

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH.

O.A. NO. 2118/94

(11)

New Delhi this the 27th day of September, 1995.

Hon'ble Shri N.V. Krishnan, Acting Chairman.

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

R.K. Bansal,
Sr. Accountant,
Pre-check Section,
R/o H.No. C-533, Sarojini Nagar,
New Delhi.

..Petitioner.

By Advocate Shri A.K. Bhardwaj.

Versus

Union of India through

1. The Secretary,
Ministry of Food,
Krishi Bhawan,
New Delhi.
2. The Additional Secretary,
and Financial Advisor,
Ministry of Food,
Krishi Bhawan,
New Delhi.
3. Shri A.S. Chauhan,
Controller of Accounts,
Ministry of Food,
1688, Kasturba Gandhi Marg,
New Delhi.
4. The Controller of Accounts,
Office of the Controller of Accounts,
Ministry of Food,
1688, Kasturba Gandhi Marg,
New Delhi.

..Respondents.

By Advocate Shri E.X. Joseph, Sr. Counsel with Shri
N. Amresh, Counsel.

ORDER (ORAL)

Hon'ble Shri N.V. Krishnan.

The applicant has been retired by the Annexure-
A order dated 16.9.1994 under Clause (b) of sub-rule
1 of Rule 48 of the Central Civil Services (Pension)
Rules, 1972 - Rules for short. That order reads
as follows:

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"Office Order No. 68.

Whereas the Controller of Accounts, Ministry of Food (appropriate authority) is of the opinion that it is in the public interest to do so;

Now Therefore, in exercise of the powers conferred by Clause (b) of Sub Rule 1 of Rule 48 of the Central Civil Services (Pension) Rules, 1972 the Controller of Accounts, Ministry of Food hereby retires Shri R.K. Bansal, Senior Accountant w.e.f. 20.9.94 (F.N.), he having already completed 30 years of service qualifying for pension on the 19.9.94. Shri R.K. Bansal shall be paid a sum equivalent to the amount of his pay plus allowances for a period of three months calculated at the same rate at which he was drawing them immediately before his retirement".

The above order has been challenged on various grounds. The respondents have resisted the claim made in the O.A.

2. When the O.A. came for final hearing today, one of the arguments raised by the learned counsel for the applicant was that this order is in violation of the provisions of the aforesaid rule. He contends that an order requiring an official to retire under Clause (b) of Sub-Rule 1 of Rule 48 can be issued only after the official had completed 30 years of qualifying service. Admittedly, in the present case, the applicant completed 30 years of qualifying service on 19.9.1994 as indicated in the impugned order. He has been retired w.e.f. 20.9.1994 by the order which has been issued on 16.9.1994. The contention is that such an order could have been issued only on or after 20.9.1994. The learned counsel for the

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applicant relies on a decision, ATC 1992(19) 821, Shri N. Srinivasan Murti Vs. DGP&T. As we feel that this issue goes to the root of the matter, we heard the learned counsel for the respondents as to how this order can be justified. His contention was that a proper reading of the rule would show that what is material is that the retirement should be made effective only after 30 years qualifying service has been completed. In other words, under this rule nobody can be retired before he has completed 30 years qualifying service. Admittedly, the retirement has been made effective one day after the 30 years qualifying service is completed. He, therefore, contends that the order is valid.

3. Sub-Rule 1 (a) and (b) of Rule 48 of the Rules reads as follows:

"48. Retirement on completion of 30 years' Service.

(1) At any time after a Government servant has completed thirty years' qualifying service-

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:"

Provided that-

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice".

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4. The plain reading of the rule indicates that a direction to the official to retire can itself be issued only after the 30 years' service is completed. Learned counsel for the respondents has not been able to cite any authority to support his contention. We notice that a Government of India's decision given as early as 6.7.1960 lays emphasis on the requirement that in the first instance the competent authority should have with him a report from the concerned Accounts Officer that a person has actually completed 30 years qualifying service. It is thereafter that the notice of retirement will be issued (G.I. M.F. O.M. No. F.12 (8)-E.V(A)/60, dated the 6th July, 1960). We are, therefore, satisfied that the impugned order was issued prematurely and, therefore, it is liable to be quashed on that account. We do so. We also quash the Office Memorandum (Annexure R-I) rejecting the applicant's representation. In the circumstance, we do not consider any other issues that have been raised in this O.A.

5. If the applicant has not already superannuated, we direct the respondents to reinstate him in service and give him all consequential benefits, namely, the pay and allowances for the period from 20.9.1994 till the date of reinstatement, within two months from the date of receipt of this order. We, however, make it clear that this will not stand in the way of the respondents from taking appropriate

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action under the aforesaid rule if they so
deem fit.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member(J)

N.V. Krishnan
27.8.85

(N.V. Krishnan)
Acting Chairman

'SRD'