

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1643 of 1996 decided on 1.10.1997

Name of Applicant: Shri Anand Sarup Guar

By advocate: Shri G.R. Matta

Versus

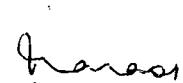
Name of Respondents: Chief Secretary, Govt. of NCT Delhi & ors

By advocate: Shri Bhaskar Bhardwaj proxy for Shri Arun Bhardwaj

Corum

Hon'ble Mr. N. Sahu, Member (A)

1. To be referred to the Reporter or not? Yes.
2. Whether to be circulated to other Benches of the Tribunal? No


(N. Sahu)
Member (A)

Central Administrative Tribunal
Principal Bench

O.A.1643/96

This the 1st day of October, 1997.

HON'BLE SHRI N. SAHU, MEMBER(A).

(17)

Shri Anand Sarup Guar,
S/o Pt. Jagan Nath,
R/o Guar Farm No. 27,
Eloom Field, Shivji Marg,
Rangpuri,
New Delhi-110037. Applicant

(By advocate Shri G.R.Matta)

Versus

1. The Chief Secretary,
Government of NCT of Delhi,
5, Sham Nath Marg,
Delhi-110054.

2. The Deputy Commissioner of Delhi,
Government of NCT of Delhi,
Tis Hazari Court,
Delhi.

3. The Director of Education,
Government of NCT of Delhi,
Old Secretariat,
Delhi. Respondents

(By Advocate Shri Bhasker Bhardwaj
proxy for Shri Arun Bhardwaj.)

ORDER(Oral)

By Hon'ble Shri N. Sahu, Member(A).

Transcribed

In this O.A. the prayer made by the applicant is for a direction to the respondents to take immediate steps as per rules to sanction retiring pension with interest as well as gratuity with interest with effect from 1.7.1995. He seeks a direction for payment of leave salary and GPF with interest for the delay. The brief facts leading to the reliefs sought are that the applicant joined the service of Delhi Administration on 21.7.1964; on 31.3.1995, having completed more than 30 years of service, he served a notice of voluntary retirement on Respondent No.1. He also informed by this letter that he was 50 years

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of age on 1.11.1992. He gave ill health as the reason for voluntary retirement. This letter was admittedly received by the respondents. Respondent No.1 replied to this letter as under:-

*Sub: Notice for voluntary retirement under
F.R. 56 (K).

Sir,

I am directed to refer to your letter dated 31.3.95 on the subject cited above and to say that your application for voluntary retirement from Government Service has not been submitted through proper channel and is not unconditional. You are, therefore, directed to submit your application for voluntary retirement unconditionally and through the proper channel so that further necessary action in the matter may be taken. *

The applicant denied service of this letter. Learned counsel for the respondents submits that the letter was properly despatched.

2. Learned counsel for the respondents who argued this case on 29.9.97 states that a CBI case was registered on 26.10.93 and the said case continued to be under investigation. He stated that two cases of misconduct were also under investigation pertaining to the period when the applicant worked as a Tehsildar. It is further submitted that under Rule 48-A of CCS (Pension) Rules 1972 qualifying service has to be verified from the concerned Accounts Officer and in the case of the applicant the verification was required to be made by the Education Department at whose disposal the service of the applicant was placed. Secondly, before allowing him to voluntarily retire, the competent authority must obtain departmental vigilance clearance.

3. A few background facts are necessary. The applicant was continuously on leave w.e.f. 18.1.93 on the ground of illness of his wife which was stated to be rejected by the competent authority. He later on applied for leave on account of his own illness and other grounds but the same was never granted to him. It was at his own request that he was transferred from the office of the Deputy Commissioner Delhi Administration to the Education Department on 11.5.93 and relieved in absentia on 26.5.93. According to para 4.7 of the counter, the applicant submitted his application for voluntary retirement on 2.5.94 addressed to the Secretary (Services) who was not the competent authority. He was advised on 12.7.94 to submit his request for voluntary retirement after joining the Education department with 3 months' notice. This was done on 31.3.95 which was acknowledged by letter dated 7.4.95. The grievance of the respondents, however, is that "as per practise, the application for voluntary retirement should have been routed through concerned Head of Dept. to the appointing authority."

4. The learned counsel for the applicant submits that the rules contained in F.R. 56(K) are satisfied by giving 3 months notice in writing to the Government. Rule 48 and not 48 (A) is applicable to the applicant's case. Notice, having been properly served on the authorities became effective. He states that there is no option for the Government but to accept the request for voluntary retirement when the Government servant exercises his right under F.R. 56 (K). For this purpose learned counsel has cited a number of Apex Court decisions: DINESH CHANDRA SANGMA Vs. STATE OF ASSAM - AIR 1978 SC 17; 1995 Supply. (I) SCC 76 - UNION OF INDIA Vs. SAYYED MUZAFFAR MIR; B.J. SHELAT. Vs. STATE OF GUJARAT (1978) 2 SCC 202; 1978 SCC (I) 208. In Mir's case a suspended Railway servant gave notice

for record

of retirement under Rule 1802 (b)(1) of the Railway Establishment Code. The statutory period of notice expired without any order passed, either withholding permission to retire or retaining the Railway servant in service. Order of removal was passed subsequent to expiry of period of notice. Such an order was held to be a nullity. In DINESH CHANDRA's case (supra), interpreting Rule 56(C) of the Fundamental Rules, the Apex Court held that where the Govt. servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period.

5. The legal position is well settled. He entered the service on 21.7.1964, attained the age of 50 years and completed 30 years service. Notices were served after he attained the age of 50 years. This case comes under Rule 48 and not Rule 48(A). When he intimated the notice, admittedly no disciplinary proceedings were pending against him. No charge sheet has been issued to him. He was not under suspension. It would be improper on the part of the respondents to reject the request merely on a technical ground, namely, that he did not submit his application through proper channel. The applicant had stated by a letter dated 27.9.1995 at Annexure A-3;

Repliesum

" I am also invite your kind attention to my earlier letter dated 14.11.1995 (copy enclosed) explaining that I was relieved by the Office of D.C., Delhi for reporting duty in the Directorate of Education retrospectively from 26.5.1993 in absentia. Unfortunately, the Office of D.C., Delhi has not been owing

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responsibility and did not entertain any of my application or communication."

The Education Department also vide their letter dated 18.11.1993 refused to entertain application of the applicant for extension of leave because he never physically joined the Directorate.

The applicant under the provisions of Rule 56(K) addressed the letter of voluntary retirement to the Competent Authority who is respondent No.1. The details of qualifying service can be got verified by respondent No.1 himself under whom all the departments function he, being the ultimate controlling authority for all these departments. Section 56(K) imposes statutory liability to accept the applicant's request for voluntary retirement if the conditions are fulfilled. I do not think it is appropriate for respondent No.1 to simply reject the application on a technicality. I, would therefore, direct respondent No.1 to decide the application for voluntary retirement dated 31.3.1995 in accordance with the provisions of F.R. 56(K) and also on the light of the Hon'ble Supreme Court's decisions cited above and pass necessary and appropriate orders within a period of 4 weeks from the date of receipt of a copy of this order.

6. It is no doubt true that a notice under Section 56 (K) after the expiry of the statutory notice period takes automatic effect and renders an order on the same a formality in the light of Apex Court decisions cited above. Even so, such an order is necessary for completeness of record and shall set in motion other necessary steps for processing of pension claims. Sanction of retiring pension and arrears of pension, depends on qualifying service, the settlement of leave account and determination of pay for purpose of pension. Such determination depends on regularisation of leave applied for by the applicant.

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It would therefore be appropriate after disposing of the notice of voluntary retirement, to pass orders on the leave applied for and thereafter the pension shall be finalised. These should be disposed of by the appropriate authorities within a period of six weeks from the date of passing of orders on notice of voluntary retirement. O.A. is disposed of accordingly. No costs.

Ansawati

(N.SAHU)
MEMBER (A)