

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

O.A.No. 1172/1998

Date of Decision: 4-8-1998

Shri M.S. Dhillon

APPLICANT

(By Advocate Shri Romesh Gautam

versus

Union of India & Ors. ..

RESPONDENTS

(By Advocate Shri P.S. Mahendru)

CORAM:

THE HON'BLE SHRI T.N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S.P. Biswas)
Member (A)

Cases referred:

1. UCI Vs. Syed Muzaffar Mir, 1995 SCC (I&S)256.
2. Dr. Baljeet Singh Vs. State of Haryana, 1997 SCC(I&S)313.
3. State of Orissa Vs. Dr. (Miss) Binapani Dei & Ors.
AIR 1967 SC 1269.

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA-1172/98

New Delhi this the 4th day of August, 1998.

Hon'ble Sh. T.N. Bhat, Member (J)
Hon'ble Sh. S.P. Biswas, Member (A)

Shri M.S. Dhillon,
S/o Sh. Sardar Hardial Singh,
R/o K-228, Sarojini Nagar,
New Delhi-23. Applicant

(through Sh. A.K. Behera, advocate)

versus

1. Union of India through
the Secretary (Health),
Ministry of Health & Family
Welfare, Nirman Bhavan,
New Delhi-11.
2. The Director General of Health
Services, Nirman Bhavan,
New Delhi-11.
3. The Director,
Central Health Education Bureau,
Kotla Road,
New Delhi-2. Respondents

(through Sh. Gajender giri, advocate)

ORDER

Hon'ble Sh. S.P. Biswas, Member (A)

The applicant, Asstt. Editor (Radio & TV) under the Ministry of Health & Family Welfare, is aggrieved by respondents' refusal to recognise the notice of voluntary retirement given by him and also forcing him to join on a lower post even after the expiry of the notice period of voluntary retirement. Consequently, the applicant seeks reliefs in terms of declaring that the voluntary retirement notice given by him had become effective from 29-31/1/98, set aside the order dated 4.2.98 by which the applicant has been

(8)

reduced in rank after the date of his voluntary retirement and issuance of directions to respondents to treat him working as Asstt. Editor (R&TV) when he retired from the services by the end of January 1998.

2. The facts of the case in brief are as under:-

The applicant joined the Government services as HET Grade-II w.e.f. 13.11.67 ^{and} was promoted to HET Grade-I and also to Asstt. Editor from 13.12.74 and 13.5.96 respectively. It is the case of the applicant that on 27.10.97, after completing 30 years of qualifying service, he gave a notice (A-2) for voluntary retirement to the Director General of Health Services (DGHS for short), the period of which was from 1.11.97 to 31.1.98. Accordingly, applicant was to take voluntary retirement from 29-31/1/98. On 27.1.98, the applicant received A-3 communication dated 23.1.98 from the respondents indicating that he had not specified the rule under which he was seeking voluntary retirement and, therefore, the matter was still under consideration. Pursuant to that the applicant intimated immediately that he was seeking voluntary retirement under Rule 48 of the CCS(CCA) Rules, 1972. The notice period was coming to an end on 29-31.1.98 since 30th and 31st of January 1998 were holidays. On 22.1.98, an office order (A-4) was issued directing one Sh. S.M. Saxena to take over the charge from the applicant as the applicant was retiring on 31.1.98. Following the issue of A-4 order by the respondents, the applicant complied with the

SP

instructions by handing over charge to Sh. Saxena on 29.1.98. In the handing over and taking over notice, as at Annexure A-6, he had duly mentioned the files that were in process. It was suddenly on 4.2.98 that the applicant received A-7 communication stating that his promotional order to the post of Asstt. Editor (R&TV) stood cancelled. The applicant felt completely shocked as his promotion to the grade of Asstt. Editor was a regular one and no show cause notice whatsoever had been given to him before cancelling the said order. This is besides the fact that he had by that time already retired voluntarily w.e.f. 29-31.1.98. As alleged by the applicant, when he came to Delhi to meet the concerned authority on 3.3.98, he was forced to submit his joining report as HET Grade-I under coersion. The respondents, however, assured him that once he joined the lower grade, he would be allowed to retire voluntarily and no further problem could be anticipated. The applicant also claims that no disciplinary proceeding case, whatsoever was pending against him.

3. In the background of the aforesaid factual position, Sh. A.K. Behera, learned counsel for the applicant argued that according to Rule 48 of CCS (Pension) Rules, 1972 after the expiry of the voluntary retirement notice there was no other pre-condition that was to be satisfied and by giving the notice the applicant was entitled to retire automatically on the expiry of the notice period. It has been further argued that the applicant fulfilled all the three provisos under Rule 48 and there was

nothing that could stand in the way of applicant's voluntary retirement becoming effective from 31.1.98. The applicant accordingly was entitled to all the 10 retiral benefits in accordance with law.

4. Sh. Gajender Giri, learned counsel for the respondents submitted that although the applicant had not indicated the rule under which he was applying for voluntary retirement, the applicant's case was processed under Rule 48(A) of the CCS (Pension) Rules and the approval of the competent authority i.e. DGHS was obtained on the file. However, before the issue of the final orders, "it was noticed that the post against which he had been appointed as Asstt. Editor had lapsed for lying vacant for over a year and the Ministry of Finance had not agreed to its revival. The Ministry of Health & Family Welfare had directed that the post should be recreated before it was filled up."

5. In the facts and circumstances of the case what is required to be decided is whether tendering of the letter of voluntary retirement shall be taken as automatic acceptance.

6. From persual of the records, we find that the applicant's case has been processed under Rule 48-A. It is necessary to reproduce the relevant rules which would govern applicant's case.

[Signature]

After completing a minimum of 30 years qualifying service

Rule 48 (1) At anytime after a Government servant has completed thirty years qualifying

- (a) he may retire from service, or
- (b) he may be required by the appointing authority to retire in the public interest,

and in the case of such retirement the Government servant shall be entitled to a retiring pension subject to provisions.

Rule 48-A. Retirement on completion of 20 years' qualifying service

(1) At any time after Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service:

(2) Notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

7. The respondents have not denied that the applicant's petition for voluntary retirement is covered under Rule 48 & 48(A) of the Pension Rules. In fact, the case has been processed on file under Rule 48(A). It is also evident from the records that no refusals have been communicated to the applicant at any stage before January 1998. On the contrary, an office order (A-4) was issued on 22.1.98 directing an official "to receive all official files and papers from Shri M.S. Dhillon, A.E. who was to retire on 31.1.98". It is the case of the respondents that the appointing authority decided that the request of the

of

applicant may be processed after cancellation of his appointment to the post of Asstt. Editor. Further, he had not completed 30 years of service as required under Rule 48 of the CCS (Pension) Rules from the date of notice, his date of appointment being 13.11.67. (P)

8. We find that as per rules laid down the appointing authority has the liberty to refuse to grant the permission for voluntary retirement. But if the competent authority does not do so before the expiry of the period specified in the notice, the retirement shall be from the date of expiry of the said notice period. In the present case, the proposal for voluntary retirement was approved by the competent authority on 8.12.97. It was only on the basis of that the order of A-4 dated 22.1.98 was issued. This is not in dispute. The legal aspects of such cases have been decided by the Hon'ble Supreme Court in a catena of cases. In the case of U.O.I. Vs. Sved Muzaffar Mir, 1995 SCC (L&S) 256, the Apex Court was examining the appeal of a railway servant who had given three months' notice seeking voluntary retirement under the relevant rules. During the statutory period of notice no order was passed by the authority concerned with-holding permission to retire under the rules. An order of removal from service was passed on 4.11.85 while the period of 3 months notice had expired on 21.10.85. The Bombay Bench of this Tribunal held the order of removal from service to be non-est. The Hon'ble Supreme Court affirmed the judgement of the Bombay Bench.

SP

9. However, it was subsequently held that the law laid down in Mir's case (supra) had no application for all the situations. Thus, in the case of Dr. Baljeet Singh Vs. State of Haryana, 1997 SCC (L&S) 313, the Hon'ble Supreme Court was examining yet another case where a notice for voluntary retirement was tendered on 20.9.93. The applicant therein had handed over the charge on 11.2.94 and thereafter the authorities by proceedings dated 25.2.94 declined to accept his retirement. The said order was challenged in the High Court and the latter refused to interfere with the order passed by the Government. The matter thereafter came before the Apex Court. The Hon'ble Supreme Court, however, distinguished earlier decision and observed as under:-

(3)

"Therefore, mere expiry of three months' period of notice given did not automatically put an end to the jural relationship of employer and employee between the Government and the delinquent official. Only on acceptance by the employer of resignation or request for voluntary retirement their jural relationship ceases. In this case since serious offences were pending trial against him, the Government have rightly refused to permit him to retire voluntarily from service pending the action against him."

The applicant in the case of Baljeet Singh (supra) made further submission that he had handed over the charge which was accepted by the respondents and, therefore, no scope for the Government to refuse acceptance of the resignation. Reacting to this, the Apex Court observed :-

8

"Under these circumstances, until the acceptance or rejection of request for voluntary retirement is communicated to the petitioner, the petitioner is required to remain in office and his handing over the charge without any order of the competent authority and acceptance of his request for voluntary retirement have no result."

(A)

10. The applicant's case is different from the one cited in Baljit Singh's (supra) case. He has not obtained the promotion fraudulently nor there are disciplinary cases pending against him. Principles thus enunciated by the Apex Court indicate that voluntary retirement on expiry of notice is not automatic to a person whose conduct is in question (emphasis added). Applicant's case does not fall in this category.

11. Respondents could have corrected the mistake committed by them. For reasons recorded on file they could have avoided issuing A-4 relieving order. That was not done. Issue of A-4 order was preceded by formal acceptance of the request for voluntary retirement. What has been done (issue of cancellation of promotion without prior notice) should not have been done. As per the law laid down in the case of State of Orissa Vs. Dr. (Miss) Binapani Dei, & Ors. AIR 1967 SC 1269, an order to the detriment of an official cannot be made without affording him/her an opportunity to show cause against the proposed order. It is not denied that the A-7 order was not preceded by any formal notice and hence, this cannot stand in the eyes of law. And what again should have been done (i.e withdrawal of the communication for handing over

g

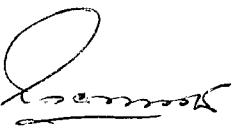
the charge as at A-4) has not been done. The "short cut" resorted to by the respondents has resulted in a "wrong cut".

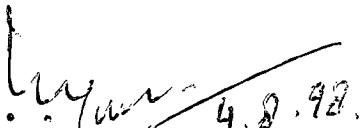
(5)

12. In view of the reasons aforesaid, the applicant's case merits consideration. In the result,

- (a) The O.A. is allowed.
- (b) The order at A-7 dated 4.2.98 is set aside.
- (c) Our orders, however, shall not stand in the way of the respondents to take appropriate action against the ~~respondents~~ applicant, if ~~they~~ ^{they} have a case but to be processed only in terms of the law laid down.

No costs.


(S.P. Biswas)
Member (A)


4.3.98
(T.N. Bhat)
Member (J)

/vv/