

11

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 450 of 1997 decided on 15. 4. 1998

Name of Applicant - Sudhir Kumar Gaur

By Advocate : Shri M.L. Sharma

Versus

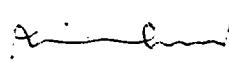
Name of respondent/s Union of India

By Advocate : Shri R.P. Aggarwal

Corum:

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

1. To be referred to the reporter - Yes/No
2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No

  
(N. Sahu)  
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 450 of 1997

New Delhi, this the 15<sup>th</sup> day of April, 1998.

(12)

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

Sudhir Kumar Gaur, Senior Auditor (Retired voluntarily) A/c No. 8306742, Office of the Dy. Controller Defence Account (A.F.), Subrato Park, New Delhi -10, R/o 10-D-Ravi Appartments, Plot No.1, Vikaspuri, New Delhi -18 -APPLICANT

(By Advocate Shri M.L. Sharma)

Versus

Union of India through

1. Controller General (Defence Accounts), R.K.Puram, West Block No.5, New Delhi-66.
2. Controller of Defence Accounts (Air Force), R.K.Puram, West Block No.5, New Delhi-66.
3. Dy. Controller of Defence Accounts (Air Force), Subrato Park, New Delhi-10.

- RESPONDENTS

(By Advocate Shri R.P. Aggarwal)

O R D E R

By Mr. N. Sahu, Member (Admnv) -

The reliefs claimed in this Original Application are extracted hereunder -

- (i) to entertain this application and decide it at admission stage itself.
- (ii) to quash the letters dated 14/21-8-95 and 22-7-96 (Annexures A-1, A-9 & A-11).
- (iii) to direct the Respondents to operate voluntary retirement from the date of its acceptance (i.e. 21.8.95).
- (iv) to treat the applicant exempted from Medical Examination for the purpose for payment of commutation of pension.
- (v) to direct the Respondents to pay the commutation of pension, L.I.C., Bonus for the year 1993-94 and pay and allowances for the period from 1.9.94 to

4.9.94 and G.P.F. & HRA after 31.10.94 from 1.11.94 to 21.8.95 with a penal interest thereon i.e. 18% from the due date to the date of actual payment.

(vi) to allow the penal interest on the delayed amount of pension and gratuity from the due date to the date of payment i.e. upto September 1996 including the interest on withheld amount Rs.1000/- from gratuity upto the date of its payment in January 1997.

(vii) Any other relief which are deemed proper may also be granted in favour of the applicant.

(viii) The cost of the proceedings of this case may also be granted in favour of the applicant and against the respondents."

2. The brief background facts are as follows:- due to personal reasons, illness of his daughter and his own ill health, the applicant gave notice of his voluntary retirement and requested for waiving the notice period by application dated 3.10.1994. His notice was considered by the respondents to be defective for want of a specific date of retirement. Hence the same was not entertained. He sent a representation dated 21.4.1995 requesting that his voluntary retirement be accepted with effect from 31.10.1994. His request was accordingly acceded to and his name was struck off the strength with effect from 31.10.1994 by a letter dated 14/21 August, 1995 (Annexure-A-9). Since he had no leave at his credit beyond 31.10.1994 except extra ordinary medical leave and since he was stated to be not present on duty before and after giving notice for retirement the department felt that it had no other alternative except to accept his retirement with retrospective

effect from 31.10.1994. By Annexure -A-6 the respondents informed him that his attendance register indicated his absence without any authority with effect from 5.9.1995.

3. The learned counsel for the applicant vehemently argued that once an application for voluntary retirement is sent its acceptance is mandatory unless he is under suspension and there are pending disciplinary proceedings for a major penalty. The respondents delayed the processing of the application. If they had not entertained the initial notice dated 3.10.1994 it was inconsistent on their part again to change their mind and to accept the same application with retrospective effect. I do not find from the pleadings as to when the respondents have informed the applicant to specify the date of voluntary retirement. The respondents should have immediately called the applicant and asked for the date and should have considered its acceptance under the Rules. No reasons were given as to why they changed their mind and accepted the claim with a retrospective date. The orders were passed on 21.8.1995 which is roughly 9 months from the date of notice of retirement. I will extract Annexure-A-9 dated 14/21.8.1995 as under -

*DR. B.*  
"Please refer to your latest letter no. nil dated 7/7/95. Your request for acceptance of your resignation from service has been considered and acceded to with effect from 31/10/94 and accordingly you have been struck off the strength of this organisation with effect from 31/10/94(AN) itself."

4. This letter is factually incorrect. There is no letter of resignation of the applicant. The respondents have on their own put this word 'resignation' in this letter. It was a simple case of a plea for voluntary retirement. There are no disciplinary proceedings pending against the applicant. He has completed 20 years of service. Rule 48 of the CCS(Pension)Rules, 1972 would apply. If no date is given then three months after the date of acceptance of the letter if the respondents did not want to waive three months' notice, should have been taken as the date of voluntary retirement.

5. In Union of India Vs. Sayed Muzaffar Mir 1995 Supp (1)SCC 76 the employee was under suspension pending inquiry. He tendered his voluntary retirement on 22.7.1985 under Rule 1802(b) of the Indian Railway Establishment Code. The period of three months expired on Oct.21,1985. The order of removal was passed against him on 4.11.1985. Their Lordship upheld the order of the Tribunal declaring the removal as non est. There can thus be no punitive action after the date of voluntary retirement. In Dr. Baljit Singh Vs. State of Haryana, 1997(2)SLJ 60 the Hon'ble Supreme Court held that it is only where a serious criminal case is pending voluntary retirement does not take effect automatically. But except such a situation, request for voluntary retirement is automatic. Rule 48-A of the CCS (Pension) Rules states that if the

competent authority does not refuse permission within three months from the date of notice of retirement, the retirement shall become effective.

6. That apart the learned counsel for the applicant cited a decision of this Court in the case of R.L.Bangia Vs. Union of India and others, 1992 (4) SLR 34. In that order the Bench has cited a number of decisions and the leading case was of J.Saran Vs. Union of India in O.A. No.364/86 wherein it was held that an order purely administrative in nature cannot have a retrospective effect. The letter of resignation becomes effective only from the date of actual acceptance of the resignation by the competent authority and not from the date from which they were directed to operate retrospectively. As in Saran's case I find that no explanation for inordinate delay on the part of the respondents in according the requisite sanction was forthcoming.

7. On the question of limitation, the learned counsel for the applicant also cited a decision of the Hon'ble Supreme Court in the case of S.R.Bhanrale Vs. Union of India & others, 1996 (10) SCC 172 for the proposition that the provisions of limitation would not apply to matters relating to retiral benefits.

8. I have carefully considered the submissions. I am of the view that the respondents are not competent in law to pass an order of the

nature of Annexure-A-9. In the first place they should have informed the applicant on his application dated 3.10.1994 to indicate the date from which he intended to voluntarily retire. They have not done that. They have not acted upon his application but ignored the same. Later on due to persistent personal problems the applicant had been explaining his predicament and requested the respondents to act on his application. By his letter dated 21.4.1995, he again pleaded for acceptance of his request for voluntary retirement. The respondents are obliged to act in accordance with law. Since they have not taken any decision on the first application, they have not acted legally in passing the impugned order retrospectively accepting his voluntary retirement. This is contrary to law. I, therefore, hold that the respondents can only consider his voluntary retirement from the date it was accepted in their record which was 14.8.1995. Annexure-A-6 shows that they accused the applicant of unauthorised absence from 5.9.1995; whether he was present or absent is a question of fact. If he was unauthorisedly absent the respondents should have initiated proceedings against him or treated him as on leave, either ordinary or extraordinary. They cannot whimsically strike off his name from the rolls on a date which was subsequent to the date he intended to voluntarily retire. The only charitable interpretation that can be given is that the respondents had not acceded to the waiver of three months notice period.

9. I would, therefore, direct respondent no.2 to treat the applicant as voluntarily retired only from 14.8.1995 i.e. the date on which they have accepted the voluntary retirement in the file. This is admittedly not a case of resignation. In Baljit Singh's case (supra) the Hon'ble Supreme Court held "Therefore mere expiry of three months' period of notice given, does not automatically put an end to jural relationship of employers and employee..... Only on acceptance by the employer of resignation or request for voluntary retirement, their jural relationship ceases." From 31.10.1994 to 14.8.1995 they are to ascertain as to whether the applicant was absent according to their records. If the applicant was not present on duty they have no option at this stage except to treat this period as leave. Thereafter the respondents shall commute the pension in accordance with law. His claim for commuted pension is delayed not because of his fault. All necessary formalities and established procedure shall be complied with in commuting his pension, treating his date of voluntary retirement as 14.8.1995. They shall also consider payment of all allowances which are due to him as a Government servant on the rolls like arrears of dearness, HRA and salary for the period till 14.8.1995 in accordance with law. A comprehensive and speaking order shall be passed by the respondents on the basis of the above directions within a period of six weeks from the date of receipt of a copy of this order along with a cheque representing the commuted

value of his pension. In the facts and circumstances of the case it would not be appropriate to direct payment of interest. As the muddle was created entirely on account of wrong application of law on the part of the respondents, I direct payment of Rs.500/- to the applicant by the respondents by way of cost.

N. Sahu 1574198  
(N. Sahu)  
Member (Admnv)

rkv.