

(2013) 11 KAR CK 0112

In the Karnataka High Court

Case No : Writ Petition No. 25549 of 2013 (S-CAT)

The General Manager, The Divisional Personnel Officer and
The Senior Divisional Mechanical Engineer, South Western
Railway

APPELLANT

Vs

P.Y. Jaithkumar

RESPONDENT

Date of Decision : 29-11-2013

Acts Referred:

Constitution of India, 1950 — Article 309
Railway Services (Pension) Rules, 1993 — Rule 67(2)

Citation : (2013) 11 KAR CK 0112

Hon'ble Judges : Mohan M. Shantanagoudar, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : M.S. Prasad, for the Appellant; Izzhas Ahmed, for the Respondent

Final Decision : Allowed

Judgement

Mohan M. Shantanagoudar, J.—The order dated 13.2.2013, passed by the Central Administrative Tribunal, Bangalore Bench, Bangalore in O.A. No. 730/2012, is called in question in this writ petition by the Railways. The records; reveal that the respondent is a Railway servant and is governed by Railway Services (Pension) Rules, 1993 framed by the President of India under Proviso to Article 309 of the Constitution of India governing the service conditions of superannuation, qualifying service, etc.

2. The respondent filed an application on 28.5.2012 requesting the petitioner-Department to permit him to take voluntary retirement w.e.f. 31.8.2012. In the very application, the respondent has clarified that request for voluntary retirement shall be treated as notice period for voluntary retirement on 31.8.2012. By that time, the respondent had put in 22 years of service. The said application came to be rejected by the petitioner- V" Department by its order dated 24.8.2012 and the same was communicated to the respondent. The respondent subsequently on 31.8.2012 appeared before the petitioners and gave

an application to reconsider his prayer for voluntary retirement since he is medically decategorized and is unwell. In other words, the respondent prayed that on health grounds, he shall be relieved from service. However, such request is not considered by the petitioners.

3. The respondent is aggrieved by the order passed by the petitioners on 24.8.2012, rejecting the prayer of the respondent praying for permission to retire voluntarily. Thus, the respondent approached Central Administrative Tribunal in O.A. No. 730/2012, which came to be allowed by the impugned order. Questioning the same, this writ petition is filed by the petitioner-Railways.

4. Before proceeding further, it would be beneficial to peruse the Rule (relevant portion), which reads thus:--

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 the appointing authority retire from service.

xxxx

(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.

5. From the aforementioned Rule, it is clear that it was open for the respondent to seek permission to retire voluntarily on completion of 20 years" qualifying service. However, the respondent/employee needs to give notice not less than three months in writing to the employer in that regard. Sub-Rule (2) of Rule 67 further makes it clear that the notice of voluntary retirement given by the employee shall require acceptance by the appointing authority. Where the appointing authority does not refuse to grant 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.

6. In the matter on hand, undisputedly, the respondent has given notice of not less than three months. As aforementioned, the notice/application was given by the respondent praying for voluntary retirement on 28.5.2012 which would be effective from 31.8.2012. Thus, it is specifically mentioned by the respondent that the voluntary retirement will take into effect from 31.8.2012. If the employer does not accept the application for voluntary retirement within 31.8.2012 as requested by the respondent, the voluntary retirement will take effect immediately after 31.8.2012 i.e., on 1.9.2012. In the matter on hand, admittedly the employer-Department has rejected the application filed by the

respondent for voluntary retirement by passing a specific order dated 24.8.2012. Thus, it is clear that prayer of the respondent is specifically rejected by the petitioners on 24.8.2012 and the same is intimated to the respondent.

7. However, contention of the respondent is that the employer ought to have accepted his application since he is suffering from certain health problems. The same is accepted by the Tribunal by observing that there is certain degree of malice on the part of petitioner-Department.

Such observation of the Tribunal is not sustainable when no records are forthcoming to that effect. In the body of the order, the Tribunal at two places has specifically concluded that the respondent has failed to show malice against the Department. If it is so, it was not open for the Tribunal to conclude in the very order that some degree of malice is shown by the petitioner-Department against the respondent by rejecting the application for voluntary retirement. Therefore, such observation of the Tribunal cannot be accepted.

Petitioners have stated that due to shortage of ministerial staff, application filed by the respondent for voluntary retirement is rejected. It is for the Department, based on fact situation, to take decision in the matter. It is not mandatory to accept all the applications for voluntary retirement filed by the employees. It is true that on the very day the application filed by other employee for voluntary retirement is accepted. But the same cannot be a ground for the respondent to press his application on the ground of parity. The applications for voluntary retirement will be considered by the concerned employer based on fact situation. Therefore, the contention of the respondent in that regard is unacceptable.

Learned counsel for the respondent also submits that there was no dearth of ministerial staff during relevant time and therefore rejection of respondent's prayer is bad in the eye of law. He further submits that it was open for the petitioner Department to appoint retired employees, if need be. In other words, the respondent's counsel submits that after relieving the respondent from duties, it was open for the petitioner to appoint retired employee in his place.

Such advise to be given by the respondent need not be accepted by the Department. It is for the petitioner to run the affairs of the Department and not by the respondent. Ultimately the decision in the matter is to be taken by the Department. We find no malice on the part of the petitioners while rejecting the respondent's prayer. The Tribunal has gone one step ahead to treat itself as an employer. The Court/Tribunal cannot stand into the shoes of employer to perform duties of the employer. Ultimately, the person who is managing the affairs of the Department would be knowing as to what are the difficulties suffered by the Department. In that context, proper decision will be taken by the Department. Unless action of the Department is arbitrary, unconstitutional or illegal, no interference need to be made in that regard.

Hence, the impugned order dated 13.2.2013 passed by the Central Administrative Tribunal in O.A. No. 730/2012, is liable to be quashed and the

same stands quashed.

Writ petition is allowed accordingly.