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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

OA 1136/1999

New Delhi this the 26th day of July, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

P.C. Verghese,
R/O Puthenparampil House,
Varavoor, Pullupuram,
Angadi, P.O. Ranni,
Distt. Pathanamthitta,
Kerala 689674

.. Applicant

(None for the applicant)

Versus

1. Director General of Health Services,
Nirman Bhawan, New Delhi.
2. Union of India (Service to be
effected through the Secretary to
the Govt. of India, M/O Health and
Family Welfare, Nirman Bhawan, New
Delhi-110011
3. The Pay and Accounts Officer,
Directorate General of Health Services
Ministry of Health and Family
Welfare, Nirman Bhawan, New Delhi-11
4. The Secretary to the Govt. of India,
Department of Pensions and Pensioners'
Welfare, Ministry of Personnel and
Pensions, Lok Nayak Bhawan, Khan Market,
New Delhi-110003.

.. Respondents

(By Advocate Shri V.S.R. Krishna)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Member (J))

The applicant has filed this application being aggrieved by the orders passed by the respondents dated 2.5.95 and 8.9.95. By the order dated 2.5.95, the respondents have declared the order of voluntary retirement passed by the Directorate General of Health Services (DGHS)

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as cancelled in respect of the applicant, followed by order dated 8.9.95 that the approval of the voluntary retirement of the applicant w.e.f. 2.11.1981 under Rule 29 of the CCS (Pension) Rules, 1972 (hereinafter referred to the 'Rules') has been cancelled.

2. The brief relevant facts of the case are that the applicant, who states that he had joined the Govt. Service as an X-ray Technician w.e.f. 1.2.1962 and was working with the Northern Regional T.B. Centre (NRTEC), New Delhi. This Centre was wound up w.e.f. 15.10.1981. The applicant has relied on an application which, he states, was submitted by him on 29.9.1981 (Annexure A-1), in which he had requested for voluntary retirement from service w.e.f. 2.11.1981. On perusal of the pleadings, it appears that the respondents had initially accepted his request for voluntary retirement which, according to them, he had made again on 22.11.1990^{and 18/} the DGHS received ~~it~~ on 26.3.1991. Later, the respondents have taken a stand that the order of voluntary retirement was passed by the DGHS after 11 years, which was not in order, and they proceeded to cancel the same by the impugned order dated 2.5.1995. In the order dated 8.9.95, they have, further, stated that the order of Directorate conveyed by their letter dated 14.9.1992 approving voluntary retirement of the applicant, formerly X-ray Technician, NETBC, New Delhi, with effect from 2.11.1981 under Rule 29

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A of the Rules is ^{is} ~~hereby~~ cancelled.

3. The applicant in his application has stated that since he had submitted an application for voluntary retirement in September, 1981 he should be treated as retired from service in the afternoon of 2.11.1981. From the orders issued by the respondents dated 8.9.1995 it is seen that they have also referred to the voluntary retirement of the applicant w.e.f. 2.11.1981 as is also evident from the order dated 14.9.92 that the competent authority had also accorded approval of the applicant for voluntary retirement under Rule 29 of the Rules from the same date.

4. The respondents have taken a preliminary objection in their reply that the OA is hopelessly barred by limitation. However, in this case, the applicant has claimed payment of pensionary benefits. Having regard to the judgement of the Hon'ble Supreme Court in M.R.Gupta Vs. UOI (1995(5) Scale 29), the claim of the applicant for pensionary benefits under Rule 29 of the Rules for the services rendered by him cannot be dismissed on the ground of limitation.

5. From the the orders issued by the respondents, it is seen that they had themselves accepted the applicant's contention that he should be treated as voluntary ^{il} retired from service w.e.f. 2.11.1981 by their letter dated 14.9.1992. It appears that the applicant had made an earlier request for voluntary

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retirement right at the time of closing ^{down} /of the NRTBC, New Delhi in October, 1981. The contention of the respondents that the applicant is not covered under the provisions of Rule 29 of the Rules only because he had not submitted his request for voluntary retirement within two months, as provided in that Rule would appear to be normally correct. On the other hand the applicant in fact, made a premature request for voluntary retirement, as according to him, he had made this request in September, 1981 i.e. prior to the winding up of the NRTBC, New Delhi w.e.f. 15.10.1981. However, it is not the case of the respondents that the applicant has ^{not} been declared surplus after the Centre was wound up and he had been informed of this position at that time. He was asked to report for duty to the Surplus Cell by letter dated 31.10.1981 (Ann.A.2). It is also relevant to note that the applicant has stated that he had put in more than 17 years of service before the winding up of the NRTBC, New Delhi, in October, 1981.

6. From the facts mentioned above, it is seen that the respondents have themselves approved the case of the applicant for voluntary retirement made under Rule 29 of the Rules w.e.f. 2.11.1981. No doubt, at that time they appear to have acted on the request made by the applicant in September, 1981, i.e. a few days before the winding up of the NRTBC, New Delhi in 1981. It is also a fact that subsequently they have received ^a /further request of the applicant in

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connection with his voluntary retirement in November, 1990 which they have said has been received only on 26.3.1991. The main ground taken by the respondents appears to be that the applicant had, therefore, not made his request for voluntary retirement strictly in accordance with ^{the} provisions of Rule 29 of the Rules. The Rule requires that option for voluntary retirement is exercised and communicated to the authority competent to sanction pension within a period of two months from the date from which the employee concerned has been declared surplus. However, in the facts and circumstances of the case, as the respondents have themselves accepted the applicant's request earlier as far back as 1992, and there has been considerable lapses and delay on their part also, the blame cannot, therefore, be squarely put on the applicant alone. This is more so, considering that the applicant otherwise fulfils the conditions laid down under Rule 29 of the Pension Rules. It is also relevant to note that the applicant had rendered more than 17 years service with the respondents at the relevant time, before the NRTBC was wound up.

7. In the particular facts and circumstances of the case, the OA succeeds and is allowed with the following directions:-

- (i) The impugned orders dated 2.5.95 and 8.9.95 are quashed and set aside cancelling the applicant's request for voluntary retirement;


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(ii) The respondents shall re-consider the case of the applicant under Rule 29 of the Pension Rules treating his application for voluntary retirement submitted in 1981 as if in terms of the Rules, after he was declared surplus;

(iii) Necessary action in this regard shall be taken within three months from the date of receipt of a copy of this order to grant him consequential benefits in accordance with law;

(iv) The applicant's claim for interest is, however, rejected.

No order as to costs.


(Smt. Lakshmi Swaminathan)
Member (J)