

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.1619/95

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Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Member(A)

New Delhi, this the 21st day of March, 2000

Dinesh Sahai
s/o Shri Kamaleshwar Sahai
r/o 11-D Pocket - C
Mayur Vihar Phase-II
Delhi - 110 091. Applicant

(By Shri D.C.Vohra, Advocate through Shri D.S.Jagotra)

Vs.

1. Union of India through
the Foreign Secretary
Govt. of India
M/o External Affairs
South Block
New Delhi - 110 011.
2. Embassy of India
Washington
through the Head of Chancery
c/o Ministry of External Affairs
South Block
New Delhi - 110 011. Respondents

(By Shri N.S.Mehta, Advocate through Shri
M.K.Bhardwaj)

O R D E R (Oral)

By Reddy, J.-

None appears for the applicant in person or through his counsel. This is a matter of 1995 and as the case had already been heard at length on the previous occasion, we proceed to dispose of the case.

2. The applicant is an employee of Respondent No.1 and served at Headquarters and at missions abroad. He joined duty in the Embassy of India in Washington on 6.6.1989. On completion of his tenure, he was relieved from the duty in the Embassy of India, Washington on 23.6.1992 and transferred to Consulate General of India, Karachi. After availing the leave granted, he was to report for duty in Consulate



General of India, Karachi in August, 1992 but the applicant applied for cancellation of his posting to Karachi by making several representations. It is the case of the applicant that though the orders of his transfer to Karachi has been cancelled and the applicant sought for leave till March, 1993 in view of his wife's continuous cardiac treatment, Respondent No.1 issued a Memorandum on 17.2.1993 charging the applicant with unauthorised absence and for non-compliance of government orders. An enquiry has been sought to be held against the applicant. His posting to Karachi was however cancelled. He returned to his duties at Headquarters on 14.7.1993 and joined duties on 13.9.1993. As he was harassed in several ways, he gave three months notice on 1.4.1995 for voluntary retirement, making it clear that in case nothing is served within the period of three months, he is deemed to have been retired by operation of law. The respondents however have not taken any decision. Though the applicant had demanded for settlement of his dues as he stood retired, nothing was heard from the respondents. The applicant therefore filed the present OA for declaration that he stood voluntarily retired w.e.f. 30.6.1995 and to give a direction to the respondents to fix the pension since 1.7.1995 and to settle all pensionary benefits.

3. In the counter it is stated by the respondents that the applicant continued to stay back in Washington in spite of his posting to Karachi on the plea that his wife was ill. His posting was however cancelled and ^{he} was transferred to Headquarters. After the applicant returned to India, disciplinary



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proceedings were initiated for unauthorised absence vide charge sheet dated 4.6.1993. The applicant applied for voluntary retirement on 31.8.1994. As the disciplinary proceedings were continued against him his request was rejected. The applicant thereafter went to join his wife in States as she had been there for treatment. As the applicant continued to stay in the unauthorised leave he has been issued a revised charge sheet clubbing together his past and present spells of unauthorised absence on 29.5.1995. The respondents denied the allegation that the applicant has filed an application for voluntary retirement on 1.4.1995. It is stated that they have not received any such communication.

4. On the last occasion, after the arguments have been heard on both sides on 3.11.1999, at the suggestion made by the counsel for the respondents that the government was prepared to consider the request of the applicant for voluntary retirement if the notice for voluntary retirement is given, the counsel for the applicant requested for time to inform his client about the development of his case. Accordingly, the case was adjourned to 16.12.1999. Again on 14.1.2000 at the request of the counsel for the applicant the case was adjourned to 6.3.2000 and the case was further adjourned to 14.3.2000 at the request of the counsel for the respondents. However, no such application has been filed by the applicant seeking for voluntary retirement.



5. We are of the view that if any fresh application is made it will have to be considered by the respondents on its own merits. That will not detain us from disposing of the OA. The result of the OA will have no effect on the consideration of the application, if made.

6. The contention of the applicant appears to be that application for voluntary retirement on 30.6.1995 having not been refused within three months period, it should be presumed that under Rule 48(A) of the CCS (Pension) Rules, 1972 that the respondents had accepted the request for voluntary retirement.

7. Under Rule 48(A) of the above Rules; a Government servant who had completed 20 years of qualifying service was entitled to give notice of not less than three months from the date to retire from service. Under the sub rule (2); the notice of voluntary retirement shall have to be accepted by the appointing authority but under proviso to sub rule (2) if the application is not refused, i.e., no communication is given rejecting the request for voluntary retirement before the expiry of the periods specified in the said notice, the retirement shall become effective from the date of expiry of such period.

8. In the application dated 1.4.1995 it is stated that he sought voluntary retirement of three months expiry on 30.6.1995 but it is clearly stated in the reply that the Government has not received any such application from the applicant. As regards the

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earlier request for voluntary retirement, i.e., given by the applicant on 31.8.1994, he was advised to apply after completion of disciplinary proceedings while rejecting the said application. In so far as the alleged application dated 1.4.1995 as it is the case of the respondents that no such application has been received by them, the contention that applicant stood retired on 30.6.1995, cannot be accepted. No material has also been placed before us to come to any conclusion that the respondents had received the said application. In the circumstances, we are unable to accept the contention of the applicant. The OA is therefore dismissed. No costs.

Shanta Shatry
(SHANTA SHATRY)
MEMBER(A)

Comptroller
(V.RAJAGOPALA REDDY)
VICE-CHAIRMAN(J)

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