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**(2023) 08 CAT CK 0005**

**In the Central Administrative Tribunal**

**Case No :** Original Application No. 180, 00748 Of 2017

K.V. Philipose

APPELLANT

Vs

Union Of India & Ors

RESPONDENT

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**Date of Decision :** 07-08-2023

**Acts Referred:**

Constitution Of India, 1950 — Article 14, 16

**Citation :** (2023) 08 CAT CK 0005

**Hon'ble Judges :** Sunil Thomas, Member (J); K.V. Eapen, Member A

**Bench :** Division Bench

**Advocate :** Shameena Salahudheen, Thomas Mathew Nellimoottil

**Final Decision :** Dismissed

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## Judgement

Sunil Thomas, Member J

1. The applicant was a Helper in the Electrical Department under the Railways, in the Trivandrum Division. While so, he was affected with cancer and underwent treatment. The applicant had joined Railway as a commission agent. He filed OA No. 423 of 2014 to reckon the period of service of the applicant as commission vendor for service benefits. That was allowed by Annexure A3 dated 17.8.2015. In the meanwhile, the respondents Railways introduced a Liberalized Active Retirement Scheme for Guaranteed Employment for Safety Staff (To be referred hereinafter as retirement Scheme) in Trivandrum Division. By Annexure A5 request dated 8.9.2015 applicant offered to avail voluntary retirement and requested that his son may be given the employment under the above retirement Scheme. He had also submitted the bio-data of the son who had passed plus two and was holding an ITI diploma.

2. The Railways informed him that since Annexure A3 order was under challenge in OP (CAT) No. 228 of 2016, they would take a decision on Annexure A5 only after the OP (CAT) was disposed of. Ultimately the OP (CAT) was dismissed. In the meanwhile the retirement Scheme was introduced for the second half of

2017. The applicant submitted Annexure A8 representation dated 17.7.2018 seeking the benefit under the retirement Scheme. Claiming that consideration of Annexure A5 was highly necessary on the basis of Annexure A6 by the respondents and because of the fact that the applicant has hardly eight months left for retirement, the applicant has filed the present OA.

3. The reliefs sought in the OA are as follows:

"I) Direct the respondents to reconsider Annexure A5 in the light of Annexure A6 and pass favorable orders.

II) Declare that the applicant is entitled to be considered for voluntary retirement with appointment to the ward under the LARGESSE scheme."

4. The respondents in their reply statement contended that the application was hit by the principles of res judicata in the light of his earlier application. It was further contended that the applicant was not entitled for the benefit under the said Scheme and further that the said Scheme was not subsisting as on the date.

5. Heard the learned counsel for the applicant and the learned Senior Panel Counsel for the Railways.

6. Ms. Astrid Stereena Mathew, the learned counsel for the applicant under instructions of Advocate Ms. Shameena Salahudheen contended that res judicata will not apply in so far as the present application was concerned, since no orders were passed on Annexure A5 application. It was contended that OA 256/2016 was not adjudicated on merits. A reconsideration of Annexure A5 was sought in the light of judgment of the High Court in Annexure A6. Annexure A8 was submitted later seeking the benefit under the retirement Scheme. It was contended by the learned counsel that the twin conditions insisted by the respondents under the said Scheme was that the applicant should have completed 20 years of service in the Department and should have three years remaining for retirement. In the case of applicant he was due to retire in June, 2018. Since the benefit of the Scheme was earlier denied to him only because of the reluctance on the part of the respondents to accept Annexure A3 order which was ultimately challenged and dismissed, the applicant was fully justified to get the benefits of the Scheme. It was further contended that the request made by the applicant was kept pending and it should have been allowed as per the Scheme.

7. Per contra, Mr. Thomas Mathew Nellimoottil, the learned Senior Panel Counsel for the Railways pointed out that the applicant had approached this Tribunal by filing OA No. 259 of 2016 seeking the identical reliefs. It was closed on 23.1.2017 by holding that since the said Scheme was held to be violative of Articles 14 and 16 of the Constitution of India by the Principal Bench of this CAT in OA No. 4138 of 2016 and connected cases, following a judgment of the High Court of Punjab and Haryana in Kala Singh & Ors. v. Union of India & Ors. (CWP No. 7714/2016), no relief could be granted. It was closed, however, holding that

if the SLP pending before the Supreme Court challenging the said judgment of the High Court was allowed, the OA can be restored.

8. It also revealed that the Hon'ble Supreme Court affirmed the judgment of the High Court holding that the Scheme was violative of the provisions of the Constitution of India. SLP was dismissed by Annexure R1 order dated 6.3.2017. The present OA was filed much after that on 13.9.2017. The present request is to re-consider Annexure A5 in the light of Annexure A6. In the light of the earlier order closing the OA, the applicant could have sought revocation of the earlier order in the OA only if the SLP was allowed. In fact the SLP was dismissed. Hence, the earlier OA could not have been revived. The contention that res judicata will not apply, since earlier decision was not on merits does not appear to be correct. That OA was closed, originally following the decision in Kala Singh's case (supra). Hence, a new OA with identical request on the same ground which has already been rejected is not sustainable and is hit by res judicata.

9. It seems that pursuant to the judgment of the Punjab and Harayana High Court in Kala Singh's case (supra) the said Scheme was kept on hold by the Railway Board vide Annexure R2 letter dated 27.10.2017 for the second half of 2017. Thereafter, the Scheme itself was set aside. The learned Senior Panel counsel placed before us the latest decision of the Supreme Court in that regard by which the Scheme itself was held to be void and not sustainable. The learned counsel placed reliance on the judgment of the Supreme Court reported in Chief Personnel Officer & Ors. v. A. Nishanth George [(2022) 16 SCR 289]. It was held that under the Scheme, safety staff in the age group of 50-57 years could seek voluntary retirement by notification dated 28th September, 2018 and the Railway Board decided to terminate the Scheme with a direction that no further appointment should be made under the Scheme, except in cases of staff who have already retired under the Scheme before 27.10.2017 but not naturally superannuated. The applicant was superannuated in 2018 and had not voluntarily retired under the Scheme. Hence, even the above judgment will not help the applicant. It is seen that the same judgment was followed by the Supreme Court in Union of India & ors. v. N. Gopalakrishnan (Criminal Appeal No. 8666 of 2015).

10. Since the Scheme has come to end and the applicant stood retired on attaining the age of superannuation, no relief can be granted. Even otherwise as per the Scheme the applicant was not entitled. As per the Scheme, the applicant should be between the age group of 50-57 years. Annexure A5 discloses that his date of birth was 12.6.1952 and that as on the date of Annexure A5 application, he had completed 57 years, 3 months and 8 days. Though the learned counsel for the applicant vehemently contended that this was not the reason for not considering the said applications, but only the pendency of the OP (CAT), that will not make any difference. Primarily, the applicant should be eligible to claim the benefits. It seems that the applicant was not eligible as on the date of application.

11. Annexure A5 further discloses that the applicant had crossed 57 years. As on Annexure A7 dated 1.7.2017 the applicant was aged 59 years and 19 days. He had crossed the age limit.

12. Having considered the entire facts in the above perspective notwithstanding the vehement arguments advanced by the learned counsel for the applicant on merit, we are convinced that the claim of the applicant is hit both on the facts and on law. No relief can be granted to the applicant. OA fails and it is accordingly, dismissed. No costs.