

In The High Court Of Judicature At Allahabad
Sitting At Lucknow

Court No. - 1

Case :- WRIT - A No. - 1940 of 2025

Petitioner :- U.O.I. Thru. General Manager North Eastern Railway
And 2 Others

Respondent :- Dharmendra Kumar Sahu

Counsel for Petitioner :- Ajit Kumar Dwivedi

Hon'ble Attau Rahman Masoodi J.

Hon'ble Subhash Vidyarthi J.

1. Heard Shri S. B. Pandey, the learned Deputy Solicitor General of India assisted by Shri Ajit Kumar Dwivedi, the learned counsel for the petitioners and Shri Amit Verma, the learned Counsel for the respondent.
2. By means of the instant Writ Petition filed under Article 226 of the Constitution of India, the petitioners have assailed validity of the order dated 04.08.2023 passed by the learned Central Administrative Tribunal, Lucknow in O.A. No.332/00254/2021. The petitioners had filed Review Application No. 332/00006/2024 for review of the judgment and order dated 04.08.2023, which application has been rejected by means of an order dated 05.07.2024. Thereafter, the petitioners filed an application for recall of the order dated 05.07.2024, which too has been rejected by means of an order dated 10.01.2025. The petitioners have challenged the validity of all the aforesaid orders by means of this Writ Petition.
3. The respondent had filed an application seeking voluntary retirement due to health issues. When no orders were passed on that application, he had filed the aforesaid original application seeking a direction to the authorities to take an appropriate decision on his application seeking voluntary retirement.
4. In paragraph 4.2 of the original application, the opposite party has specifically pleaded that he has completed more than 22 years of

service. The petitioners have filed a counter affidavit before the Tribunal wherein they admitted the aforesaid plea taken by the opposite party in his original application. It was stated in the counter affidavit that the respondent had been awarded two minor punishments vide order dated 19.02.2020. The first punishment of stoppage of an annual increment for one year got completed on 30.06.2021 and the second punishment of stoppage of annual increment for one year and two months got completed on 30.08.2020, due to which his application for voluntary retirement could not be considered and it does not deserve to be accepted.

5. The Tribunal allowed the original application and directed the petitioners to allow the request of the opposite party for grant of voluntary retirement on expiry of statutory period of 90 days with effect from 06.03.2021 and to pay him all retiral dues.
6. A review application filed by the petitioners was also rejected.
7. Thereafter the petitioners filed an application for recall of the order dated 05.07.2024, wherein they raised this plea for the first time that the opposite party has not completed 22 years of qualifying service, which is a prerequisite for accepting the request for voluntary retirement as per the provisions contained in Clause 11.1 of the master circular.
8. The learned D.S.G.I. has submitted that the petitioner has remained unauthorizedly absent from service for a considerably long period of time and the effective service rendered by him is of 18 years 5 months and 24 days only. The period during which the opposite party remained unauthorizedly absent from duty cannot be treated as a period during which he was in service. He has next submitted that an Office Memorandum dated 26.02.2010 issued by the Government of India makes a mention of some orders issued by the Comptroller and Auditor General, which reads as under: -

“5. The consequences and procedure to be followed in respect of an officer who is absent from duty without any authority has been brought out under FR 17(1) and 17-A. As per FR 17-A(iii)

without prejudice to the provisions of rule 27 of the Central Civil Services (Pension) Rules, 1972, remaining absent without any authority or deserting the post, shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in department examinations, for which a minimum period of continuous service is required.

6. Comptroller and Auditor General have issued orders that the period of absence not covered by grant of leave shall have to be treated as “dies non” for all purposes, viz., increment, leave and pension. Such absence without leave where it stands singly and not in continuation of any authorized leave of absence will constitute an interruption of service for the purpose of pension and unless the pension sanctioning authority exercises its powers under Article 421, Civil Service Regulations [now Rule 27 of the CCS (pension) rules] to treat the period as leave without allowance, the entire past service will stand forfeited.”

9. Clause 5 of the Office Memorandum dated 26.02.2010 provides that remaining absent without any authority or deserting the post, shall be deemed to cause an interruption or break in the service of the employee, unless otherwise decided by the competent authority **for the purpose of leave travel concession, quasi-permanency and eligibility for appearing in department examinations**, for which a minimum period of continuous service is required.
10. Clause 6 of the Office Memorandum dated 26.02.2010 specifically mentions that the period of absence not covered by grant of leave shall have to be treated as “dies non” for all purposes, **viz., increment, leave and pension.**
11. Clause 5 and 6 of the Office Memorandum dated 26.02.2010 do not make any mention of voluntary retirement and, therefore, the provisions of this Office Memorandum are not relevant for deciding the requests for voluntary retirement.
12. When Clause 11.1 of the master circular specifically mentions about the period of 20 years of qualifying service as also service, which implies service other than qualifying service and when the petitioners did not controvert the specific plea of the opposite party that he had completed more than 22 years of service, this Court finds no reason to

take a view different from the view taken by the Tribunal by issuing a direction to the petitioners to allow the opposite party's request for voluntary retirement.

13. From time to time the Railway Board issues Master Circulars, which are consolidated instructions of the Railway Board on the subject matters. The Railway Board issues these consolidated instructions as Master Circular for information and guidance of all concerned.
14. Master Circular No. 35 issued by the Railway Board contains provisions regarding Retirements and Part D of this Circular deals with Voluntary Retirements. Clause 11 of his Master Circular deals with Voluntary Retirements and the relevant part thereof is being quoted below: -

*“11. Based on the recommendations of the Administrative Reforms Commission, the scheme of voluntary retirement of Railway Servants **after they have rendered Twenty Years of qualifying service / service**, on proportionate pension and gratuity/proportionate SC to PF, **with a weightage upto a maximum of five years towards qualifying service / service** has been introduced with effect from 9.11.77. Under this scheme, which is purely voluntary, the initiative rests with the Railway servant and the Govt. does not have the reciprocal right to order on its own retirement of Railway servants.*

(Ref: Board's letter No. E(P&A)I-77/RT-46 dated 9.11.1977)

Period of notice to be given

*11.1 A Railway servant desirous of retiring voluntarily **after twenty years of qualifying service / service** should give a notice of three months in writing to the appointing authority. **A notice of less than three months may also be accepted by the appointing authority in deserving cases.** Before serving the notice of voluntary retirement, a Railway servant should satisfy himself by means of a reference to the appropriate administrative authority that he has completed twenty years of service qualifying for pension/ service of twenty years for purposes of Special Contribution to Provident Fund, as the case may be.*

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11.3. Where proceedings under the Railway Servants (D&A) Rules are pending or contemplated as for a major penalty against the Railway servant who has given notice of voluntary retirement and the disciplinary authority, having regard to the

Circumstances of the case, is of the view that the penalty of removal or dismissal from service would be warranted in the case or in cases where prosecution is contemplated against the railway servant concerned or may have been launched in a Court of law acceptance of the notice would require the approval of the Minister in charge in regard to Group 'A' & 'B' railway servants and that of the General Manager in the cases of Group 'C' & 'D' railway servants. Therefore, in the cases of Group 'A' & 'B' officers, the General Manager, while making a reference to the Railway Board for advice, should indicate whether departmental/ vigilance/ SPE investigations or consequential DAR proceedings are pending or contemplated against the officers concerned for the imposition of a major penalty and whether removal or dismissal from service would be warranted in the case(s). (Ref: Board's letters No. E(P&A)I-77/RT-46 dated 9.11.1977 & 26.5.1980)

11.4 A railway servant giving notice of voluntary retirement the acceptance of which requires appointing authority's approval, may presume acceptance of the notice and the retirement shall be effective in terms of the notice, unless the competent authority issues an order to the contrary, before the expiry of the period of notice. (Ref: Board's letter No. E(P&A)I-77/RT-46 dated 9.11.1977)

15. The use of the expression '**service**' only in Clauses 11.1 and 11.2 of the Master Circular, after using the phrase '**qualifying service**' makes the intention of the Railway Board manifest that even 'service' other than 'qualifying service' will also be taken into consideration while considering a request for grant of voluntary retirement.
16. As per Clause 11.3 and 11.2 of the Master Circular, a request for voluntary retirement can be entertained even where proceedings for a major penalty against the railway servant are pending and the disciplinary authority is of the view that the penalty of removal or dismissal from service would be warranted in the case or even in cases where prosecution is contemplated or has been launched against the railway servant. The only rider in such a condition is that it would require the approval of the Minister in charge in regard to Group 'A' & 'B' railway servants and that of the General Manager in the cases of Group 'C' & 'D' railway servants. The acceptance of a request for voluntary retirement shall be presumed and the retirement shall be

effective in terms of the notice, unless the competent authority issues an order to the contrary, before the expiry of the period of notice.

17. The Master Circular No. 35 does not provide that the request of voluntary retirement of a person who has been awarded a minor punishment, cannot be accepted.
18. The respondent has sought voluntary retirement on the ground that he is not keeping good health. Previously, two charge-sheets were issued to him for his unauthorized absence from duty. On 18.02.2020, two separate punishment orders were passed for negligence in performance of duties. One order imposed the punishment of withholding of increment for one year without cumulative effect and the other order punished him with withholding of increment for one year and 2 months without cumulative effect. Apparently, the respondent has already been punished for his unauthorized absence from duty and that punishment does not provided that the periods during which the opposite party remained absent, shall not be counted in his service or that he shall not be paid salary for those periods. In these circumstances, no other adverse consequence will follow due to the respondent's absence for the aforesaid period.
19. In view of the foregoing discussion, we are of the considered opinion that there is no illegality in the impugned orders passed by the Central Administrative Tribunal allowing the original application filed by the respondent. The Writ Petition lacks merit and the same is hereby **dismissed** at the admission stage.

(Subhash Vidyarthi J.) (A. R. Masoodi J.)

Order Date: 17.02.2025

-Amit K-