

**CWP No.6230 of 1997**

Date of Decision: **February 12, 2016**

...Petitioner

versus

## ...Respondents

**CORAM: HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: - Mr.K.S.Sidhu, Advocate for the petitioner.

Mr.Parambir Singh, Advocate for the respondents.

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**HARINDER SINGH SIDHU, J.**

Davinder Singh Randhawa had filed the instant petition raising his grievance for enhanced pension, etc. as also for quashing of orders dated 8.7.1993 and 28.8.1989 (Annexures P-1 and P-2) passed by the respondents. After the filing of this petition he expired on 7.7.1999 and his wife Harbir Kaur was impleaded as his legal representative.

As pleaded in the petition, the facts are that in the year 1956, Davinder Singh Randhawa (herein referred as 'the petitioner') had joined the Railway Protection Force as Sub Inspector. In 1968, he was promoted as Inspector and as Inspector Grade-I in the year 1983. In the year 1984, he was promoted as Assistant Security Commissioner and in the year 1989 he was posted at Ambala Cantt.

On 20.11.1988, he had given three months' notice to the respondents for voluntary retirement, but withdrew the same on

6.2.1989 before expiry of the said period. Despite the withdrawal of his request, he was retired on 12.4.1989 vide order dated 28.8.1989 (Annexure P-2) and pension was worked out on Rs.2800/- as basic pay without benefit of due increment. Later, vide order dated 30.4.1990 (Annexure P-4), his prayer for withdrawal of his request for voluntary retirement was accepted and he was allowed to continue in service till his normal superannuation. Since, no vacancy of ASC at Ambala Division was available, therefore, posting orders of the petitioner remained pending. Vide letter dated 11.9.1990, the petitioner was summoned by the Deputy Director Security, Railways Board and he reported for duty on 20.9.1990. He was directed to join as Assistant Commandant 6 Bn.R.P.F.S. Daya Basti after medical check up. The C.M.O. Baroda House finally completed all the tests and he was declared fit by the Medical Board on 26.9.1990 and he joined at 6Bn.R.P.S.F. Daya Basti on 27.9.1990. On 30.9.1990, the petitioner retired from service on attaining the age of superannuation. In this factual background, the order dated 8.7.1993 (Annexure P-1) was passed regarding treatment of the intervening period from the date of voluntary retirement of the petitioner to the date of his reinstatement i.e. from 12.4.1989 to 26.9.1990 as leave of the kind due and admissible including E.O.L as under:

- “1. From 12.04.89 to 25.10.89 as leave on average pay,*
- 2. From 26.10.89 to 11.06.90 as leave on Half Average Pay.*

*3. Period from 12.06.90 to 26.09.90 as Extra Ordinary Leave.”*

The grievance of the petitioner is that at the time of voluntary retirement, Leave Encashment on the basis of the last pay drawn, already stood paid to him and there was no leave left with him. It is his case that the delay in re-joining the duties occurred due to non-communication of the order of withdrawal of voluntary retirement, which is entirely the fault of the administration, and they cannot derive any benefit from it. It is also the case of the petitioner that his efficiency bar was due in the year 1988 and no order for withholding the Efficiency Bar or allowing the same was ever passed, therefore, the increments for the years 1988, 1989 and 1990 were also not given to him. Since from the date of his superannuation, the petitioner has been representing again and again to the respondents for getting the above benefits and re-fixation of his pension, but no relief has been granted to him. Even the Divisional Security Commissioner – respondent No.4 vide letter dated 10.2.1995 (Annexure P-9) wrote to the Chief Security Commissioner – respondent No.3 for release of the Efficiency Bar, increments and re-fixation of the pension of the petitioner, but no action has been taken.

Hence, the present writ petition.

Upon notice, joint written statement was filed by respondents No.3 and 4 stating that voluntary retirement notice dated 20.11.1988 submitted by the petitioner was sent to Headquarters office for further necessary action as in the Ambala

Division, there was no competent authority to accept the voluntary retirement of a Gazetted Officer of Railway Protection Force. On 6.2.1989, after a lapse of 2 months and 16 days, the petitioner submitted a request for withdrawal of voluntary retirement notice, which was also forwarded to the Headquarters for necessary action. It is stated that in the meantime, his voluntary retirement had been accepted by the competent authority i.e., General Manager as per letter dated 5.4.1989 (Annexure R-1) and vide order dated 12.4.1989 (Annexure R-2), the petitioner was voluntary retired. It is also the case of the respondents that the petitioner knew that his voluntary retirement notice would be accepted by the Headquarters Office, Baroda House, New Delhi. He also filled up all relevant papers for the grant of pension, DCRG, etc. Accordingly, after his voluntary retirement, the settlement of dues were arranged. If he did not intend to retire from service, he would not have filled up the pension papers and would have waited for the decision of his notice for withdrawal of voluntary retirement. Vide letter dated 8.2.1990, the Railway Board communicated to the Chief Security Officer – respondent No.4 that in view of the withdrawal of the request for voluntary retirement, the petitioner should be continued in service till his normal superannuation. Accordingly, notice dated 21.3.1990 (Annexure R-4) was sent to the petitioner, and other concerned authorities that his voluntary retirement is treated as withdrawn and he may be continued in service till his normal superannuation. The date of resumption of duties by him were

required to be communicated immediately. The petitioner however did not report for duty. Instead he sent representation dated 17.4.1990 (Annexure R-5) stating that he did not receive the order to join his duty and requested that a copy of the order be sent to him. Immediately, thereafter, copy of the order dated 17.4.1990 and his posting order were sent to him vide communication dated 26.4.1990 (Annexure R-6). But still, the petitioner did not report for duty taking the plea that orders for joining duty were not received by him. It is the case of the respondents that this act of the petitioner clearly reflects that he intentionally avoided to receive the orders as well as to report for duty. He finally reported for duty on 27.9.1990 and retired on 30.9.1990 on attaining the age of 58 years.

Regarding the plea of the petitioner that he has already exhausted all the leaves by virtue of Leave Encashment on account of his voluntary retirement, it is stated that in para 2 of the order dated 8.7.1993 it is clearly mentioned that the final settlement to the petitioner may be made after adjusting the payment i.e. Pension, Gratuity, Commuted Value, etc. made on 28.08.1989. It is stated that since the entire intervening period was treated as leave, the final settlement was to be done after taking into account the payment due and already paid to the petitioner. In case excess payment was made, the same had to be recovered.

Regarding the grievance of Efficiency Bar and the increments, the written statement mentions that in fact, his E.B. test was due in 1988. His pay in July, 1987 was Rs.2650/- which was

raised to Rs.2725/- in August, 1987. In August, 1988, his pay was raised to Rs.2800/-. Therefore, his E.B. became due in August, 1989 instead of 1988, but before that he stood voluntarily retired on 12.04.1989. It is also denied that his pay in 1990 would be Rs.3100/-. It is further stated that the petitioner had voluntarily retired on 12.4.1989 and dues have already been paid to him i.e. P.F., Leave Encashment, GIS, DCRG and commutation of pension, etc. at his last pay for Rs.2800/-. Since his withdrawal of voluntary retirement notice has been accepted by the Competent Authority and the intervening period has been regularised as kind of leave due, therefore, his pay is being revised from Rs.2800/- to Rs.2900/- w.e.f. 1.8.1989, which too after clearing his E.B. Test but his revised pay @ Rs.2900/- shall be charged on the day he resumed his duty i.e. 27.9.1990, as per Rules. It is mentioned that the increment cannot be drawn during leave and shall be drawn only when employee resumed duty after availing leave. As such, his pay shall be fixed at Rs.2900/- on 27.9.1990. It could not be revised earlier as the petitioner stood retired from service on his request on 12.4.1989. As regards his next increment from Rs.2900/- to Rs.3000/- from 1.8.1990, this could not be sanctioned as the period from 12.6.1990 to 26.9.1990 has been regularised as extra-ordinary leave (Leave without pay) and his next increment would be due from 15.11.1990 (i.e. after 3 months and 14 days) after the date of retirement on attaining the age of superannuation (58 years). It is accordingly stated that he was not entitled to increment from

1.8.1990. Regarding the final settlement of dues, it is stated that at the time of re-joining, the petitioner did not deposit any amount which was already paid to him on his voluntary retirement.

I have heard Ld. Counsel for the parties and gone through the paper-book.

On the petitioner's request he was voluntarily retired on 12.4.1989. However, taking note of the fact that before acceptance of his request for voluntary retirement, he had already withdrawn that request, vide order 8.2.1990 his voluntary retirement request was ordered to be treated as withdrawn and he was permitted to continue in service till normal age of superannuation. This order was sent to him as also the concerned officials vide letter dated 21.3.1990 with the request that the date of resumption of duty be intimated to the office immediately. On his complaint dated 17.4.1990 that he had not received the order permitting him to continue in service till superannuation, he was once again sent the order vide communication dated 26.4.1990. Despite that, instead of immediately reporting for duty he did so only on 27.9.1990, i.e., only three days before his age of superannuation on 30.9.1990. This sequence reveals that despite acceptance of his request, the petitioner was not keen on rejoining duty. He was clearly aware of the passing of the order dated 8.2.1990 accepting his request for withdrawal of resignation as is clearly evidenced from his letter dated 17.4.1990 (Annexure R-5) wherein he states that the order has not been received by him and requested that it be sent to him.

He was a senior official and surely he was aware of his impending date of superannuation. He should have re-joined duties at the earliest after the passing of the order. In any case the order was again sent to him on 26.4.1990, yet he still waited till the very end. There is nothing on record to indicate that he had requested or reported for joining earlier, but was refused by the respondents for any reason. This clearly indicates that he was remiss in joining and the respondents cannot be fastened with any liability on this account.

Ld. Counsel for the petitioner has not referred to any statutory provision applicable to the petitioner as per which for the intervening period between his voluntary retirement and rejoining i.e., 12.4.1989 to 27.9.1990, he should have been treated to be on duty or in any manner different from that regularised vide impugned order dated 8.7.1993. (Annexure P-1). He has also not been able to refer to any provision whereby the petitioner would be entitled to increments for this intervening period.

In the absence of that I do not find any illegality in the impugned orders.

Accordingly the writ petition is dismissed.

It is, however, clarified, that if consequent on the settlement of dues as per the order dated 8.7.1993 (Annexure P-1), any amount becomes recoverable from the petitioner, the same be not recovered.

**February 12, 2016**

**(HARINDER SINGH SIDHU)**  
**JUDGE**