

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No. 3341 of 2002

New Delhi, this the 6th day of January, 2004

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

Shri F.S. Virdi

C/o Shri S.D. Virdi

Sector 8/1096,

R.K. Puram,

New Delhi.

....Applicant

By Advocate: Shri Amit Anand.

Versus

1. Union of India
Through Secretary,
Ministry of External Affairs,
Government of India,
New Delhi.

2. Joint Secretary (AD)
Ministry of External Affairs,
Government of India,
New Delhi. Respondents

By Advocate: Shri Desh Raj.

ORDER

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant has filed this OA assailing order dated 1.1.2002 whereby the respondents are alleged to have stated that the matter has been reexamined in view of the Tribunal's directions dated 6.12.2001 and they are sending to the applicant order dated 5.10.2001 passed by the respondents which was also produced during the contempt proceedings before the Hon'ble Tribunal.

2. The applicant alleges that the respondents have not acted in compliance of the order and failed to consider the case of the applicant in view of the principle of Similar situated Persons and failed to satisfy the order dated 17.8.1976 which was passed by the respondents arbitrarily and without following the

Kr

②

.2.

principles of natural justice.

3. Facts in brief are that the applicant was working under the Ministry of External Affairs as an Assistant. Last posting of the applicant was in London though the applicant was liable to be transferred after 3 years. However, he was kept for further period of 6-7 months because in the meantime his two sons had entered in their middle of academic session of their school.

4. It is further stated that the applicant received a memo dated 12.3.1974 whereby he was informed that his substitute has been selected and he was advised to get ready for transfer. The applicant made a request for issue of ordinary passports of their children so that they may remain in London. Applicant also expressed his inability to proceeding to Headquarters before 1st of July because his sons was in the middle of their academic session.

5. Applicant had been making various applications but he says that he did not receive any reply thereof. However, he was relieved from the High Commission on 29.5.74. The applicant then made an application for ex-India leave and also states to have given the address of the house which was allotted to him by the Government but since the request for grant of ordinary passports was not accepted so applicant made an application on 1.9.1974 and gave three months' notice for premature voluntary retirement and had given his correspondence address that of London but no reply was received.

fu

6. . . . It is further stated that to the utter surprise of the applicant the respondents sent a letter dated 17.8.76 referring the applicant as retired Assistant and in the above said order he was served with a penalty of withholding of his entire pensionary benefits normally admissible to him. The respondents have conducted an ex-parte departmental enquiry but they had not made any efforts to contact applicant and conducted enquiry at his back. The applicant made an appeal dated 30.10.1978 denying him pension but the respondents after taking into consideration his representation passed an order dated 22.5.1979 modifying the penalty order dated 17.8.1976 and applicant was granted death-cum-retirement gratuity.

7. Applicant kept on making representations but respondents sent a letter dated 21.3.1983 simply stating that the procedure leading to the issuance of the order dated 17.8.76 and 22.5.1979 has been followed properly and his appeal has been rightly rejected but the applicant alleges that the same did not give any reason for rejection.

8. The applicant again made a representation to the Prime Minister and External Affairs Minister on 13.4.200. Applicant was informed that the respondents have re-examined the matter further. The respondents did not give any reply and thus the applicant filed an OA on 18.11.2001. The Tribunal vide its order dated 6.12.2001 directed the respondents to reconsider the matter and review the same but the respondents did not give any

ku

reply though a contempt petition was filed but his review application has been considered and rejected by a bald order so CP was dismissed and liberty was given to file a fresh OA.

9. To challenge the order in question the applicant has taken the grounds that the respondents had acted in a most arbitrarily and illegal manner. The disciplinary authority had concluded that it was not reasonably practicable to hold the enquiry and only then it should be proceeded ex-parte against the applicant but in the case of the applicant as he had given his address, so non ex-parte enquiry should have been held.

10. It is further stated that Rule 9 of the CCS (Pension) Rules is not attracted in the case of the applicant.

11. It is further stated that when the applicant had submitted his notice for voluntary retirement on 1.9.1974, no reply was given and if the notice was given to the department then the department could have started the departmental proceedings at that time itself but the respondents failed to do so and held a belated enquiry after 2 years which has seriously prejudiced the case of the applicant so it is prayed that the orders dated 5.1.2001 and 17.8.76 be quashed and set aside.

ku

12. The respondents are contesting the OA. The respondents pleaded that the case of applicant is barred by time. It was reconsidered in the year 1986 and the applicant was duly informed of the position after reconsideration in the year 2001-2002.

13. It is further submitted that application can be made to the Hon'ble President within 6 months of the order represented against and records are retained by the Ministry for 3 years after which the case is closed. Since the case was closed in 1986 and the same was reopened by making a frivolous representation and consequently applications before this Hon'ble Tribunal were filed, so the entire records of the case has already been weeded out, therefore, the present application is not maintainable.

14. It is further submitted that the applicant instead of returning to the Headquarters applied for 32 days ex-India leave on the grounds of academic session of his son which he had made after he has been relieved from the High Commission of India, therefore, grant of ex-India leave could not be accepted and the same was communicated to the applicant.

15. The communication to the applicant was sent with the remarks from the U.K Postal authorities that no response - return it to the sender. Thereafter the department received a notice of voluntary retirement and as per Rule 56 the applicant retired on 22.12.1974 on expiry of 3 months notice of voluntary retirement and since the applicant was not available at his latest known

h

AP

.6.

address so it was not possible to conduct a formal enquiry as such charge-sheet was not served because of non-availability of his correct address so it was not reasonably practicable to hold an enquiry under Rule 14 and 15 of the CCS (CCA) Rules. Therefore, the respondents, Ministry of External Affairs passed order dated 17.8.76 in consultation with the UPSC holding the applicant guilty of the grave misconduct of wilful absence from duty and also for deliberate disobedience of the Ministry's order.

16. The applicant represented against the order for reconsideration of the order but the respondents intimated their decision vide order dated 21.3.83.

17. The case of the applicant was again considered in 1986 but rejected vide vigilance unit and then again after a lapse of 14 years the applicant made a representation to the Prime Minister and External Affairs Minister and was informed of the decision vide order dated 5.10.2001. Thereafter the applicant filed a petition before the Tribunal wherein directions were given to the respondents to reconsider his case in the light of the representation dated 13.7.2001. Representation by the applicant was filed after 13.7.2001 which is nothing but a reminder to the Joint Secretary (Admn). Matter was again reconsidered and the applicant was informed that the decision has already been taken on 5.10.2001, thus it is submitted that the OA has no merits and the has to be dismissed.

ku

18. We have heard the learned counsel for the parties and gone through the record.

19. The main contention raised by the respondents is that the order has been passed by respondents in the year 1976. It is in fact that order which is under challenge so the OA is barred by time. The orders passed on repeated representations do not extend the time period for challenging the order dated 17.8.76. The order dated 17.8.76 is a quasi judicial order passed under Rule 9 of the CCS (Pension) Rules. The applicant if at all had to challenge the same then he had to challenge the same within the prescribe period or by filing a memorial to the President within 6 months and as the same has not been done so he cannot agitate it now. Moreover he has been writing to the Ministry which has been considered by the department and thereafter orders were passed as such applicant cannot claim that his case has not been considered in accordance with Rule 9.

20. In reply to this the counsel for the applicant submitted that no limitation applies if the impugned order is void ab initio and in support of his contention he has also referred to a judgment reported in 1998 (1) ALSLJ (CAT) 209, i.e., Ravindra Shankarrao Taleker Vs. U.O.I. & Others.

21. However, on this point we have asked the applicant to show as to how the order dated 17.6.76 is void ab initio. The learned counsel for the applicant pointed out that since no charge-sheet was issued during the period when the applicant was in service so no

h

22

.8.

proceedings could have been initiated under Rule 9 after the deemed retirement of applicant. In support of this the learned counsel for the applicant has referred to the order in question and submitted that in the order itself the applicant is being referred as a retired employee so no proceedings could have been initiated under Rule 9 of the CCS (Pension) Rules.

22. As far this aspect is concerned, we may mention that Rule 9 of the CCS (Pension) Rules confers power on the President to withhold or withdraw a pension. It provides that the President can withhold or withdraw whether permanently or for a specified period and if ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government if any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement.

23. It is further provided that the UPSC shall be consulted before any final order is passed.

24. Rule (2)(a) of Rule 9 provides that the departmental proceedings should be instituted while the employee was in service but section (2)(b) provided that the departmental proceedings if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment shall not be instituted save with the sanction of the President, so it is to be seen whether the requisite sanction of the President has been taken before instituting the

ku



proceedings under Rule 9 of the CCS (Pension) Rules. In this regard we may refer to the impugned order dated 17.8.76 which in its opening para mention that in exercise of power under sub-clause (1) of Rule (2) of Rule 9 of the CCS (Pension) Rules institution of departmental proceedings had been sanctioned by the President. Thus we find that the applicant fails to prove that the proceedings have been instituted without valid sanction of the President and it cannot be said that the order passed by the President was void ab initio.

25. If an employee is aggrieved by an order passed in exercise of quasi judicial powers the remedy is only a legal one and the order dated 17.8.76 is a final order passed by the department. The applicant had a remedy to file any memorial within a period of 6 months to the President of India and if the order is not challenged in a competent court of law then the order becomes final.


26. We may also mention that the order itself makes it clear that before passing the order the UPSC has also been consulted as required under Rule 9 of the CCS (Pension) Rules.

27. Since no judicial course was taken by the applicant to challenge the order passed on 17.8.76 so by making representation one after another that does not extend the time limit and thus we are of the considered opinion that in this case no interference is called for.

20

.10.

28. In view of the above, OA has no merits and the same is dismissed. No costs.


(SARWESHWAR JHA)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

Rakesh