

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.865/98

New Delhi, this the 3rd day of December, 1998.

Hon'ble Mr. K. Muthukumar, Member (A)  
Hon'ble Mr. J.S. Dhaliwal, Member (J)

Aradhan Santra,  
Block No.79,  
Quarter No.293,  
Sector I, DIZ Area,  
Gole Market,  
New Delhi.

...Applicant

(By Advocate Shri M.P. Saxena)

-Versus-

The Secretary,  
Dept. of Food & Civil Supplies,  
Ministry of Food & Consumer Affairs,  
Krishi Bhawan,  
New Delhi.

...Respondents

(By Advocate Shri R.V. Sinha)

O R D E R (ORAL)

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A):

Applicant was given an extension of service beyond his date of superannuation, viz., 31.10.97 for a period of six months or till such time the post was filled up on regular basis whichever was earlier. The respondents by the impugned order dated 16.4.98 terminated the extension of his service w.e.f. 13.4.98 forenoon declaring that the applicant stood retired from Government service with effect from that date. Applicant is aggrieved that this peremptory termination was not in accordance with the procedure provided in the first and second provisos to F.R. 56 (d) and also instructions of the Government of India, Department of Personnel OM dated 2.5.74 and 24.11.73, which stipulate that the retirement shall take place in the afternoon of the last day of the month.

Respondents have submitted that in terms of the order granting extension of service to the applicant he was retained in service beyond his normal date of superannuation and a second post against which the applicant was given extension was filled up on 13.4.98 when a regular Staff Car Driver one Shri Vijay Singh Yadav joined this department. It is also stated in the reply that although the impugned order was passed granting extension of service only upto 12.4.98, the order was modified as a leave vacancy was available till 20.4.98 and the applicant was continued till 20.4.98 afternoon and the respondents have annexed a copy of the modified order at Annexure R-2.

2. We have heard the learned counsel for the parties and have also perused the record. The learned counsel for the applicant relies on second proviso to F.R. 56 (d) and also administrative instructions mentioned above. As per the proviso to FR 56 (d) the appropriate authority shall have a right to terminate the extension of service before the expiry of such extension by giving a notice of not less than three months in the case of a permanent Government servant, or, one month in the case of a temporary Government servant, or, pay and allowances in lieu of such notice. In the instant case the respondents by the order of extension of service have stipulated that the extension is only for a period of six months or till such time the post is filled up on regular basis, whichever is earlier. In our considered view this itself carries with it an

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inherent notice for termination as and when six months period expires or when the post is filled up on regular basis, whichever is earlier. In view of this, we do not find that there is any violation of the provisions of the aforesaid Rule. The learned counsel also relies on Chapter 40, paragraph-7 in which the departmental instructions are manualised in Swamy's Book on Establishment & Administration. These instructions are not different from the substantive provisions of the Fundamental Rules. Inasmuch as we hold that there has been no violation of the Fundamental Rules, we also do not find any violation of the instructions issued thereunder. In any case the applicant has been continued almost for six months, i.e., upto 20.4.98, when he would have normally retired even if nobody had joined the post. The respondents have averred that another person has joined on this post on 20.4.98.

3. In the light of this we do not see any merit in this application, which is accordingly dismissed. No costs.

*J. S. DHALIWAL*  
(J.S. DHALIWAL)  
Member (J)

*K. MUTHUKUMAR*  
(K. MUTHUKUMAR)  
Member (A)

'Sanju'