

(2014) 05 DEL CK 0368

In the Delhi High Court

Case No : W.P.(C) 736/2014 & CM No. 1477/2014

Syed Mohd. Jawed Alam

APPELLANT

Vs

The General Manager Northern Railways and Others

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Citation : (2014) 05 DEL CK 0368

Hon'ble Judges : Gita Mittal, J;Deepa Sharma, J

Bench : Division Bench

Advocate : Rajeev Sharma, Advocates for the Appellant; J.K. Singh and Neeraj Atri, Advocates for the Respondent

Judgement

Gita Mittal, J.—By a separate order, we have dismissed the writ petition. We now pen down our reasons for doing so.

2. The petitioner challenges the order dated 25th April, 2012 whereby the Central Administrative Tribunal has dismissed the O.A.No. 3581/2011 filed by him. The petitioner was aggrieved by the order dated 22nd February, 2011 passed by the respondents accepting the petitioner's request for voluntary retirement with immediate effect after deleting the allegations made by him in an application for voluntary retirement. Before the Tribunal, he sought quashing of this order and the consequential relief to continue him as Chief Inspector, Catering in the Northern Railways with all benefits.

3. The facts giving rise to the instant writ petition are within the narrow compass and are undisputed. The petitioner was posted as the Chief Catering Inspector with the Northern Railways at the relevant time. On the 30th of September, 2010, the petitioner submitted an application dated 30th September, 2010 stating that "due to communal and corrupt environment he was unable to work and therefore request for voluntary retirement with effect from 31st December, 2010. The petitioner also requested the respondents to sanction Leave Against Pay ("LAP") to him with effect from 4th of October, 2006 to 16th December,

2010. It was also clearly indicated there under that by the letter dated 30th September, 2010, the petitioner was giving three months prior notice as required for voluntary retirement.

The request of the petitioner were forwarded by the Chief Commercial Manager (Catering) on the 19th of October, 2010 and D and PR clearance was obtained on the 23rd of December, 2010.

4. The competent authority, i.e., the Chief Commercial Manager (Catering) considered and noted the general allegations made by the petitioner. In view thereof, it was directed that information of specific instances may be sought from the petitioner.

5. As such, a letter dated 30th December, 2010 was addressed by the General Manager (P) of the Northern Railways to the petitioner asking him to spell out specific instances of the matter stated by him. The petitioner was informed that decision on his request for voluntary retirement would be taken after receipt of a reply.

6. As the petitioner did not respond, a reminder dated 31st January, 2011 was issued to him calling upon the petitioner to respond within three days failing which "it will be presumed that allegations made by you are not correct and action will be taken on your request for voluntary retirement after deleting the allegations made by you".

7. The respondents were duty bound to give the petitioner reasonable opportunity to respond. After waiting for a reasonable time, the petitioner's request for voluntary retirement was examined after deleting the allegations made by him and was accepted by a letter dated 22nd February, 2011.

8. After receipt of the said letter, he submitted representation dated 26th February, 2011 requesting the respondents to recall the order dated 22nd February, 2011 and to take him back into service which was follow up another communication of 1st April, 2011. The respondents have submitted that these requests were not accepted and by a letter dated 21st July, 2011, the petitioner was so informed.

9. It is to be noted that the petitioner at no point of time, withdrew his request for voluntary retirement. After the same was processed by the respondents, the petitioner challenged the same by way of O.A.No. 3581/2011, which was filed in September, 2011.

The respondents contested the same and filed a detailed counter affidavit denying all allegations made by the petitioner. After detailed consideration of the pleadings of the parties, the Tribunal passed the impugned order dated 25th April, 2012 rejecting the petitioner's claim, resulting in the present writ petition.

10. Before us the petitioner has primarily contended that as per instructions contained in para 11 and 12 of the Master Circular no. 35, dated 9th November,

1977 issued by the Railway Board under letter No. E (P&A) 1 - 77/RT/46, the competent authority was empowered to consider an application for voluntary retirement for service within the period of three months from when it was made only. It is submitted that the same could have been accepted or rejected only within such period of three months. The submission is that Rule 67 of the Railway Services (Pension) Rules 1993 bound the consideration of the petitioner's request and mandated that the request for voluntary retirement from service had to be accepted within the period of three months.

11. The petitioner has also contended that the respondents have placed reliance on paras 11 and 12 of Master Circular no. 35 dated 9th November, 1977 issued by the Railway Board under letter No. E (P&A) 1 - 77/RT/46.

12. The petitioner contends that notice dated 30th September, 2010 sent by the petitioner for voluntary retirement was a conditional notice. As per clause III of this master circular, no condition could have been attached to the notice of voluntary retirement and the conditional notice required to be rejected outright at the General Manager level itself. Therefore such notice could not have been considered by the respondents. It is therefore contended that the acceptance of the petitioner's request by the letter dated 22nd February, 2011 was illegal and deserves to be quashed and therefore, impugned order dated 25th April, 2012 is contrary to the binding rules as well as the directions contained in the master circular.

13. We may firstly consider the petitioner's contention based on condition III as contained in Master Circular No. 35 dated 9th November, 1977. For this purpose, condition No. (iii) deserves to be extracted and reads as follows:-

"No, condition of any nature, whatsoever, should be attached to a notice of voluntary retirement such conditional notice should be rejected at the GM's levelled."

14. Let us now examine the petitioner's request. In the letter dated 30th September, 2010, the petitioner has stated that he was unable to work with the respondents due to communal and corrupt environment and that for this reason he was seeking voluntary retirement from service. The letter contained no condition at all for acceptance of the voluntary retirement. The petitioner merely tendered his explanation for submitting the request for voluntary retirement. His grievance that environment was communal and corrupt was really disclosing the reasons for his request. The petitioner's contention that the request made in the letter dated 30th December, 2010 was conditional, is not supported by reading of the communication and is wholly misconceived.

15. The petitioner has made a second submission that the request made on 30th September, 2010 had to be processed and acceptance or rejection thereof had to be communicated within three months in terms of the Master Circular dated 9th November, 1977 based on Rule 67 of the Railway Services (Pension) Rules, 1993.

16. Rule 67 has been extracted by the Tribunal in the impugned order. For the purposes of convenience, the same is set down hereunder as well:-

"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 period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) (a) A railway servant referred to in sub-rule (1) may, make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) On receipt of a request under clause (a) , the appointing authority subject to the provisions of sub-rule(2) , may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the railway servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A railway servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and death-cum-retirement gratuity of the railway servant retiring under this rule shall be based on the emoluments as defined under rules 49 and 50 and the increase not exceeding five years in his qualifying service shall

not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a railway servant who retires from railway service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation - For the purpose of this rule, "appointing authority" means the authority which is competent to make appointments to the service or post from which the railway servant seeks voluntary retirement".

17. Sub-rule (1) of Rule 67 enables an employee to seek, who has completed 20 years of service to seek voluntary retirement from service after giving three months notice.

However, under sub-rule (3) the employee does not have an absolute right of favourable consideration of his request. Sub-rule (2) mandates acceptance of the request by the appointing authority. It also postulates that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. Thus, if the authority fails to pass an order accepting or rejecting the request within three months, the request is deemed to have been accepted. Sub-rule (2) therefore incorporates a provision for deemed acceptance of the request for voluntary retirement.

18. The Tribunal has noted the spirit, object and intendment of Rule 67 which is that the authorities should not inordinately delay consideration of request for voluntary retirement. For this reason an outside the period for rejection of the period is set out. If no decision is taken, the rule stipulates that the request would be deemed to have been accepted.

19. Inherent in this stipulation is the requirement that in case the employee desires to withdraw the request he has to do so before the intended date of retirement. Upon failure to pass an order rejecting or accepting the request, the consequence is not rejection of the request but is its deemed acceptance unless the applicant had withdrawn the request for voluntary retirement within the stipulated period.

20. In the instant case, the admitted position is that despite the notices dated 30th December, 2010 and 31st January, 2011, the petitioner did not withdraw his request for voluntary retirement. In fact by the letter dated 30th December, 2010, the petitioner was informed about the postponement of the decision of the competent authority to enable the petitioner to place material to support the allegations. No objection was made by the petitioner. By the communication of 31st January, 2011, the respondents informed the petitioner that in case he failed to respond, it would be presumed that the allegations made by him were not correct. More importantly, the petitioner was notified that action would be

taken on his request for voluntary retirement after deleting the allegations made by him.

The petitioner again did not inform the respondents that he did not want to press the request for voluntary retirement, even though he was aware that the respondents were processing his request for voluntary retirement.

In these circumstances, the Tribunal has rightly held that the petitioner had indirectly given his tacit assent/approval to the respondents to proceed in the matter to process his application for voluntary retirement.

21. In view of the above discussion, we are of the view that the challenge of the petitioner has been rightly rejected by the Tribunal. There is no merit in this writ petition which is hereby dismissed.