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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.3279 of 2001

with

Original Application No.2015 of 2001

New Delhi, this the 10th day of September, 2002

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

OA 3279/2001

Shri R.S. Sahdev
B-12/148 Pharma Apartment,
88, I.P. Extension,
Patparganj,
Delhi-110 092. ..Applicant

(By Advocate: Shri S.M. Rattanpaul)

Versus

Union of India through
Secretary to the Government of India,
Department of Research and Developmeent and
Scientific Adviser to Defence Minister,
Director General,
Defence Research & Development,
South Block, GHQ P.O.,
New Delhi-110 002. ..Respondent

(By Advocate: Shri K.C.D. Gangwani)

OA 2105/2001

Shri S.P. Saxena
A-302 Vidyut Apartment, B1,
I.P. Extension,
Patparganj,
Delhi-100 092. ..Applicant

By Advocate: Applicant in person.

Versus

1. Union of India through
The Secretary,
Ministry of Defence,
South Block,
New Delhi.

2. Secretary and DG,
Department of Defence Research & Development
& Scientific Adviser to Defence Minister,
New Delhi.

3. Director General,
Defence Research and Development,
South Block,
DHQ, PO, New Delhi-11. ..Respondents

By Advocate: Shri H.K. Gangwani.

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O R D E R(ORAL)

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

By this OA we will be deciding two OAs bearing No.OA 3279/2001 and OA No.2015/2001 as the facts in both the OAs are identical.

2. The leading case would be OA 3279 of 2001. In this OA the applicant has sought a declaration to the effect that he stood retired from service in terms of the notice dated 16.8.2000 under FR 56 K(1) on the expiry of notice period on 15.11.2000 and the action of the respondents against the applicant after putting him to notice was non-est in the eyes of law and to direct the respondents to release immediately his pension and other pensionary benefits and other retiral benefits.

3. The facts in brief are that the applicant was working as a Scientist 'B' in the Defence Research and Development Organisation (DRDO) of the Ministry of Defence and on attaining the age of 50 years and after rendering about 30 years of qualifying service, he served a notice on his employer on 16.8.2000 under FR 56 K(1) to seek voluntary retirement. The notice became effective w.e.f. 15.11.2000 but the respondents on flimsy and frivolous grounds denied his pension and other retiral benefits.

4. It is also pleaded that the applicant was removed from service by way of penalty in a disciplinary case. The applicant had challenged the same before the Tribunal which was dismissed. Thereafter the applicant

had filed a Civil Writ Petition before the Delhi High Court in a CWP No. 1393/99. The High Court of Delhi quashed the termination order dated 18.8.1992 passed by respondents removing the applicant from service and had further directed that the applicant shall be reinstated and after his reinstatement the respondent will take appropriateness of continuing with the enquiry and thereafter may also place the applicant under suspension.

5. Thereafter the applicant submitted his joining report on 11.8.2000 and in pursuance of the directions of the High Court of Delhi dated 28.7.2000, on 16.8.2000 he submitted a notice for voluntary retirement, but the applicant received a communication Annexure A-2 dated 25.8.2000 vide which he was informed " that since the applicant was dismissed from service vide a Presidential Order dated 18.8.1992 till such time the applicant is reinstated in service in implementation of the judgment of the Delhi High Court through an executive order the rights of a Government servant cannot be conferred on you so in view of the same, your notice of voluntary retirement has become infructuous". However, a representation was made to the Secretary and vide Annexure A-3 dated 16.10.2000, the applicant was informed that his grievances are being looked into and a final reply will be given in due course.

6. In the grounds to seek a declaration the applicant has pleaded that at the time when the applicant submitted notice for voluntary retirement, no enquiry was pending or initiated against him nor he was placed under suspension since no positive order for withholding

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permission was passed by the respondents so after the expiry of the notice of voluntary retirement it became operative w.e.f. 15.11.2000 and the relationship of master and servant ceased to exist after 15.11.2000 and since the respondents had never refused or withheld the permission to retire during the notice period of 3 months so the applicant is deemed to have retired on the expiry of the notice period w.e.f. 15.11.2000.

7. In OA 2015/2001 the applicant who was working as Scientist 'C' in Defence Electronics Application Laboratory, Dehradoon and is seeking a declaration to seek voluntary retirement w.e.f. 18.11.2000 in pursuance of notice dated 16.8.2000. A representation was made by the applicant on 9.10.2000, Annexure-G and in reply to the representation dated 9.10.2000 the applicant received a letter dated 16.10.2000 that his grievances are being looked into and final reply would be sent but nothing has been heard so far. He has, therefore, filed this OA seeking a relief that he stood retired w.e.f. 18.11.2000 and also to direct the respondents to take further steps to pay him all other retiral benefits etc.

8. Since the facts in both the case are identical except some dates, we need not repeat the facts again.

9. The respondents are contesting the OA and pleaded that in pursuance of the orders passed by the Delhi High Court the department had issued an order dated 12.7.2001 reinstating the applicant in service w.e.f. 18.8.92 and simultaneously applicant was placed under suspension w.e.f. the same date pending finalisation of

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the disciplinary proceedings for which separate orders were issued. Since the applicant without waiting for a proper order of reinstatement in service submitted a notice for voluntary retirement on 25.8.2000 so his request for voluntary retirement could not be entertained till such time he was reinstated in service in pursuance of the directions given in the CWP.

10. The contention of the applicant that later when the department was informed of the High Court order dated 28.7.2000 the department had taken another stance vide letter dated 16.10.2000 which is contrary to the facts.

11. The respondents thus pleaded that since the applicant was reinstated w.e.f. 1992 and was also simultaneously placed under suspension w.e.f. 1992 so he could never asked for voluntary retirement and could not have been granted the same.

12. We have heard the learned counsel for the parties and gone through the records of the case.

13. As regards the requirement for issue of Executive Order for reinstatement is concerned, the learned counsel for the applicant submitted that there is no requirement or direction in the said order of the Delhi High Court that an Executive Order for reinstatement has to be passed and while allowing the CWP, the High Court had quashed the impugned order of removal w.e.f. 1992 itself, the effect of which is that immediately on the date the judgment was pronounced the

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applicant stood reinstated. To support his contention the learned counsel for the applicant has referred to a judgment reported in 1986 (2) SCC page 218 entitled as Capt. Virendra Kumar Vs. Chief of Army Staff. The issue raised in that case was whether on the quashing of the order of removal from service the applicant was reinstated in service or not. The Military Intelligence Authorities had taken an action immediately on passing of the judgment of the removal from service which was challenged by Capt. Virender Kumar on the plea that since he was not recommissioned so Military Authorities should not have taken any action against the applicant in the judgment passed by the Court. The effect of the earlier judgment in the civil appeal was stated in the earlier judgment itself and it was said, " the inevitable result of the invalidation of the termination of service is that the officer comes back into service". If as stated in the judgment a civil appeal the result was that the officer automatically came back into service, we do not think that there was any need for re-commissioning him. There is, therefore, no substance in the first point raised by Captain Virendra Kumar.

14. In this case also though the department had taken a plea that an Executive Order was passed for proper reinstatement but Shri Gangwani appearing for the respondents also referred to the directions given by the Court and submitted that the Hon'ble Supreme Court , did not use the word that the petitioner shall be reinstated whereas Delhi High Court used the word that petitioner be reinstated and tried to impress that the Executive Order was required to be passed for reinstatement. However, in

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our view, this single line cannot be read in isolation because it has to be read with the foregoing paragraph also where the High Court had allowed the Writ Petition and issued a writ of certiorai quashing the impugned order of removal from service. So once the order of removal was quashed the law as laid down by the Hon'ble Supreme Court in the judgment of Capt. Virendra Kumar's case comes to the assistance of the applicant and he is deemed to be automatically reinstated and the Executive Order may be required only for sanctioning of pay and not for automatically reinstatement, so the applicant shall be deemed to be reinstated automatically after issue of writ of certiorai the moment the impugned order of removal dated 18.8.92 was quashed on 28.7.2000. So from July, 2000 the applicant shall be deemed to be reinstated in service.

15. The next question arises whether by issuing letter dated 25.8.2000, Annexure A-2 the respondents have withheld the permission to retire or not. The reading of the letter dated 25.8.2000 would show that this letter has been issued by the Joint Director and there is no reference whether the same has been issued in consultation with the competent authority or the appointing authority who was to accept the notice of retirement and the stand taken up by the department in the same was that since formal order for reinstatement was required so notice asking for voluntary retirement has to be accepted and since we have already held that as per the law laid down in Cap. Virender (Supra) that the formal order of reinstatement was not required for actually putting the applicant in service but the same

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may have been required for regulating the pay etc. But on the basis of the judgment of the High Court the applicant stood retired the moment the impugned order was quashed by issue of a Writ of Certiorari. This letter cannot be read to say that the permission to seek voluntary retirement had been withheld by positive action.

16. In this regard the counsel for the applicant has also referred to a judgment of the Hon'ble Supreme Court in the case of State of Haryana and Others Vs. S.K. Singhal reported in 1999 (4) SCC 293 wherein dealing with the subject of voluntary retirement the Hon'ble Supreme Court have in categorical words observed :-

> " 13. Thus from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangam case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or in contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzafaffar Mir case before the expiry of the notice period".

17. In the above case also the Hon'ble Supreme Court had observed that the refusal of permission before the expiry of the notice period is not permissible and it is incumbent to withhold the permission of or one of the conditions by a positive action is not fulfilled and it is for the appointing authority to see to it. All these

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elements are also missing in the letter dated 25.8.2000. The letter does not seem to have been issued by the competent authority nor does it in specific terms state that the permission for voluntary retirement had been withheld on any of the conditions that may be available with the department. So this plea of the respondents that prior permission for the voluntary retirement was withheld vide order dated 25.8.2000 also does not hold good.

18. Having regard to the above discussion, we are of the considered opinion that the applicants notice for voluntary retirement which was served upon the department on 16.8.2000 deemed to have taken effect immediately on the expiry of the notice w.e.f. 15.11.2000. Accordingly, OAs are allowed and the applicants will also be entitled to all consequential benefits.

(M.P. SINGH)
MEMBER (A)

(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh