



IN THE HIGH COURT OF ANDHRA PRADESH

W.P. No.6090 of 2019

Between:

Banda Rama Mohana Rao

.... Petitioner

and

The Union of India,
rep. by its General Manager & Others

.... Respondents

Date of Judgment pronounced on : 08.11.2019

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

1. Whether Reporters of Local newspapers
May be allowed to see the judgments? : Yes/No
2. Whether the copies of judgment may be marked
to Law Reporters/Journals: : Yes/No
3. Whether The Lordship wishes to see the fair copy
Of the Judgment? : Yes/No



*** HON'BLE THE ACTING CHIEF JUSTICE C.PRAVEEN KUMAR**

AND

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

+ W.P. No.6090 of 2019

% 08.11.2019

Banda Rama Mohana Rao,
O/o D.R.M., East Coast Railway, Visakhapatna,
R/o D.No.7-147/9, C B I Residency,
Revellapalem, Bakkannapalem Road,
Madhurawada Post, Visakhapatnam-530048.

... PETITIONER

Vs.

\$ The Union of India,
rep. by its General Manager,
East Coast Rialway, Chandrasekharpur,
Bhubaneshwar, Odisha – 751017 & Others

... RESPONDENTS

! Counsel for the Petitioner : SRI RAYAPROLU SRIKNATH

Counsel for the Respondents: SRI P.BHASKAR

<Gist :

>Head Note:

? Cases referred:

1. AIR 2014 SC 33



HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON'BLE SRI JUSTICE CHEEKATI MANAVENDRANATH ROY

W.P. No.6090 of 2019

ORDER : *(Per Hon'ble Sri Justice C.Praveen Kumar)*

The present Writ Petition came to be filed seeking the following reliefs :

“a) to issue an appropriate writ, direction more particularly one in the nature of Writ of Certiorari declaring the order dated 29.11.2018 passed in O.A.No.172 of 2018 on the file of Central Administrative Tribunal at Hyderabad as illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India and consequently, set aside the same, and

b) to declare the action of the 2nd respondent in accepting the premature retirement application of the petitioner dt.9.10.2017, by orders dt.31.10.2017 is contrary to the Law, illegal and violative of the established rules and guidelines contained in the Indian Railway Establishment Code Vol-II and

c) to declare the action of the 2nd respondent in not accepting the applications dt.04.12.2017 and 20.12.2017 for withdrawal of premature retirement application/notice of the petitioner vide orders dt.09.01.2018 is contrary to the Law, illegal and violative of the established rules and guidelines contained in the Indian Railway Establishment Code Vol-II and

d) to issue Writ of Mandamus or any order or orders of like nature, directing the respondents to issue necessary orders for resumption of service of the petitioner as Divisional Commercial Manager, East Coast Railway, Visakhapatnam and pass such other order or orders may deem fit and proper in the circumstances of the case.”

2. Aggrieved by the orders dated 29.11.2018 passed in O.A.No.172 of 2018 by the Central Administrative Tribunal, Hyderabad Bench, the present Writ Petition came to be filed.

3. The facts which lead to filing of O.A. are as under :



The applicant – Writ Petitioner was appointed as Law Assistant in South Eastern Railway on 18.5.1993, on being selected through Railway Recruitment Board, Kolkata. While he was working as a Law Assistant – Chief Law Assistant under Senior Deputy General Manager, East Coast Railway, Bhubaneswar, Odisha, went on deputation to the Central Bureau of Investigation, Anti-Corruption Branch (Visakhapatnam) as Special Public Prosecutor and worked there 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 in Hyderabad on deputation. While working in Academy, the petitioner appeared for the selection test to the post of Assistant Commercial Manager, East Coast Railway, Khurdha and on selection to the said post on 29.12.2009, he joined the same on 2.8.2010. Thereafter, he was promoted as Divisional Commercial Manager, East Coast Railway, Visakhapatnam and worked there till 31.10.2017. While working as Divisional Commercial Manager, the petitioner submitted an application to the 2nd respondent along with a copy to respondents 3 to 5, seeking premature retirement on 9.10.2017 under Rule 1802 (1)(a)(b) and (2) of the Indian Railway Establishment Code. This request was made on the ground that the applicant was under a depressed mental state of mind.

4. It is also to be noted here that he made an application withdrawing his premature retirement application for which two representations dated 4.12.2017 and 20.12.2017 came to be made indicating reasons for withdrawal of premature retirement. His application for premature retirement was accepted by the 2nd respondent and the order of acceptance of premature retirement was also communicated to the petitioner. The main ground was that acceptance of premature retirement by the authorities, does not satisfy the requirement of Rule 1802 (1)(a)(b)



read with note 3 of 1805 of IREC Volume-II and as such it is *non est* in the eye of law. It is thus pleaded that the respondents ought to have rejected his application dated 9.10.2017 for voluntary retirement and MOU dated 31.10.2017 as it is in violation of the law laid down by the Apex Court in ***Vinod Kumar v. State of Haryana and Ors.***¹

5. The request of the petitioner for withdrawing premature retirement application came to be rejected on 9.1.2018 on the ground that a railway servant, who has served notice of retirement under Rule 1802(b) or rule 1803(b)(1) or Rule 1804(b) shall be precluded from withdrawing his election subsequently, except with the specific approval of such authority, provided the request for withdrawal shall be within the intended date of his retirement.

6. Challenging the same, O.A. came to be filed, which was rejected after hearing all concerned. Aggrieved by the same, the present Writ Petition came to be filed under Article 226 of the Constitution of India.

7. The main ground urged by the learned counsel for the petitioner is that in terms of Rule 1802 (1)(a)(b) read with Note 3 of 1805 of IREC Volume-II a railway employee, who attains the age of 50 years in Group-A or Group-B services or 55 years in other cases, may seek retirement prematurely only before attaining the age of 50/55 years, as the case may be. In other words, it is pleaded that an employee, to become eligible for premature retirement should have left with service of 10/5 years at the time of submission of acceptance of premature retirement. In other words, he would plead that after completion of 55 years of age, railway employee cannot invoke Rule 1802 (1)(a)(b) read with Note 3 of 1805 of IREC Volume-II. Since the applicant made the application after completion of 56 years of age, the authorities erred in accepting his

¹ AIR 2014 SC 33



application for premature retirement. It is pleaded that the authorities erred in rejecting the representation of the petitioner on the ground that he should have made the representation within the time i.e., before the date of acceptance of voluntary retirement i.e., 31.10.2017 and the same is again violative of the Rules.

8. On the other hand, counsel appearing for the Railways would contend that the request of the petitioner for seeking voluntary retirement itself indicates that his continuation in the post of Commercial Officer is not desirable as he is not in a position to justify and discharge his duties. Further, the petitioner adjudged himself to be not suitable for Commercial Officer and he has no intention to continue his services in Railways. Hence, he made a request to the competent authority to relax/waive three months notice. Relying upon the said letter, it is alleged that when the petitioner himself is certifying that he is unfit to continue to hold the post of Commercial Officer and when he himself sought for waiver of three months notice, raising the legal issue three months after his request was accepted, cannot be entertained.

9. In order to appreciate the rival contention it will be useful to refer to certain rules. Before referring to said rules it is to be noted that the petitioner made an application seeking premature retirement on 9.10.2017. He sought the authorities to accept his premature retirement with effect from 31.10.2017 waiving three months notice, which is required as per law. These facts are not in dispute. The application of the petitioner for premature retirement came to be accepted on 31.10.2017. Two and half months later, probably after taking the legal opinion and realizing the mistake done by him, he made an application seeking withdrawal of his application for premature retirement, which was rejected. It is also to be noted here that after his application for



premature retirement was accepted on 31.10.2017, representations came to be made two and half months thereafter for withdrawal of his application for premature retirement. Keeping these facts in view, we intend to proceed further.

10. It is not in dispute that the applicant was Group-B Officer of East Coast Railways. He made his application for premature retirement on 9.10.2017 on the ground that his continuance in the post of Commercial Officer is not desirable as he is not in a position to justify his duties and the salary drawn by him. He judged for himself stating that he may not be suitable for holding the post of Commercial Officer and as such does not want to continue in service any more. While referring to Rule 1802(2) and 1802(1) he pleads that the competent authority may relax/waive the condition of three months notice period by allowing him to retire on 31.10.2017. He also sought payment for settlement dues such as pension, DCRG etc., for which he was entitled. The same was approved by the Principal Chief Personnel Officer on 31.10.2017, referring to the waiver sought by him. Long thereafter i.e., on 4.12.2017 he made a representation to the General Manager, East Coast Railway, Bhubaneswar, seeking withdrawal of his premature retirement on the ground that his request dated 9.10.2017 came to be accepted without following the established procedure and hence he is making this request for withdrawal.

11. As observed by us earlier, the same came to be rejected on 9.1.2018 stating that as per the rule position, 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, is 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.

12. Rule 1802 of the Indian Railway Establishment Code reads as under:

“1802. (a) Notwithstanding anything contained in this Rule, the appointing authority shall if is of the opinion that it is in the public interest to do so, have the absolute right to retire any Government servant by giving him notice not less than three months in writing or three months pay and allowance in lieu of such notice :-

(i) If he is in Group-A or Group-B service or post in a substantive or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) In any other case, after he has attained the age of 55 years.

(b) (1) Any railway servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Group-A or Group-B service or post (and had entered Government service before attaining the age of 35 years) and in all other cases after he has attained the age of 55 years:

Provided that it shall be open to the appropriate authority to withhold permission to a railway servant under pension who seeks to retire under this clause.

(2) A railway servant, referred to in sub-rule (1) may make a request in writing to the *appointing authority* to accept a notice of less than three months, giving reasons therefore. On receipt of a request under this sub-rule the *appointing authority* may consider such request for 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 communication of a part of his pension before the expiry of the period of notice of three months.”

13. A reading of the above rule, *inter alia* shows that notwithstanding anything contained in this rule, the appointing authority if it is of the opinion and in public interest, has absolute right to retire any Government servant by giving notice of not less than three months in writing or three months pay and allowance in lieu of such notice, if he is in Group-A or Group-B service or holding the post in a substantive or temporary capacity and had entered Government service on attaining the



age of 35 years, after he has attained the age of 50 years and in any other case, after he has attained the age of 55 years. Clause (b) of Rule 1802 states that any railway servant may by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of 50 years, if he is in Group-A or Group-B service or post and in all other cases after he has attained the age of 55 years. Proviso to the said clause states that it shall be open to the appropriate authority to withhold permission to a railway servant under suspension who seeks to retire under this clause. A reading of Rule 1802 makes it clear that if a person is working in Group-A or Group-B services or in a substantive or temporary capacity, the appointing authority has every power to retire him from service by giving notice of not less than three months or pay in lieu thereof, which as per clause (i) after he attains the age of 50 years and in any other case, after he has attained the age of 55 years. In the instant case, it is not in dispute that the petitioner is in Group-B service and that he is above the age of 55 years on the date of his making request. Keeping this circumstance in background, we shall now refer to Rule 1805 of the Indian Railway Establishment Code, which reads as under :

“1805. (1) If on a review of the case referred to in Rule 1802 (a), 1803 (a) and 1804 (a), either on representation from the railway servant retired prematurely or otherwise, it is decided to reinstate the railway servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement as duty or as leave of the kind due and admissible, including extra-ordinary leave, or by treating it as diesnon depending upon the facts and circumstances of the case:

Provided that the intervening period shall be treated as a period spent on duty for all purposes including pay and allowances, if it is specifically held by the authority ordering reinstatement that the premature retirement was itself not justified in the circumstances of the case, or if the order of premature retirement is set aside by a Court of law.



(2) Where the order of premature retirement is set aside by a Court of law with specific directions in regard to regulation of the period between the date of premature retirement and the date of reinstatement and no further appeal is proposed to be filed, the aforesaid period shall be regulated in accordance with the directions of the Court.

NOTE (1).--Appropriate authority, referred to in these Rules, means the authority which has the power to make substantive appointments to the post or service from which the railway servant is required or wants to retire.

NOTE (2).--'Appointing Authority' means the authority competent to make the first appointment to the grade which the railway servant for the time being holds.

NOTE (3).--The 3 months notice referred to in these rules may be given before the railway servant attains the age specified in Clauses (a) and (b) of Rule 1802 or has completed thirty years of service specified in Clause (a) and (b) (1) of Rule 1803 or has completed thirty years of service specified in clauses (a) and (b) of Rule 1804:

Provided that the retirement takes place after he has attained the relevant age or has completed 30 years service as the case may be.

NOTE (4).--In computing the notice period of three months referred to in Rules 1802 to 1804, date of service of the notice and the date of its expiry shall be excluded.

NOTE (5).--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."

14. A reading of NOTE (5) therein would show 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. In the instant case the request for withdrawal of his premature resignation came to be made after the intended date of his retirement i.e., 31.10.2017. Therefore, in terms of



NOTE (5) of Rule 1805 of Indian Railway Establishment Code, the petitioner is not entitled for any relief. Insofar as giving three months notice is concerned, it is to be noted that the applicant entered into service on 18.5.1993 i.e., before he attained 35 years of age and attained more than 50 years of age at the time of application for premature retirement on 9.10.2017, when he became eligible to seek premature retirement on his own volition.

15. Having regard to the above, the competent authority accepted his notice on premature retirement with effect from 31.10.2017. Further, a reading of his request for premature retirement would indicate that he himself declared to be unfit to continue in the Railways and adjudged himself to be not suitable to hold the post of Commercial Officer and that he is not in a position to continue in service. He further sought relaxation of Rules 1802(2) and 1802(1) and requested to permit/allow him to retire with effect from 31.10.2017. It is not a case where he was forced or coerced to give such a letter. It is also not a case where he was not aware about the legal provision, since his request letter itself refers to all the provisions of law.

16. Hence, we see no grounds to interfere with the order passed by the Tribunal.

17. Accordingly, the Writ Petition is dismissed. No order as to costs.

Consequently, interlocutory applications pending, if any, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

JUSTICE CHEEKATI MANAVENDRANATH ROY



Date : 08.11.2019

Note : L.R. copy to be marked.
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