

- (11) -

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA.No.1582 of 1996

Dated New Delhi, this 1st day of August, 1997.

HON'BLE DR JOSE P. VERGHESE, VICE CHAIRMAN (J)
HON'BLE MR K. MUTHUKUMAR, MEMBER (A)

Kewalanand Sharma
S/o Late Jogeshwar Prashad
C/o Shri D. P. Sharma
L-II/64 Lajpat Nagar
NEW DELHI.

... Applicant

By Advocate: Shri Vivekanand

versus

1. Union of India
through Secretary
Ministry of Defence
Department of Military
Engineering Service, South Block
NEW DELHI.

2. The Engineer-in-Chief, MES
Army Headquarters
Kashmere House
NEW DELHI.

3. The Chief Engineer, W.C.
Chand Mandir
CHANDIGARH.

4. The Garrison Engineer, MES
Red Fort
DELHI-6.

... Respondents

By Advocate: K. R. Sachdeva

O R D E R (Oral)

Dr Jose P. Verghese, VC(J)

The case of the applicant is that after completion of twenty years of service he had given notice to the respondents indicating his intention to retire voluntarily under Rule 48A

Contd..2

~~12~~

of the CCS(Pensions) Rules,1972. According to the said Rule, unless refused within the next three months, the retirement of the applicant voluntarily is automatic and complete. It is stated that no refusal or acceptance of the intention of the applicant to retire voluntarily from service under the said Rules has been passed or communicated to the applicant. In the circumstances, it is stated that the applicant is deemed to have retired voluntarily under Rule 48A of the CCS(Pensions)Rules,1972 and the applicant accordingly is entitled to all pensionary benefits.

2. After perusing the records and hearing the arguments of the counsel for the applicant, we find that the applicant himself has made an averment at paragraph 4.vii of the OA and Annexure A-6 that he had joined his duties with G.E. Red Fort and he submitted his joining report to BSO Red Fort in December,1996. In reply to the said averment it was stated by the respondents that no joining report is available in the office of the BSO Red Fort as stipulated by the applicant. Further, in reply to the OA at paragraph 4.xii it was stated by the respondents that the applicant failed to comply with the

13

directive to join duty vide Annexure A-5 produced by the applicant. It was submitted that in view of this averment, in no case it is to be accepted that the applicant has subsequently joined his duties and, therefore, the joining report is deemed to have been cancelled.

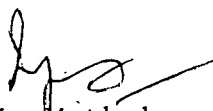
3. We are afraid that such a conclusion is unwarranted in the circumstances of this case especially because in the opening words of Annexure-VI of Annexure A-6 with reference to joining report the applicant has made a statement by saying that during one of his such visits to the office of the GE Red Fort, he was advised to join duties for settling his retirement dues. That only indicates that it was not a deliberate act of joining and the same will not have the effect of nullifying the deemed effect of retirement which has already become final by operation of law as contained in Rule 48A of CCS(Pension) Rules, 1972.

4. In the circumstances, the applicant for all purposes, is deemed to have been retired voluntarily and he is entitled to all pensionary benefits. It goes without saying that the respondents will be also at liberty to take action against the applicant for any further misdemeanour committed by him in accordance with the rules. If no appropriate action is forthcoming, the grant of retirement ^{benefits} to the applicant shall not be withheld only because of the inaction of the respondents.

Contd...4

14

5. In the above terms, the application is disposed of. No order as to costs.


(K. Muthukumar)
Member(A)


(Dr. Jose P. Verghese)
Vice Chairman(J)

dbc