

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

9

OA No.876/2001

New Delhi, this the 5th day of September, 2001

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

Shri M.L. Sharma,
S/o Shri Chhattar Singh Sharma
H.No.620, Vill & P.O. - Jharoda Kalan,
New Delhi-72.

(By Advocate: Shri V.S. Tomer)

... Applicant

V E R S U S

1. Deputy Commissioner (Administration)
K.V. Sangathan Headquarters,
18, Institutional Area Shaheed Jeet Singh
Marg,
Katwaria Sarai, New Delhi-110018.
2. Assistant Commissioner,
K.V. Sangathan (Delhi Region)
JNU Campus, New Mehrauli Road,
New Delhi-110067.
3. Principal,
Kendriya Vidyalaya No.2
Gurgaon Road,
Delhi Cantt.
New Delhi-110010.

(By Advocate: Shri S. Rajappa)

... Respondents

O R D E R (ORAL)

The present OA filed by the applicant, who has sought voluntary retirement vide an application dated 20.11.2000, whereas according to the applicant, he has inadvertently tendered his resignation, but he has prayed for settlement of pensionary benefits. The aforesaid request has been further reiterated by a letter dated 1.12.2000. The applicant was told by the Principal on 7.12.2000 that he should make this request in a proper format and in accordance with law. Thereafter, the applicant had complied with by making an application in the proper format on 27.12.2000.

The applicant has also assailed an order of transfer passed on 28.11.2000 and has sought directions to the respondents to treat the voluntary retirement effective from expiry of three months as provided under FR 56 (k) read with Rule 48 (A) of CCS (Pension) Rules, 1972 w.e.f. 27.12.2000 as neither he was suspended nor any disciplinary and criminal proceedings were pending against him.

2. On apprehension that his services would likely to be terminated by the respondents, the applicant approached this Court's by an order passed on 23.4.2001, the respondents have been directed to maintain the status quo and the services of the applicant should not be dispensed with. The learned counsel for the applicant states that the intention behind making prayer for pre-mature retirement was to accord all the pensionary benefits and the resignation has been inadvertently mentioned in the application.

3. On the other hand, the learned counsel for the respondents contended that the applicant has intentionally made an application tendering his resignation on 11.12.2000, which was accepted w.e.f. 1.12.2000. In view of the directions of this Tribunal, it is not possible for the respondents to accord him voluntary retirement. He has also stated that the issue which now the applicant is claiming for his resignation, is not a part and parcel of the present OA and cannot be adjudicated by this Court.

(3)

4. After carefully considering the rival contentions of both the parties, I am of the confirmed view that the applicant has made a request for voluntary retirement and inadvertently, it has been stated that he has tendered his resignation and in this, he has prayed for accord of all the pensionary benefits, would clearly indicate that the applicant has no intention to forego his past service. Apart from this, a communication dated 1.12.2000 made to the Principal clearly establishes that what has been referred to earlier was pre-mature retirement, i.e., voluntary retirement. The letter issued by the respondents on 7.12.2000 is also indicative of the fact that the applicant has been accorded an opportunity to file an application in the proper format which he has done by making an application on 27.12.2000. The intention of the respondents that the resignation of the applicant was accepted on 11.12.2001 is not justified. I find from the original letter produced by the learned counsel for the respondents that retrospectively the resignation of the applicant has been accepted w.e.f. 1.12.2000. The acceptance of resignation was also never communicated to him.

5. In this view of the matter, I do not take cognizance of this letter and hold that the request made by the applicant vide his letters dated 20.11.2000 and 27.12.2000 was for voluntary retirement and as per the provision of FR 56 (k), where the only

requirement is that the notice should not be less than three months and it needs no approval of the competent authority. The permission of competent authority is required only when a Govt. servant is placed under suspension and who seeks to retire. Admittedly, the applicant was not under suspension as such the notice served upon the respondents on 27.12.2000 deemed to have been accepted by the respondents on expiry of three months, i.e., 27.3.2001 as such the applicant has stood retired voluntarily on 27.3.2001. However, I find that the applicant has not joined his duties and the period during which the applicant himself remained absent from duties, shall not be entitled for the pay and allowances on the basis of "no work and no pay".

6.. In the result, the present OA is disposed of and the respondents are directed to act upon the notice served to them by the applicant on 27.12.2000 and necessary orders be issued by the competent authority for granting him all the pensionary benefits as admissible to him within a period of two months from the date of receipt of a copy of this order. No costs.

S. Raju
(SHANKER RAJU)
MEMBER(J)

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