

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 436/96

New Delhi this the 6th day of December 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri J.P. Govil
S/o Shri Virender Prashad,
R/o 1375-18th
Avenue No.4, Sanfrancisco,
California-94122, USA.

....Applicant

(By Advocate: Shri G.D. Gupta)

Versus

1. Union of India through the
Secretary to the Government of India,
Ministry of Urban Development,
Nirman Bhawan, New Delhi.
2. The Director General (Works),
Central Public Works Department,
Government of India, Nirman BHawan,
New Delhi.
3. The Pay & Accounts Officer,
Central Public Works Department,
New Delhi Zone, New Delhi.
4. The Superintending Engineer, Delhi
Central Circle No.4, Central Public
Works Department, Government of India,
New Delhi.

...Respondents

(By Advocate: Shri V.K. Mehta)

ORDER (Oral)

By Reddy, J.-

Heard the counsel for the applicant and
the respondents.

2. The applicant was initially appointed
as Section Officer. His services were, however,
terminated by an order dated 7.3.1972. The said
order was challenged by the applicant before the
High Court. The High Court of Delhi vide its order
dated 26.2.85 quashed the order of termination and
directed the respondents to pay all consequential

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reliefs. Though the judgment was delivered on 26.2.85 the applicant states that it came to his knowledge during February 1987 and on 16.2.87 he reported for duty. By letter dated 1.5.87 he was asked to report for duty to the S.E. (Coord), Coordination Circle (Civil), CPWD immediately. The period of absence from date of the judgment of the High Court to the date of reporting for duty on 16.2.87 was treated as 'dies-non'. The applicant joined duty on 11.5.87.

3. However, by letter dated 29.1.88 the applicant sought voluntary retirement w.e.f. 1.2.88 under Rule 48-A of the CCS (Pension Rules) (for short Rules). The respondents accepted the notice and permitted him to retire w.e.f. 30.4.88.

4. Having accepted the request of the applicant for voluntary retirement the applicant was, however, not paid his retiral benefits including the pension. The applicant had made several representations to the respondents for release of the retiral benefits but they have not been released except the payment of arrears of pay and allowances. The respondents appear to have been labouring under the view that the applicant had not completed 20 years of service in view of the period from 27.2.85 to 15.2.87 having been declared as 'dies-non' and hence the applicant was not eligible for proceeding on voluntary retirement w.e.f. 30.4.88.

Chs

5. It is the case of the applicant that the aforesaid period which was treated as dies-non was condoned by the competent authority. Thus he should have been treated as completed 20 years of service. The respondents issued the impugned order dated 15.3.85 whereby it was held that the applicant was not entitled to the retiring pension under CCA (Pension Rules) as he had not completed 20 years of qualifying service. The applicant challenges the above order in this OA and seeks the relief of directing the respondents to declare that the period from 16.2.87 to 11.5.87 as period spent on duty for all purposes.

6. It is contended by the learned counsel for the applicant that the respondents having taken a decision to treat the period from 27.2.85 to 11.5.87 as a qualifying service and having allowed the applicant to retire voluntarily, respondents are estopped from holding that the same period could not be treated as a qualifying service for the purpose of Rule-48 'A' of the Rules.

7. Learned counsel for the respondents, however, submits that the applicant had not joined service after the date of the judgment delivered by the High Court till February 1987 and hence that period could not have been treated as a period spent on duty. Hence, it is contended that the said period has been rightly treated as Dies-Non. If the said period is taken away from the period of the service of the applicant, the applicant had not

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completed 20 years of service which is a requirement under Rule-48 A of the CCS Pension Rules for voluntary retirement.

8. We have given careful consideration of the contentions raised by the learned counsel on either side. Rule-48 'A' of the CCS Pension Rules stipulates that the Government servant should have completed 20 years of qualifying service for the purpose of seeking voluntary retirement. Thus undoubtedly, he should complete 20 years of service for seeking voluntary retirement. The applicant was initially appointed in 1967 but during 1972 he was removed from service. The order of the High Court quashing the order of termination was passed on 26.2.85 directing re-instatement of the applicant with all consequential benefits. The applicant, however, did not join service immediately thereafter. He reported to duty on 16.2.87. Thus from the date of the judgment the applicant was not in service till 16.2.87. The respondents, therefore, rightly treated the said period as 'dies-non'. But the fact remains that the respondents had accepted the notice of voluntary retirement without a demur and allowed the applicant to be relieved from service w.e.f. 30.4.88 under Rule-48 'A' of the Rules having been satisfied that the applicant had completed 20 years of service. From the letter dated 15.9.94 addressed by the Superintending Engineer to the Chief Engineer, it is clear that a decision has been taken by the Superintending Engineer to condone the period of dies-non and only thereafter

Chm

the request of the applicant for voluntary retirement has been directed to be accepted. In the said letter the Executive Engineer was also directed to treat that the said period of dies-non from 27.2.85 to 15.2.87 as condoned. Accordingly, the applicant was permitted to retire and he was also relieved w.e.f. 1.5.88. It is not in dispute that if this period is condoned the applicant would complete 20 years of service for his eligibility for voluntary retirement. The applicant has been making representations for the payment of retiral benefits including pension. He was not informed of any error having been discovered to change their view, to deny the pension. It is not, therefore, open to the respondents during 1995 after 7 years of accepting voluntary retirement to raise an objection which has already been condoned. The Principle of 'estopped' squarely operates against the respondents.

8. In the circumstances, the impugned order is set aside. We direct the respondents to release the retiral benefits to the applicant treating the period from 27.2.85 to 15.2.87 as qualifying period for the purpose of pension Rule-48 'A' of the rules. However, we are not prepared to grant any interest, in view of the facts and circumstances of the case. The respondents are directed to pay the pension and other benefits within a period of three months from the date of receipt of a copy of this order.

Ch

g. In the circumstances, there shall be no order as to costs.

R.K. Ahuja

~~(R.K. Ahuja)~~
Member (A)

cc.

V. Rajagopala Reddy

(V. Rajagopala Reddy)
Vice-Chairman (J)