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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1510/89 199
T.A. No.

DATE OF DECISION 7-6-1991

Shri Krishan Pal Petitioner Applicant
Dr.D.C.Vohra Advocate for the Petitioner(s) Applicant
Versus
Union of India & anr. Respondents
Shri P.P.Khurana Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. M.M. MATHUR, MEMBER(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. P.K.KARTHA, VICE CHAIRMAN)

The short point arising for consideration in this case is whether a notice for voluntary retirement given by a Government servant under FR 56(k) require acceptance by the competent authority or whether he would stand retired on the expiry of the notice period by operation of law.

2. FR 56(j) deals with the absolute right of the appropriate authority to retire any Government servant by giving him three months' notice, in public interest.

FR 56(k) deals with a corresponding right of the Government servant to retire after giving similar notice to the appropriate authority.

3. The Fundamental Rules were amended by the Fundamental Rules(1st Amendment) Rules, 1985 with effect from 2.7.85(vide

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Notification No.25013/25/83 Estt(A) dated 2.7.85,
reproduced in/All India Services Law Journal, Journal
Section pages 36-37). By the said amendment, the following
proviso(b) was inserted in FR 56(k):-

" (b) nothing in the clause shall also
apply to a government servant, including
scientist or technical expert who (i) is
on assignment under the Indian Technical
and Economic Cooperation (I.T.E.C)
programme of the Ministry of External
Affairs and other aid programmes, (ii) is
posted abroad in a foreign based office of
a Ministry/Department and, (iii) goes on a
specific contract assignment to a foreign
government unless, after having been
transferred to India, he has resumed charge
of the post in India and served for a period
of not less than one year."

4. In the instant case, the applicant who belongs
to the Indian Foreign Service 'B' was posted at Washington
DC between 1976-81. He was working as Attache in the
Indian Embassy at Washington DC with effect from
21.5.80. On 27.10.80, the Indian Embassy at Washington
DC issued an order to the effect that on leave-cum-
transfer to the Ministry of External Affairs, New Delhi,
the applicant relinquished the post of an Attache in
the Embassy on the forenoon of 27.10.80. On 21.11.80,
the Ticket Agent of Air-India informed the applicant
that the first flight on which they could offer a confirmed
seat to him for passage to India was 6.1.81. In view
of this, he requested on 1.12.80 to the Embassy that
his leave may be extended till 6.1.81. On 8.12.80,
the Embassy informed the applicant that Air India has
been requested to book his passage for 16.12.80 and
advised him to keep in readiness to proceed to India
on transfer and avail of the passage being arranged for

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him. Subsequently, the Embassy informed him that his passage to India had been booked for 28.12.80.

5. In the above background, the applicant served on 17.3.81 on the First Secretary (Admn) of the Embassy his notice for voluntary retirement:-

" With reference to Embassy's Memorandum No.WASH/ADMR/661(10)80 of 6th March, 1981 I very much regret to say that the Government's inhumanistic attitude has upset me and my family tremendously. I joined Government of India on 9.7.1948 and have rendered over 32½ of service and am over 52 years old.

In view of the above and compelled with the prevailing circumstances I intend to seek voluntary retirement w.e.f. today the 17th March, 1981 admissible under FR/56(K) which may kindly be conveyed to the Ministry of their approval. I further request that I may please be granted 3 months' E.L. which should run concurrently with the notice period."

6. On 14.4.81, the Indian Embassy issued the following Memorandum to the applicant stating that his request for voluntary retirement can be considered only on his return to India:-

" With reference to his letter, dated the 17th March, 1981, Shri Krishan Bal, formerly an Attache in the Embassy of India, Washington, D.C. is hereby advised to proceed to India and to report for duty in the Ministry of External Affairs immediately failing which disciplinary action will be taken against him. His application for voluntary retirement can only be considered on his return to Headquarters.

Shri Bal is further advised to surrender the passports issued to him and members of his family, immediately on receipt of this letter, to the Embassy."

7. On 12.6.81, the respondents issued a Memorandum under Rule 14 of the CCS(CCA) Rules, 1965 proposing to hold an enquiry against him for the alleged misconduct of "absenting himself from duty in an unauthorised manner with effect from 4.12.80 after having been relieved of his duties in the Embassy" and for not complying with "the Government's order transferring him to the Headquarters and the instructions conveyed to him by the Embassy of India, Washington to proceed to India and to report for duty there". The said Memorandum was sent to the applicant at a wrong address at "U.K." He, however, received it on 1.7.81 and represented to the respondents on 7.7.81 that it may be withdrawn. The applicant did not participate in the enquiry (which was therefore held ex parte) on the basis that he stood voluntarily retired under FR 56(k) on the expiry of notice period of three months. On 18.1.83, the respondents passed an order whereby the applicant was purported to be dismissed from Government service with effect from 31.12.82.

8. The facts are not in dispute. The question arising for consideration is one of law, namely, whether the applicant stood retired with effect from 17.6.81 as contended by him or whether he continued in Government service upto 31.12.82.

9. We have carefully gone through the pleadings and have considered the rival contentions. The learned counsel of the applicant relied upon numerous authorities¹

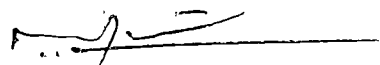
1. Authorities relied upon by the learned counsel of the applicant:

AIR 1978 SC 17; SLJ 1983(2) 418; ATC 1987(3) 533;
ATC 1987(3) 537; ATC 1989(11)408; 1984(1) SLJ 52;
1984(2) SLJ 343; ATR 1986(1) 296; ATR 1986(1) 227;
ATR 1986(1) 326; ATR 1986(1) 405; SLJ 1986 (2) 17

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and we have duly considered them. The legal position applicable to the instant case is quite clear. FR 56(k) as it stood on 17.3.1981 or 17.6.1981 did not contain a stipulation that a Government servant while posted abroad in an Indian Embassy should not seek voluntary retirement while being posted there. A stipulation in this regard came to be inserted in the second proviso to FR 56(k) only with effect from 2.7.1985, as already mentioned above. The said amendment has only prospective operation. Consequently, the applicant stood retired with effect from 17.6.1981 under the then provisions of FR 56(k) by operation of law and he would be entitled to proportionate pension, gratuity and other retirement benefits in accordance with the provisions of the CCS(Pension) Rules, 1972. In this view of the matter, the very basis on which the respondents proceeded against the applicant for alleged misconduct, is not legally tenable.

10. We, therefore, hold that the applicant should be treated as having retired voluntarily u.s.f. 17.6.1981, when his three months notice under FR 56 (k) expired. We further set aside and quash the enquiry proceedings held against the applicant ex-parte and the order of his dismissal dated 18.1.1983. The respondents are directed to release to the applicant the proportionate pension, gratuity and other retirement benefits together with simple interest at the rate of 10% per annum within a period of three months from the date of receipt of this order. There will be no order as to costs.


 (M. M. MATHUR)
 MEMBER(A)


 (P. K. KARTHA)
 VICE CHAIRMAN(J)