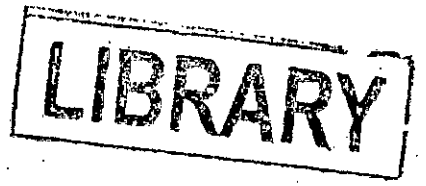


CENTRAL ADMINISTRATIVE TRIBUNAL  
KOLKATA BENCH, KOLKATA



No. O.A. 243 of 2014  
O.A. 1579 of 2013

Date of order: 6.9.2019

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member  
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sri Kaushal Kumar Singh,  
Son of Late D.S. Singh,  
Aged about 51 years,  
Worked as OS/Court Cell/Works Branch  
Under Sr. DEN (Co-ordination),  
Residing at 281, Netaji Subhas Road,  
P.O. Howrah,  
Howrah - 1.

... Applicant.

VERSUS -

1. Union of India,  
Through the General Manager,  
Eastern Railway,  
17, Netaji Subhas Road,  
Kolkata - 700 001.

2. The Divisional Railway Manager,  
Eastern Railway,  
Howrah,  
P.O. & P.S. Howrah,  
Dist. Howrah - 1.

3. The Senior DEN (Coordination),  
Eastern Railway,  
Howrah,  
P.O. & P.S. Howrah,  
Dist. Howrah - 1.

... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. K. Sarkar, Counsel

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**ORDER (Oral)**

**Per Dr. Nandita Chatterjee, Administrative Member:**

In O.A. 243 of 2014, the applicant has approached this Tribunal in second stage litigation under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

"(1) The Office Order dated 5<sup>th</sup> February, 2014 cannot be tenable in the eye of law and the same may be quashed.

(2) An order do issue directing the respondents to release all the pensionary benefits including pension after treating the applicant as a retired employee either from 1.11.2011 or from 8.5.2012."

2. Heard both Ld. Counsel, examined pleadings and documents on record.

3. The submissions of the applicant, as articulated through his Ld. Counsel, is that the applicant was appointed as Clerk Grade-II on 1989 and, on, 5.4.2009, had completed 20 years of service. Thereafter, on 11.7.2011, the applicant submitted an application to the respondent authorities praying for voluntary retirement on the grounds that he could not perform his official job properly due to his personal grounds. The applicant would cite the provisions of Railway Board's circular dated 1.6.1981 and that dated 3.11.1983 to state that retirement of an employee ahead of his superannuation may take place either on his own volition or as a result of an order passed by a competent authority in public interest.

According to the applicant, the respondent authorities not only failed to act on the applicant's prayer dated 11.7.2011 but also issued a transfer order dated 8.2.2012, whereby the applicant was transferred from Howrah to Katwa. The applicant would submit that he should have been deemed to have been retired automatically after completion of 3 months w.e.f. 1.11.2011 which was his intended date of voluntary retirement.

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On being aggrieved by inaction on the part of the respondent authorities, who did not treat him as a retired employee, at the end of notice period of three months, the applicant moved the Tribunal in an O.A. No. 1579 of 2013, which admittedly remains pending for adjudication. That, during the pendency of the said Original Application, an Office Order was passed by respondent No. 2 to the effect that the applicant's claims for voluntary retirement w.e.f. 1.11.2011 is unacceptable on the ground that the applicant continued to serve after submitting his prayer for voluntary retirement. According to the applicant, he should have been deemed to have voluntarily retired w.e.f. 1.11.2011/9.2.2012, and, hence, the communication of the respondent No. 2, is not tenable in the eyes of law even if he had attended office upto 8.2.2012.

The applicant would advance the following grounds in support of his claim, namely, that:

- (i) The applicant should have been deemed to have retired automatically at the end of the notice period;
- (ii) The applicant's prayer for seeking voluntary retirement was pending till 5.2.2014 with the respondent authorities hence, the applicant's voluntary retirement ought to commence with effect from 9.2.2012, wherefrom he went off his duties.

4. Per contra, the respondents would argue as follows:-

- (a) That, as per statutory provisions, once application for voluntary retirement from service be filed, the incumbent cannot continue in his service but in the instant case, the applicant continued in his service till 8.2.2012, even after his proposed date of retirement from service i.e. 1.11.2011, and, as such, he

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admittedly waived his own application/Notice of Voluntary Retirement from service.

(b) Considering the service records of the applicant, the competent authority, vide Office Order dated 5.2.2014 (Annexure "A-4" to the O.A.) rightly rejected his application/notice for voluntary retirement from service with effect from 1.11.2011, inasmuch as the applicant himself continued his service even after proposed date of voluntary retirement from service.

(c) The applicant's notice of voluntary retirement cannot be accepted and that there is no such illegality and/or irregularity in the said order as challenged by the applicant.

The respondents would hence argue that the Original Application is misconceived and the same is liable to be rejected.

5. The issue for adjudication before us is whether the applicant was deemed to have retired w.e.f. 1.11.2011 as per his notice and/or w.e.f. 9.2.2012 as per his claim.

6.1. The applicant has relied on Railway Establishment Rules and Labour Laws wherein the scope of premature retirement has been laid down as follows:

" Premature retirement means the retirement of an employee ahead of attaining the age of superannuation either on his or her own volition or as a result of an order passed by the competent authority in public interest."

6.2. Judicial pronouncements have laid down the ratio in the case of voluntary retirement.

In ***Power Finance Corporation Ltd. v. Pramod Kumar Bhatia***, 1997 (4) SCC 280, it was held that it was a settled position of law that unless the employee is released from his duties after acceptance of the offer of voluntary retirement / resignation, dual relationship of the employer and employee does not come to an end.

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It was also held in the case of *Union of India v. Gopal Chandra Misra, 1978 (2) SCC 301*, that a complete and effective act of resigning office is one which severs the link of the resignor with his offices and terminates his tenure.

Similarly, in *State of Uttar Pradesh & others. V. Achal Singh (2019) 1 SCC (L&S) 677*, the Hon'ble Court had held that there is no unfettered right of voluntary retirement after serving notice period. The Hon'ble Court had ruled that voluntary retirement is not automatic on expiry of notice period and appointing authority has to accept notice for voluntary retirement which can be refused on grounds of public interest. Right to retire is not absolute as in case of resignation since voluntary retirement is with retiral benefits.

The Hon'ble Court further held that the concept of liberty "not to serve in public interest" is not attracted since retirement carries pecuniary benefits which can be subject to riders.

6.3. In the instant matter, it is clearly established that, after the expiry of three months w.e.f. 1.11.2011, which was the intended date of voluntary retirement of the applicant, there was no severance of relationship between the employer and the employee.

The applicant admittedly accepted the fact when he rejoined his service and continued to be in service till 8.12.2012, whereupon, being transferred from Howrah to Katwa, he decided to stop attending his duties on the plea of his earlier notice of voluntary retirement.

6.4 It is a settled principle of law that no one is allowed to probate and reprobate simultaneously on his cause of action. Had the applicant not rejoined his duties and continued to insist that a decision be taken on his prayer for voluntary retirement after expiry of the notice period, the respondents would have had to explain as to why they had failed to

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accept or reject his prayer for voluntary retirement. In the instant case, the applicant has himself gone back on his prayer for voluntary retirement by rejoining his duties and in continuing to attend to his duties until the issue of his transfer orders, waiving therefore, his right to deemed retirement.

7. Accordingly, the matter, being devoid of merit, deserves to be dismissed.

As submitted by Ld. Counsel for the applicant, earlier O.A. bearing No. 1579 of 2013 has become infructuous and is dismissed accordingly.

There will be no orders on costs.

**(Dr. Nandita Chatterjee)**  
**Administrative Member**

**(Bidisha Banerjee)**  
**Judicial Member**

SP

