

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2852/2002

New Delhi this the 27th day of May, 2003.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Lachman Bhambani,
R/o 502, Kumudi Apartments,
11/6, Nasir Pur,
New Delhi-45.

-Applicant

(By Advocate Shri M.K. Bhardwaj)

-Versus-

Union of India through:

1. Secretary, Ministry of Defence,
South Block, New Delhi.
2. Engineer-in-Chief,
Army Head Quarters (DHQ),
New Delhi.
3. Chief Engineer,
Engineers Branch,
Head Quarters Central Command,
Lucknow.

-Respondents

(By Advocate Shri S.K. Gupta)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 10.9.2002 whereby his request for voluntary retirement has been rejected on the ground that pending disciplinary proceeding has not yet been finalised. He has sought quashment of this order with direction to allow applicant to go on voluntary retirement as well as direction contained in order dated 13.11.2001, wherein applicant has been directed to submit a fresh application for voluntary retirement.

2. Applicant joined respondents in the year 1964 and was lastly working as AE in 1993.

3. Applicant showed his intent to serve at Port Blair but subsequently sought revocation due to bad health and non-availability of proper medical facilities and made a request for a posting at Delhi on 31.5.2002.

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4. By an application dated 26.7.2001 applicant on expiry of more than 30 years of service has sought voluntary retirement w.e.f. 1.11.2001, treating the three months notice period w.e.f. 1.8.2001 to 31.10.2001. The same was served upon respondents on 26.7.2001. Another request of the same kind was made on 1.8.2001. The requisite documents have been furnished to respondents as desired on 5.11.2001. It has been communicated to applicant in February, 2002 that request seeking voluntary retirement had come back without action as service particulars of applicant were not found enclosed and Audit has not certified the qualifying service. As no efforts have been made to grant voluntary retirement to applicant he preferred a representation on 14.3.2002 which was rejected.

5. Applicant again served a notice on respondents for voluntary retirement commencing from 1.6.2002 to 31.8.2002 as per Rule 48 of the CCS (Pension) Rules, 1972.

6. In the interregnum a chargesheet was issued to applicant on 2.7.2002 which was responded to wherein no action had taken place for almost a year. The request of applicant was turned down for voluntary retirement, giving rise to the present OA.

7. Sh. M.K. Bhardwaj, learned counsel appearing for applicant contended that having completed more than 30 years of service and his application for voluntary retirement on 1.8.2001 which was effective after expiry of three months on 31.10.2001 he is deemed to have retired voluntarily from service as no disciplinary proceedings were pending and even otherwise as applicant was not under suspension and no proceedings were pending which is not an impediment for voluntary retirement. According to applicant a chargesheet was issued on a later date would not affect his request for voluntary retirement and the action of the respondents is arbitrary.

8. On the other hand, respondents' counsel Sh. S.K. Gupta vehemently opposed the contentions of applicant. According to him on 26.1.2001 request for voluntary retirement of applicant was received back for want of completion of certain documents. Applicant, who submitted another application for voluntary retirement on 5.11.2000 was also returned back since May, 2001 applicant remained on leave and still on leave without pay and allowances. The request for voluntary retirement on 14.5.2002 giving three months notice w.e.f. 1.6.2002 was forwarded to the authorities but as disciplinary proceedings were pending the same was not acceded to. As per rules request for voluntary retirement needs acceptance by the competent authority and would not be granted during the pendency of the disciplinary proceedings under Rule 14 of the CCS (Pension) Rules, 1972.

9. I have carefully considered the rival contentions of the parties and perused the material on record. It is not disputed that applicant had completed at

the time of giving three months notice w.e.f. 1.6.2002 which would have been effective from 31.8.2002 a qualifying service of more than 30 years of service.

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10. Rule 48 of the CCS (Pension) Rules, 1972 provides that at any time after a government servant had completed 30 years qualifying service give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire. He may be retired except when he is under suspension only then it is open to the appointing authority to withhold permission. In other words, for voluntary retirement after completion of 30 years no specific permission is required and if government servant is not placed under suspension on expiry of the notice the voluntary retirement becomes effective. It is not disputed that three months period expired on 31.8.2002 but the respondents rejected the request of applicant on pendency of disciplinary proceedings which cannot be a ground to deny permission to seek voluntary retirement.

11. In Tek Chand v. Dile Ram, (2001) 3 SCC 290

the Apex Court made the following observations:

"Where rule requires the appointing authority to accept the three months' notice of voluntary retirement, and provides that in case of the authority's failure to refuse the permission to retire before expiry of the period specified in the notice, retirement shall become effective from the date of expiry of the said period, held, acceptance by the authority not essential for coming into force of voluntary retirement--Authority not refusing the permission to retire before expiry of the period specified in the notice--Held voluntary retirement came into effect from the date specified in the notice."

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12. If one has regard to the aforesaid, voluntary retirement of applicant which requires no formal permission is deemed to be effective from 31.8.2002 and permission cannot be withheld or denied on pendency of disciplinary proceedings.

13. In the result, for the foregoing reasons, OA is allowed. Impugned orders are quashed. Respondents are directed to consider applicant as voluntary retired w.e.f. 31.8.2002 and in that event he would be entitled to all consequential benefits, including his terminal benefits in accordance with Rule 9 and Rule 69 of the CCS (Pension) Rules, 1972. However, this shall not preclude respondents from proceeding further in the disciplinary proceedings instituted against him on 11.6.2002. Aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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fresh MA for
settling claimant's pension

sanctioned ret. from 1.11.2002