

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.020/00172/2018
&
M.A.No.203/2018 in O.A. No.020/00172/2018

Date of CAV:07.09.2018.

Date of Order :29.11.2018.

Between :

Banda Rama Mohana Rao, s/o late Radha
Krishna Murthy, Aged about 56 yrs,
Occ:Ex.Divisional Commercial Manager,
Group-B, O/o DRM, East Coast Railway,
Visakhapatnam, r/o D.No.7-147/9, CBI
Residency, Revellapalem, Bakkannapalem Rd,
Madhurawada Post, Visakhapatnam-530 048.

...Applicant

And

1. The Union of India, rep., by the
General Manager, East Coast Railway,
Chandrasekharpur, Bhubaneshwar,
Odisha-751 017.
2. General Manager, East Coast Railway,
Chandrasekharpur, Bhubaneshwar,
Odisha-751 017.
3. Chairman, Railway Board,
Ministry of Railways, Govt. Of India,
New Delhi-110 001.
4. Principal Chief Personnel Officer,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar,
Odisha-751 017.
5. Principal Chief Commercial Manager,
East Coast Railway,
Chandrasekharpur, Bhubaneshwar,
Odisha-751 017.
6. Divisional Railway Manager,
East Coast Railway, Visakhapatnam,
Andhra Pradesh-530 004.

7. Senior Divisional Personnel officer,
East Coast Railway, Visakhapatnam,
Andhra Pradesh-530 004. ... Respondents

Counsel for the Applicant ... Mr.Banda Rama Mohana Rao,
(Party-in-Person)
Counsel for the Respondents ...Mr.S.M.Patnaik, SC for Railways.

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.NAINI JAYASEELAN, MEMBER (ADMN.)**

ORDER

(As per Hon'ble Mrs.Naini Jayaseelan, Member (Admn.))

Brief facts of the case:

The applicant was initially appointed as Law Assistant, South Eastern Railway, on 18.05.1993 on being selected through Railway Recruitment Board, Kolkata. He worked as Law Assistant/Chief Law Assistant under Senior Deputy General Manager, East Coast Railway, Bhubaneswar, Odisha, up to 31.07.2010. While working as Chief Law Assistant under East Coast Railway, Bhubaneswar, the applicant went on deputation to the Central Bureau of Investigation, Anti-Corruption Branch (Visakhapatnam) as Special Public Prosecutor carrying the pay scale of Rs.8000-13500/- of Group-A post from 18.2.2005 to 31.7.2006. Thereafter, he worked as Administrative Officer Grade-II Group-B post under the Sardar Vallabhai Patel National Police Academy (SVPNA), Hyderabad, on deputation. While on deputation to the SVNPA, Hyderabad, the applicant appeared for the selection test for the post of Assistant Commercial Manager (ACM),

East Coast Railway, Khurda Road Division, Khurda, and was selected on 29.12.2009 and joined the said post on 02.08.2010. He worked as ACM under the East Coast Railway, Khurda Road Division and also Sambalpur division, Odisha, and was promoted as Divisional Commercial Manager (DCM), East Coast Railway, Visakhapatnam, and worked till 31.10.2017.

2. While working as DCM, Visakhapatnam, he submitted an application for premature retirement on 09.10.2017 under Rule 1802 (1) (a) (b) and (2) of the Indian Railway Establishment Code (IREC), Volume-II. As per the applicant, this request was made inadvertently under a depressed mental state with a misconception of the rule position regarding his age at the time of the submission of the application for premature retirement. His request for premature retirement was accepted w.e.f 31.10.2017 after approval of Respondent No.2 under the aforesaid Rule, vide OM dated 31.10.2017.

3. The applicant (appearing in person) stated that on realising his mistake and after legal consultations regarding the rule position, he submitted representations dated 04.12.2017 and 20.12.2017 for withdrawal of the said application for premature retirement. The applicant submitted that in terms of Rule 1802 (1) (a) (b) r/w note 3 of 1805 of IREC Volume-II that the Railway employee, who attains the age of 50 years in Group-A or Group-B services or in other cases 55 years of age may seek retirement prematurely only before attaining the age of 50/55 years as the case may be. However, the Railway employee has to give a 3 months' notice period. In otherwords, for the employee to become eligible for premature

retirement, he/she must be left with the service of 10/5 years at the time of submission and acceptance of his application for premature retirement. In any case, after completion of 55 years of age the Railway employee cannot invoke the premature retirement under Rule 1802 of IREC Volume-II.

4. The applicant further submitted that his application for premature retirement was submitted on 9.10.2017 was after completion of 56 years of age since his date of birth is 30.05.1961, which was against the aforesaid Rule of 1802 (1) and (2). He also submitted that as he did not fulfil the requirements laid down in the rules, his application for premature retirement was against the rules and the respondents acceptance of the said request for premature retirement, which was illegal and arbitrary. The applicant, therefore, prayed to continue him in service up to the age of superannuation from the date of Respondent No.4 proceedings vide memorandum No.ECOR/PERS /GAZ/VR dated 31.10.2017.

5. On his application for withdrawal of his request for voluntary retirement, the Respondent No.4 communicated vide letter dated 09.01.2018 that since his request for premature retirement was not submitted within the intended date, he is precluded from withdrawing his election. The applicant has again submitted a representation dated 15.01.2018 to the 3rd respondent, but in vain.

6. The applicant has further submitted that the respondents are duty bound to verify the rules before communication of the acceptance of the order of premature retirement. It is his contention that the

Respondents 2, 4 and 5, took a hasty decision without examining the rule position and legality of the action and hurriedly communicated the same to the applicant in spite of the fact that he did not fulfil the requirements laid down under the rules as he was 56 years of age and not 55 years of age. The applicant reiterated that the respondents should have rejected his application for voluntary retirement dated 9.10.2017, and the OM dated 31.10.2017 is void and not valid in the eyes of law.

7. In support of his submissions, the applicant has cited the judgment of the Hon'ble Supreme Court in *Vinod Kumar v. State of Haryana & Others* in Civil Appeal No.392/2008 & batch dated 24.10.2013, wherein it was held as follows:

"19. Thus, if wrong and illegal acts, applying the aforesaid parameters of judicial review can be set aside by the courts, obviously the same mischief can be undone by the administrative authorities themselves by reviewing such an order if found to be ultra vires. Of course, it is to be done after following the principles of natural justice. This is precisely the position in the instant case and we are of the considered opinion that it was open to the respondents to take corrective measures by annulling the palpably illegal order of the earlier DGP, Haryana."

8. However, the facts and circumstances of the above cited case are entirely different and are not applicable to the present case as in the above

mentioned case a mercy petition, which was not maintainable, was allowed, which was clearly untenable and rightly recalled. However, in this case, the processing of the application for voluntary retirement was in accordance with the Rules as was not untenable or not maintainable.

9. The applicant has also filed M.A.No.203/2018 seeking a direction to the Respondents 2 to 7 to accord permission to the applicant for attending the personal talks to be held on 27.04.2018 at UPSC, New Delhi. Since the due date has already expired, no further action can be taken in the MA.

10. The respondents have filed reply statement to the main OA as well as the M.A.No.203/2018.

11. In their reply statement, the respondents have contended that the applicant was a Group-B Officer of Traffic and Commercial Department of East Coast Railway and had sought premature retirement w.e.f 31.10.2017 and once his application was accepted, withdrawal cannot be permitted under Note 5 of Rule 1805 of Indian Railway Establishment Code (IREC). In terms of Note 5 of Rule 1805 of IREC, which states that a *Railway servant who has served a notice of retirement under Rule 1802 (b) or Rule 1803 (b) (1) or Rule 1804 (b), as the case may be, shall be precluded from*

withdrawing his election subsequently except with the specific approval of such authority, provided that the request for withdrawal shall be within the intended date of his retirement. Since the applicant submitted his request on 04.12.2017 for withdrawal of his retirement after the intended date of his retirement i.e., 31.10.2017, his request for withdrawal of his premature retirement notice cannot be considered in terms of Note 5 of Para 1805 of IREC.

12. It is also the contention of the respondents that the applicant was not forcibly retired, but his request for premature retirement was processed as per rules and even the mandatory period of three months was also cut short on the specific request of the applicant.

13. The learned counsel for the Respondents submitted that since the applicant entered service on 18.05.1993 i.e., before 35 years of his age and attained the age of more than 50 years of age at the time of submission of application for premature retirement on 09.10.2017, he was eligible to seek premature retirement on his own volition. Accordingly, the competent authority accepted his notice for premature retirement from Railway service with effect from 31.10.2017. Since his application for withdrawal of his notice was more than a month after he had retired, his application was not accepted in accordance with Note 5 of Rule 1805 of IREC.

14. After hearing the Applicant in person and the learned counsel for the Respondents, and in view of the above facts and circumstances of the case, we are of the view that the OA is devoid of merits and is liable to be dismissed.

15. Accordingly, the OA.No.172/2018 is dismissed.

16. The M.A.No.203/2018 stands disposed of.

17. No order as to costs.

Sd/-

Sd/-

(NAINI JAYASEELAN)
MEMBER (ADMN.)

(JUSTICE R. KANTHA RAO)
MEMBER (JUDL.)

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