15

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.758 of 2002

New Delhi, this the 18 day of ~~March~~ April, 2003

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

Dr.S.K. Gogia
C/o Shri R.K. Dara
Flat No.179,
Karishma Apartments,
Patpar Gunj,
East Delhi. -APPLICANTS

(By Advocate: Shri Ajay Kumar Bhat)

Versus

1. Council of Scientific and Industrial Research through Director General, CSIR, Anusandhan Bhawan, Rafi Marg, NEW Delhi.

2. Regional Research Laboratory, (Council of SCientific and Industrial Research) Bhubaneswar through its Director, Shachivalaya Road, Bhubaneshwar, Orissa. - RESPONDENTS

(By Advocate: Shri C.D. Singh)

O R D E R

By Hon'ble Mr.Kuldip Singh,Member(Judl)

The applicant in this case has impugned an order dated 30.3.99 vide which his resignation from the post of Scientist has been accepted w.e.f. 24.12.1997 subject to refund of salary paid to him during the period of sabbatical leave from 19.12.1996 to 18.12.1997.

2. Facts in brief are that the applicant was working as Scientist in the Regional Research Laboratory under Council of Scientific and Industrial Research (in short referred to as CSIR) Bhubaneswar. The applicant had rendered almost service of about 12 years when he applied for sabbatical leave for one year from 18.12.1996 to

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16

17.12.1997 so as to enable him to carry out research and development work in a Cobalt Project being carried out by a company known as M/s Rubamin Limited situated at Baroda. The said leave was granted to him and the applicant thereafter proceeded to join M/s. Rubamin Limited at Baroda. During one year of Sabbatical leave the applicant worked there but after the expiry of the leave the applicant felt that the project had reached on such a stage that had he left the project his entire efforts would have come to naught. The applicant asked for extension of leave which was not allowed.

3. It appears that the applicant joined for few days and again left for Baroda from where he applied for medical leave which was rejected as the same was found to be in order as the Medical Certificate was not issued by any authrised medical attendant.

4. The applicant thereafter submitted his resignation which was accepted vide impugned order dated 20.3.99 wherein it was mentioned that the resignation of the applicant was accepted subject to refund of salary paid to him during the period of sabbatical leave from 19.12.1996 to 18.12.1997 and production of No Demand Certificate from the all concerned of the laboratory that nothing was outstanding against him.

5. The applicant submits that putting up this condition of refund of salary during the period of sabbatical leave is illegal and even if there is any such rule for refund

of salary the same is unfair and ultra vires. Therefore, the applicant reserves his right to challenge the rule.

6. The applicant further submitted that he was allowed sabbatical leave on the sole condition that he was to work at M/s. Rubamin Limited Baroda for one year and was not to take up any commercial employment during this period and he had given an undertaking to that effect only but there was not condition that in case he resigns he would have to refund the salary.

7. In the alternative it is also pleaded that the applicant should be deemed to be in employment of respondent No.2 because there was no unconditional acceptance of the request of the applicant to relieve him from service. The act of relieving of applicant from the post which he was occupying was of a bilateral character and his resignation would have been effective only on acceptance of the same by respondent No.2. Since the respondent had accepted his resignation with certain conditions, acceptance of resignation could not be termed as assent on the part of the respondents. The assent would have become effective only when the salary was refunded by the applicant and since the same had not been done so there is no resignation and the applicant continues to be in service.

8. The applicant further submitted that though not admitting that the applicant had been relieved from service but the applicant could not be deprived of his

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benefits like gratuity, leave encashment and more importantly by his Provident Fund amount unless a liability had been incurred by the applicant. Thus the applicant has prayed for the following reliefs:-

(i) Allow this OA with costs.

(ii) Quash the impugned order of respondent No.2 whereby the applicant has been asked to refund the salary received by him during the period of sabbatical leave and has further been informed that his dues like provident fund, gratuity etc. shall be released/paid to him only after he refunds the salary.

(iii) In the alternative direct the respondent to treat the applicant to continue to be in their service, as his resignation is yet to be accepted by them unconditionally.

9. The OA is being contested by the respondents. The respondents admitted that sabbatical leave cannot be combined with any other kind of leave as per Office Memorandum dated 22.7.1976.

10. It is further submitted that as per the rules and regulations governing the Sabbatical Leave are concerned, Rule 10 specifically provides as under:-

> "Scientist concerned will given an undertaking before proceeding on Sabbatical Leave that he will utilise it for the bona fide purpose for which it is sanctioned and will not

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19

> accept any commercial employment during the period of leave; <u>if, after rejoining duty, he resigns within three years he shall refund the salary paid to him during the period of his Sabbatical Leave</u>."
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> (emphasis supplied)

11. The reading of this rule would go to show that if a Scientist concerned after rejoining duty resigns within 3 years he shall refund the salary paid to him during the period of Sabbatical Leave. Thus the respondents submitted that since the applicant had joined the duties so he is liable to refund the salary during the period of Sabbatical Leave. Thus it is prayed that the OA has no merits and the same is liable to be dismissed.

12. It appears that on the earlier occasion when the case was taken up for hearing issue with regard to limitation of filing of the OA had also cropped up and the applicant filed an MA for condonation of delay. Though in the MA seeking condonation of delay the applicant had alleged that the cause of action is a continuing one and hence the applicant claims that he should be deemed to be in service so the application should be taken as if filed within time and relief, if any, in claiming the relief relating to the order of conditional acceptance of the applicant's resignation by the respondents may be condoned. This application (MA) is also opposed by the respondents. The respondents have stated that respondents have not disclosed any substantial cause of delay seeking condonation of delay so the MA should be rejected.

13. I have heard the learned counsel for the parties and gone through the record.

20

14. On the point of limitation I may mention that in para 1 of the OA the applicant has impugned the OM dated 30.3.99 issued by respondent No.2 through its Administration Officer. The said order dated 30.3.99 has been annexed as Annexure P-10. The applicant has asked for quashing of the same in paragraph 8(b) though in the application for condonation of delay the applicant submits that he is not asking for the same. Though in the application the applicant submits that in para 8 he has not prayed for any specific relief for quashing of the OM but in paragraph 8(b) says that the impugned order be quashed whereby the applicant has asked to refund salary for the period of Sabbatical Leave and it is the only order dated 30.3.99 whereby his resignation has been accepted subject to refund of salary. The body of the petition also says that the application has challenged this condition as he has also submitted that respondent could not have put up this condition. But since this order was issued on 30.3.99 and the OA has been filed on 18.3.2002 that is almost few days less than 3 years and whereas Section 21 provides that order has to be challenged within one year form the date the order made. Thus the applicant has failed to challenge the order within a period of one year.

15. Though the applicant has prayed for that he has a continuous cause of action since he is also asking in the alternative that he should be deemed to be continuing in service but so far that aspect is concerned, the documents on record suggest that applicant had resigned

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21

from the service and had accepted this OM dated 30.3.99 because he had always been making request that he should be relieved from the post earlier so that he may join the company. The applicant in fact, joined the commercial organisation in violation of Rule 14 of the grant of Sabbatical Leave. Thus the applicant had himself treated as if his resignation has been accepted though conditionally. There has also been correspondence that the applicant has also been asking the details of the amount which he was supposed to refund on joining the Company on account of Sabbatical Leave. He had also made an attempt to submit a "No Demand Certificate" as mentioned in the OM vide which his resignation was accepted. Thus in a way the acceptance of resignation has been acted upon by both the parties. The applicant by his own conduct had not taken the order of conditional acceptance as if it was a non acceptance and, in fact, the same had been acted upon by both the parties. So the applicant's cause of action does not remain to be continuing one.

16. The relief clause as per the OA shows that the applicant was asking for quashing of the impugned order or in the alternative to continue the applicant in service. Since the seeking of the relief for quashing of the impugned order has become time barred so the applicant cannot be permitted to ask for the alternative relief that he should be deemed to be continuing in service because that also flows from the main relief. Even otherwise since the applicant had joined

the Private Company so he should be deemed to have abandoned the service with the respondents. There is no relief asked for with regard to payment of retiral benefits in this case, Hence, I find that the relief as asked for is time barred.

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

(KULDIP SINGH)
MEMBER(JUDL)

Rakesh