

WPA 9642 of 2025

Smt. Tara Rani Majhi & Anr.
VS.
Union of India & Ors.

Mr. Mahadev Ghosh
Ms. Shikha P. Chowdhury
Mr. Arun Kumar Paul
..... for the petitioners

Mr. Brojesh Jha
Mr. Kushi Prasun Chatterjee
..... for the UOI

1. The second report as sought for by this Hon'ble Court in its order dated April 22, 2026 has been filed and is taken on record.
2. The petitioners are aggrieved that the petitioner no. 2 has not been considered for compassionate appointment after the death of his father sometime in January, 2020. Petitioner no. 2 applied for compassionate appointment on September 26, 2020.
3. As it appears from the records, that issue of compassionate appointment was questioned by the authorities on the ground that father of the petitioner no. 2 had taken voluntary retirement from his service, during his lifetime and, therefore, could not be construed as "died-in-harness", on account whereof the petitioner no. 2 is not entitled to be considered for compassionate appointment.

4. The issue of voluntary retirement of the employee, father of the petitioner no. 2, dates back to sometime in April, 2019. Voluntary retirement was sought for by the employee as he was physically not in a condition to continue with his service. The said application for voluntary retirement was considered and accepted, according to the authorities, without, however, intimating the same to the father of the petitioner no. 2.

5. Thus, within a few days and certainly within the notice period of three months, father of the petitioner no. 2 made an application for withdrawing his application for voluntary retirement, which was, however, refused.

6. The issues to be considered before passing any orders or directions in this writ petition are as under:

(a) Whether father of the petitioner no. 2, the employee, Sunil Chandra Majhi, had withdrawn his application for voluntary retirement and whether the same had been accepted or not?

(b) Whether after giving a letter for voluntary retirement, a person is entitled to withdraw the same?

7. In so far as the first issue is concerned, there are two parts to it. The application for voluntary retirement can be made and it is for the authorities

to accept or reject the same. The entire gamut of voluntary retirement, other than parameters set forth, stipulates a notice period of three months in writing. The period of notice of three months is stipulated in Clause 11.1 of Master Circular No. 35 updated in September, 2019, issued by the Government of India, Ministry of Railways, Railway Board.

8. Within this notice period, the parties are at liberty to take any further steps, as may be advised. The same appears from a perusal of Clause 11.5 and 11.6. Clause 11.5 makes it clear that upon accepting the notice of voluntary retirement, which may (acceptance) also happen as a presumption under Clause 11.4, certain other steps have to be taken by the authorities as stipulated in Clause 11.5(i) to (ix). In fact, Clause 11.5(ii) is very clear and unequivocal. Thus, acceptance is not mere acceptance by the authorities but acceptance stipulates certain consequential steps.

9. In so far as Clause 11.6 is concerned, it gives a specific right to an incumbent seeking voluntary retirement, to withdraw the same within the notice period of three months. Thus, an employee seeking voluntary retirement, who has given such a letter for voluntary retirement, may within the notice period

of three months seek to withdraw such letter of voluntary retirement.

10. In the event a letter for withdrawal of voluntary retirement has been given by the employee, the authorities are mandated under Rule 11.7 to consider the request. For the purpose of better understanding Rule 11.7 is set out hereunder :

“The competent authority should consider the request for withdrawal of the notice for voluntary retirement in a reasonable and rational manner and refuse such a request only if there are valid reasons for doing so which should be recorded by way of a speaking order.

(Ref. Board’s letter No. E(P & A)/I-2000/RT-9 dated 27.03.2001 (RBE No. 64/2001) & 05.11.2001 (RBE No. 217/2001).”

11. This Rule clearly stipulates that the competent authority should consider the request for withdrawal of the notice for voluntary retirement: (a) in reasonable and rational manner; (b) refuse such request only if there are valid reasons for doing so; (c) such reasons should be recorded by way of a speaking order.

12. It is in this backdrop that the instant case has to be considered. The application of the father of the petitioner no. 2 for voluntary retirement was made on April 12, 2019. The notice period of three months, thus, expired on July 11, 2019.

13. The said employee submitted his application by way of a letter for withdrawal of the voluntary retirement on April 29, 2019.

14. The employee expired on January 3, 2020. Application for voluntary retirement was found to be justified and accepted on April, 25, 2019. On receipt of the application for voluntary retirement, the concerned authority by an endorsement in a note-sheet dated May 28, 2019 reported that the medical condition of the father of the petitioner no. 2 will affect his efficiency in performing duties. On account thereof, his application for withdrawal of the voluntary retirement was not accepted. It is this hand-written order which found support by a formal order dated May 30, 2019.

15. The order speaks of the medical condition of the petitioner no. 2, though there is no medical report on record to show that such medical review of the health of the father of the petitioner no. 2 had been caused by the authorities which prompted them to hold that the health of the father of the petitioner no. 2 was such that it cannot permit him to discharge his duties in a proper manner. The finding in the order of May 30, 2019 is clearly *de hors* the provisions of Rule 11.7.

16. This order was communicated to the father of the petitioner on March 3, 2020, at his residence, when he had already expired on January 3, 2020.

17. Thus, the facts as aforesaid would result in the following conclusions :

(i) Father of the petitioner no. 2 after serving the Railways for a considerable period of time had tendered an application seeking voluntary retirement/resignation on medical ground;

(ii) After having submitted his application for voluntary retirement, father of the petitioner no. 2, within the notice period of three months, made an application for withdrawal of such plea of voluntary retirement.

(iii) The plea of voluntary retirement may or may not have been accepted, but was never communicated to the father of the petitioner no. 2. Even without a communication, there is a presumption of acceptance.

(iv) Even if it is presumed that the father of the petitioner no. 2 had notice of the authorities refusal to withdraw his plea of voluntary retirement, the consequential steps as stipulated in Clause 11.5(ii) viz. a clear certificate, duly vetted by the FA and CAO should be enclosed has not been given.

(v)Refusal to permit the father of the petitioner no. 2 to withdraw the plea of voluntary retirement was made on grounds which may not be accepted, but was communicated on March 3, 2020, two months after the death of the employee.

(vi)Thus, on the date of his death on January 3, 2020, the father of the petitioner no. 2 was in service, as the consequential steps relating to his voluntary retirement had not been taken. Additionally, there was no intimation to him as on the date of his death that his plea for withdrawal of his voluntary retirement had been rejected.

18. In the circumstances aforestated, it cannot be said that the employee had already retired or resigned and was not in service on the date of his death. Clearly the father of the petitioner no. 2 died-in-harness and should be treated as such.

19. The application of the petitioner no. 2 for compassionate appointment made sometime in September 26, 2020, as the notice for the refusal of withdrawing of voluntary retirement was served only on March 3, 2020 has been rejected by way of a speaking order on July 15, 2023.

20. In view of the observations and findings aforestated, the impugned order dated July 15, 2023 is set aside. The concerned authorities will consider the applications of the petitioner no. 2 dated

September 26, 2020 and May 5, 2021 within a period twelve weeks from the date.

21. With the aforestated directions, the writ petition is disposed of.

22. There will be no order as to costs.

23. Urgent photostat certified copy of the order, if applied for, be given to the parties upon usual undertakings.

(Reetobroto Kumar Mitra, J.)