by the applicant in which he was again declared unfit for Guard in the year 2014. A second screening was also conducted in the year 2015 but he was not offered any alternative post. While the applicant continued in the supernumerary post, a third screening was conducted in March 2018 and a posting order was given to the applicant in May 2018 on an alternative post.

3. It is further submitted that Rule 1803 of IREC Volume II r/w Rule 66 of Railway Servants Pension Rules 1993 and RBE 137/2016 provides for the applicant opting for voluntary retirement in such circumstances within one month of the receipt of alternative posting in which event, the applicant would be deemed to have retired from the category of running

staff and pension benefits granted accordingly. The applicant exercised the option and sought voluntary retirement by Annexure A-9 dated 23.05.2018. However, the respondents have passed Annexure A-10 order dated 30.08.2018 stating that the applicant had earlier indulged in delaying tactics and sought re-medical examination in which also he was found unfit and, therefore, he would only be entitled to pay fixation benefits as applicable for running staff who are medically decategorized. It was also intimated that one SF-11 was pending against him. However, the same had been disposed of by Annexure A-12 order letting the applicant off with a severe warning not to repeat his misconduct in future.

4. The grievance of the applicant is that he opted for voluntary retirement only with a view to benefiting in the matter of fixation of pension. The stand taken by the respondents to disallow enhanced pension benefits as available to running staff and at the same time also accept the notice for voluntary retirement from service when he still has about two years of residual service left was detrimental to his interests. It is alleged that the applicant was in no way responsible for the delay in the conduct of the medical re-examination or the offer of the alternative post.

5. Mr.P.Srinivasan, senior standing counsel for Railways takes notice on behalf of the respondents.

6. On perusal, it is seen that the applicant had been offered alternative employment by Annexure A-8 OM dated 10.05.2018 and he had opted for voluntary retirement by Annexure A-9 letter dated 23.05.2018. It does appear that the applicant had opted for voluntary retirement with a view to benefiting from the relevant provisions which provide for 55% of pay to be added to the basic pay for the purpose of calculating pension which is not available to non-running staff. There is some force in the applicant's contention that in case enhanced pension is not permissible, he should atleast be allowed to continue in service as he would have no purpose in seeking voluntary retirement without any benefit whatsoever and sacrificing the residual service.

7. In the above circumstances, we are of the view that the ends of justice would be met in this case, if the applicant is permitted to make a comprehensive representation within a period of one week from the date of receipt of a copy of this order. On receipt of such representation, the respondents shall consider the same in accordance with law and pass a reasoned and speaking order within a period of four weeks thereafter. Status quo with regard to the applicant's VRS shall be maintained till then. OA is disposed of accordingly.

(P.MADHAVAN)
MEMBER(J)

(R.RAMANUJAM)
MEMBER (A)

10.12.2018

M.T.