

UNION OF INDIA AND ORS.

v.

SAYED MUZAFFAR MIR

SEPTEMBER 20, 1994

[KULDIP SINGH AND B.L. HANSARIA, JJ.]

*Service Law :*

*Indian Railway Establishment Code : Articles 1801(d) and 1802(b) Proviso.*

*Voluntary retirement—Notice for—Employee under suspension during notice—Disciplinary proceeding—Removal order passed after expiry of notice period—Held non-est in the eyes of law—Notice of premature retirement does not require acceptance—Acceptance comes into effect on the completion of notice period—Withholding permission to retire or retention in service of employee under suspension requires passing of an order to that effect by competent authority.*

The respondent, a railway employee, gave three months notice on 22.7.1985 for seeking per-mature retirement as visualised by Article 1802(b) of the Indian Railway Establishment Code. The period of notice expired on 21.10.1985. However, in view of the disciplinary proceeding which was then pending against him he was suspended and an order of removal was passed against him on 4.11.1985. The respondent filed an application before the Tribunal seeking declaration that he voluntarily retired from service w.e.f. 22.10.1985 and that all proceedings pending against him as on date were of no consequence. The Tribunal held that the respondent had been rightly found guilty of the charges, but it set aside the order of removal passed by the appellate authority who on appeal being preferred by the respondent had awarded this punishment, instead of dismissal, which was the punishment inflicted by the disciplinary authority. The Tribunal held that the respondent was entitled under the law to seek premature retirement; and, therefore, the order of removal has to be treated as non-est in the eyes of law.

In appeal to this court, it was contended on behalf of the appellant that the right of premature retirement conferred by Article 1802(b) could

A be denied to a railway servant in case he was under suspension at the relevant time; that under Article 1801(d) the competent authority may withhold permission to retire or retain in service a railway servant under suspension.

B Dismissing the appeal, this Court

C HELD :1. The provisions contained in Articles 1802(b) and 1801(d) of Indian Railways Establishment Code would require passing of appropriate order, when the Government servant is under suspension, as was the respondent, either of withholding permission to retire or retaining of the incumbent in service. Despite the right given to the competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. [731-C, H, 732-A]

D 2. Where the Government servant seeks premature retirement, the same does not require any acceptance and comes in-to effect on the completion of the notice period. The period of notice in the present case having expired on 21.10.1985, as the first to order of removal having been passed on 4.11.1985, the Tribunal had rightly come to the conclusion that the order of removal was non-est in the eyes of law. [732-C, D]

E *Dinesh Chandra Sangma v. State of Assam*, [1977] 4 S.C.C. 441 and *B.J. Shelat v. State of Gujarat*, [1978] 2 S.C.C. 202, relied on.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2620 of 1994.

F From the Judgment and Order dated 22.8.91 of the Central Administrative Tribunal, Bombay in O.A. No. 106 of 1987.

Altaf Ahmed, Additional Solicitor General, Hemant Sharma and C.V. Subba Rao for the Appellants

G The Judgment of the Court was delivered by

H HANSARIA, J. The Central Administrative Tribunal, New Bombay Bench, was approached by the respondent seeking two declarations in the main that he voluntarily retired from service with effect from 22.10.1985 and that all proceedings against him pending as on that date were of no consequence. The Tribunal after having applied mind to the charges, which

on inquiry were found established, came to the conclusion that the respondent had been rightly found guilty of the charges, but it set aside the order of removal passed by the appellate authority, who on appeal being preferred by the respondent had awarded this punishment instead of dismissal, which was the punishment inflicted by the disciplinary authority. This order of the Tribunal has been assailed in this appeal.

2. The Tribunal had taken the aforesaid view because the respondent had by a letter dated 22.7.1985 given a three months notice to the Railways to retire from service as visualised by Article 1802(b) of Indian Railways Establishment Code. The period of three months had expired on 21.10.1985 and the order of removal was first passed on 4.11.1985. It was held by the Tribunal that the respondent was entitled under the law to seek premature retirement; and, therefore, the order of removal has to be treated as non-est in the eye of law.

3. The learned Additional Solicitor General, Shri Ahmed appearing for the appellants, has contended that the right of premature retirement conferred by the aforesaid provisions could be denied to a railway servant in case he be under suspension, as was the respondent at the relevant time. This is what finds place in the proviso to the aforesaid provision. The Additional Solicitor General also seeks to place reliance on what has been stated in Article 1801(d) which starts with *non-obstante* clause and states that the competent authority may require a railway servant under suspension to continue his service beyond the date of his retirement in which case he shall not be permitted by that authority to retire from service and shall be retained in service till such time as required by that authority. Relying on these provisions the contention advanced is that though the respondent had sought premature retirement by his letter dated 22.7.1985 and though the three months period had expired on 21.10.1985, the Railways were within the rights not to permit the premature retirement because of the suspension of the respondent at the relevant time, which had come to be ordered in the course of a disciplinary proceeding which was then pending against the respondent.

4. There are two answers to this submission. The first is that both the provisions relied upon by the learned counsel would require, according to us, passing of appropriate order, when the Government servant is under suspension (as was the respondent), either of withholding permission to

- A retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason (s) thereof. May be, for some reason the concerned authority thought that the it would be better to see off the respondent by allowing him to retire.
- B

5. The second aspect of the matter is that it has been held by a three Judge Bench of this Court in *Dinesh Chandra Sangma v. State of Assam*, [1977] 4 SCC 441, which has dealt with a *pari materia* provision finding place in Rule 56(c) of the Fundamental Rules, that where the Government servant seeks premature retirement the same does not require any acceptance and come into effect on the completion of the notice period. This decision was followed by another three Judge Bench in *B.J. Shelat v. State of Gujarat*, [1978] 2 SCC 202.
- C

6. The period of notice in the present case having expired on 21.10.1985, and the first order of removal having been passed on 4.11.1985, we hold that the Tribunal had rightly came to the conclusion that the order of removal was *non-est* in the eyes of law.
- D

7. For the reasons aforesaid, the appeal is dismissed. We, however, make no order as to costs.
- E

T.N.A.

Appeal dismissed.