

(2019) 02 DEL CK 0077

In the Delhi High Court

Case No : Civil Writ Petition No. 3811 Of 2017, Civil Miscellaneous No. 16748 Of 2017

Mahesh Kumar Gupta

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 06-02-2019

Acts Referred:

Railway Services (Pension) Rules, 1993 — Rule 67, 67(2)

Citation : (2019) 02 DEL CK 0077

Hon'ble Judges : Vipin Sanghi, J;A.K. Chawla, J

Bench : Division Bench

Advocate : Rashmi Chopra, R.V. Sinha, A.S. Singh

Final Decision : Allowed

Judgement

Vipin Sanghi, J

1. The petitioner has preferred the present writ petition being aggrieved by the order dated 06.03.2017 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No.914/2015. The Tribunal has rejected the said Original Application of the petitioner, wherein the petitioner had sought interest on delayed release of retiral dues of the petitioner.

2. The petitioner was serving as Chief Engineer (Construction-II) in the East Central Railway (ECR), Hazipur, Patna. He applied for voluntary retirement under Rule 67 of the Railway Services (Pension) Rules, 1993, having completed over 20 years of qualifying service. The said application was made on 14.06.2010.

3. Rule 67, insofar as it is relevant, reads as follows:

"67. Retirement on completion of 20 years qualifying service -

(1) At any time after a railway servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to appointing authority retire from service:

Provided that this sub-rule shall not apply to a railway servant including Scientists or technical expert who is -

(i) on assignment under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes;

(ii) posted abroad in foreign based offices of the Ministries or Departments; (iii) on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of a post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the said period."

4. The petitioner gave 3 months notice as required under the Rules. However, since the petitioner did not receive any express acceptance/ rejection of his application to seek voluntary retirement, by force of proviso to sub-Rule (2) of Rule 67, he stood retired on the expiry of the 3 months notice period. Consequently, on 14.09.2010, he relinquished the charge. It is not in dispute that after 14.09.2010, the petitioner has not reported for duty, and the respondents have not treated his absence, thereafter, as unauthorized.

5. The petitioner was not released the retiral dues within the period when the same should have been released under the Rules. He, therefore, kept representing to the respondents to release his retiral dues. Belatedly on 18.07.2011, the respondents sought to issue a communication deeming the petitioner to have retired from service on 13.09.2010.

6. The petitioner has set out in the petition the delay in release of the retiral dues, and the said tabulation reads as follows:

S. No.

Item of Payment

Amount (Rs.)

Due date of Payment

Date of Credit in account

Delay in months

1.

Provident Fund

1544293

13.10.2010

21.11.2011

13

2.

Leave encashment

942645

13.10.2010

17.12.2011

14

3.

Group Insurance

95016

13.10.2010

17.12.2011

14

4.

Composite Transfer Grant

65010

13.10.2010

04.01.2012

15

5.

Gratuity & commutation

2309250

13.10.2010

23.02.2012

16

6.

Pension upto July, 2012

852780

Sept. 2010 to July, 2012

21.08.2012

12

7. With the aforesaid grievance, the petitioner preferred the Original Application.

8. The submission of Ms. Chopra is that the Tribunal has rejected the Original Application on a specious ground that the petitioner was a senior officer, and his application for voluntary retirement required approval at a

very high level in the Railway Board. On this ground, the delay in release of the retiral dues has been condoned by the Tribunal. Ms. Chopra submits that under proviso to Rule 67(2) the voluntary retirement took effect on the expiry of the notice period and consequently, the petitioner stopped serving after 14.09.2010.

9. On the other hand, the submission of Mr. Sinha is that the petitioner did not assail the communication dated 18.07.2011 by which the acceptance of voluntary retirement application made by the petitioner was communicated. He submits that after 18.07.2011, the retiral dues of the petitioner were released in a reasonable time. He further submits that there is no illegality in the impugned order passed by the Tribunal.

10. Having heard learned counsels and perused the impugned order, as well as the documents placed on record, we are of the view that the impugned order cannot be sustained. By force of proviso to Rule 67(2), the voluntary retirement of the petitioner took effect on the expiry of the notice period since no communication of either acceptance, or rejection was made by the Appointing Authority to the petitioner prior to the expiry of the notice period. The petitioner also did not serve the respondents, and relinquished his charge on the expiry of the said notice period on 14.09.2010. The respondents also does not dispute that the petitioner stood voluntarily retired on 13/ 14.09.2010. Merely because the respondents chose to issue the communication dated 18.07.2011 belatedly, would not change the date of voluntary retirement of the petitioner, or his entitlement to receive his retiral dues within the prescribed period - which was admittedly not done.

11. Once a Government servant retires, he looks forward to receiving his retiral dues within the prescribed period, which represent his hard-earned savings and reward for his service. That is also the time when the need of the retiral dues is more, so that he is able to implement his future plans. He stops receiving his salary and perks from the date of his retirement. Upon retirement, the Government servant would also have to relinquish the accommodation and other perks that he may have been enjoying while in service. He may need to relocate from one place to another. If he were to be denied his retiral dues at such a juncture - which he would have factored into in his plans, the Government servant would be put to great inconvenience and harassment. Merely because the petitioner was a senior officer is no ground to treat him indifferently, or to trivialize his need, or ignore his predicament. Interest is awarded to compensate

the person denied his dues for the falling value of money.

12. We, therefore, allow this petition and quash the impugned order. We direct the respondents to pay interest to the petitioner on the delayed payment of retiral dues at the rate applicable to GPF.