

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

12

OA No.1874/89

NEW DELHI THE 4th DAY OF MARCH, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)
HON'BLE MR.B.N.DHOUNDIYAL, MEMBER(A)

Shri Chand Sharma
S/o Shri Chotu Lal
R/o Vill & Post Rampur
Distt.Alwar(Raj.)

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Applicant

BY ADVOCATE SHRI V.P.SHARMA.

VS.

1.Union of India through the
Member(Personnel)
P&T Board,Dak Tar Bhawan
New Delhi.

2.The Post Master General
Rajasthan Circle,Jaipur.

3.The Director Postal Services,
Rajasthan Eastern Region,
Jaipur.

4.The Sr.Supdt.of Post Office
Rajasthan Circle,
Jaipur.

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Respondents

NONE FOR THE RESPONDENTS.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Postal Assistant, was compulsorily retired from service by an order dated 4.12.1987 passed by the Director Postal Services, Rajasthan Eastern Region, Jaipur. He preferred an appeal to the Director General Posts, New Delhi. By communication dated 26.7.1988 addressed to the Director Postal Services(E) Jaipur, the Assistant Director General(SPM) informed that the appeal preferred by the applicant had been considered and the same had been rejected. The orders passed by the Director Postal Services, Rajasthan Eastern Region, Jaipur and the Director General (Postal), New Delhi are being impugned in the present OA.

2. On 11.1.1990, this OA came up before this Tribunal. On that day, the learned counsel for the respondents raised the objection that the

8

Principal Bench of this Tribunal had no jurisdiction to entertain this OA as the offices of respondents 2 to 4 are located in Rajasthan. Counsel for the applicant pointed out that the applicant had preferred an appeal to respondent No.1(Union of India through the Member(Personnel), P&T Board,Dak Tar Bhawan, New Delhi). Counsel also made a statement that he proposed to move Hon'ble the Chairman with an application under Section 25 of the Administrative Tribunals Act,1985 for permission to present this OA in the Principal Bench. This Tribunal directed that the matter should be posted after the orders of Hon'ble the Chairman.

3. On 10.5.1993, the counsel for the applicant made a statement that he felt that the applicant was entitled to present this OA at Delhi as of right and, therefore, he need not file any application under Section 25 of the Administrative Tribunals Act,1985. He prayed for a week's time to make an application for recalling the order dated 11.1.1990.

4. On 25.5.1993, Misc.Petition No.1624/93 was allowed. By means of this Misc. Petition the applicant sought the recalling of the order dated 11.1.1990 passed by this Tribunal. On the same day, this Tribunal passed the following order:

" The petitioner has retired compulsorily. In the interest of justice, the respondents are given time to furnish the relevant record pertaining to the retirement of the applicant. Mrs.Chopra assures us that the record shall be produced on the next date of hearing which is 1.9.1993. Copy of this order be given to the learned counsel for the respondents."

14

5. On 7.9.1993, counsel for the applicant prayed for and was granted two weeks for filing an application seeking the amendment of the OA. It was directed that the OA shall be listed on 28.9.1993 for final hearing as a part-heard case.

6. On 6.12.1993, the Tribunal passed the following order:

" In pursuance of the order dated 7.9.1993, the applicant filed a Misc.Petition seeking amendment to the Original Application on 22.9.1993. Alongwith the M.P.,he filed amended O.A. This he did on his own. We passed no order to file the amended O.A. The M.P. filed on 22.9.1993 has been registered as M.P.No.2968/93. This M.P. is allowed. The applicant is permitted to amend the O.A. to the extent prayed for in the M.P. on 28.10.1993. The applicant filed another application seeking the amendment of the O.A. This application has been registered as M.P.No.8615/93. In this M.P., no fresh facts have been stated. However, certain amendments in the reliefs originally claimed in the O.A. are sought to be added. In the interest of justice we allow this application.

The applicant shall now file an amended O.A. incorporating therein the amendments allowed today. He shall serve a copy of the amended O.A. upon Smt.Raj Kumari Chopra, ld. counsel for the respondents,who will be at liberty to file a reply to the amended O.A.,if she so desires, within a period of three weeks from the date of the service of the copy of the amended O.A. The ld.counsel for the applicant undertakes to file the amended O.A.within 24 hours."

57

15

7. On 27.1.1994, the following order was passed:

" Shri V.P.Sharma undertakes to serve a copy of the amended OA upon Mrs.Chopra within 24 hours. If a copy is served within 24 hours upon Mrs.Chopra, she may, if she so likes, file a reply to the amended OA within 4 weeks. We make it clear that if a copy is not served upon Mrs.Chopra within 24 hours, this OA shall stand automatically dismissed. List on 1.3.1994 as part-heard."

8. This OA came up for hearing on 3.1.1994 in the revised list. No one appeared on behalf of the respondents. Shri M.K.Gaur, Advocate, made a statement at the Bar that he had served a copy of the amended OA upon the counsel for the respondents within the time specified by this Tribunal in its order dated 27.1.1994. The learned counsel for the applicant also produced a copy of the amended OA containing the initials of the learned counsel for the respondents which, as stated by him, were taken from the learned counsel for the respondents as a token of the receipt of the amended OA.

9. On 26.10.1987, the Senior Supdt.of Posts Alwar Division, Alwar passed an order compulsorily retiring the applicant from service. Relevant portion of the order ran:

"....The Sr.Superintendent of Post Offices, Alwar also directs that Shri Srichand Sharma 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."

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10 On 4.11.1987, the Supdt.of Post Offices, Alwar Division, Alwar passed an order cancelling the order dated 26.10.1987 whereby the applicant had been retired compulsorily from service. A copy of this order was issued to the applicant with the endorsement:

"...He will please refund the amount of Pay and allowances paid to him in lieu of three months notice before, rejoining his post."

The second endorsement was to the Postmaster, concerned that he will allow the applicant to join after refund of three months pay and allowances already paid to him(the applicant).

11. The impugned order dated 4.12.1987 passed by the Director Postal Services, Rajasthan Eastern Region, Jaipur runs as follows:

" WHEREAS the Director Postal Services, Rajasthan Eastern Region, Jaipur is of the opinion that it is in the public interest to do so;

NOW THEREFORE, in exercise of the powers conferred by Rule 48 of the Central Civil Services(Pension) Rules, 1972, the Director Postal Services, Rajasthan Eastern Region, Jaipur hereby retires Shri SRI CHAND SHARMA, Postal Assistant(LSC), Moti Dungri, Alwar Head Post Office with immediate effect, he having completed thirty years of service qualifying for pension on 07th MAY, 1986. Shri SRI CHAND SHARMA, has been paid on 26th OCTOBER, 1987 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.

THIS order supersedes the orders contained in Memo.of even number dated 28th OCTOBER, 1987 issued by the undersigned."

Sd/-

12. In para 4.6A of the OA as amended, the averments, as material, are these. On 4.12.1987, the applicant was on duty and he was entitled to his salary upto that date ^{the} ~~From~~ / amount which was paid to him on 26.10.1987 ~~from which~~ only the salary of one month and 21 days was left. Therefore, the requirement of Rule 48 of the CCS(Pension) Rules has not been complied with since he had not been paid his salary for three months.

13. We may at this stage indicate that no counter-affidavit at all has been filed on behalf of the respondents. The record too has not been produced for our perusal.

14. Rule 48 (1) of the Central Civil Services (Pension) Rules, 1972 and the proviso thereto, as material, states that at any time after a Government servant has completed thirty years' qualifying service, 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 and 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 public interest or three months' pay and allowances in lieu of such notice.

15. The first defect in the impugned order is that there is no recital in it that the applicant has been compulsorily retired from service in the public interest. Since the respondents have failed to file a counter-affidavit, it is difficult for us to speculate that, in fact, the order had been passed in the public interest. The second infirmity which is really fatal is that evidently the

applicant was not given three months' pay and allowances in lieu of notice contemplated in the proviso to Rule 48. Admittedly, a bare reading of the impugned order will show that the applicant was not given three months' notice. The fact that on 4.12.1987, an order retiring the applicant from service compulsorily, was passed coupled with the fact that the order dated 26.10.1987 was cancelled by the order dated 4.11.1987 lead to the irresistible conclusion that the respondents treated the applicant to be in service till 4.12.1987. We have already quoted the averments made by the applicant in para 4.6A of the OA as amended. We may reiterate that in the absence of any counter-affidavit filed on behalf of the respondents, we have no option but to accept the averments made in the aforesaid paragraph as correct.

16. We are now left with the question as to what relief should be granted to the applicant. Learned counsel for the applicant has made a statement at the Bar that the applicant would be satisfied if he is reinstated in service without being given backwages. This is a very fair offer indeed.

17. The order passed by the Director Postal Services, Rajasthan Eastern Region, Jaipur compulsorily retiring the applicant from service has merged with the appellate order passed by the Director General (Postal), New Delhi. A part of the cause of action has, therefore, arisen within the jurisdiction of the Principal Bench of the Tribunal at New Delhi. This Tribunal has, therefore, jurisdiction to entertain this OA and dispose of the same on merits.

18. It is averred in para 4.8 of the OA,

19

that the applicant was, at no stage, supplied with a copy of the order passed by the appellate authority rejecting his appeal. He was, therefore, absolutely in the dark about the reasons given by the appellate authority for rejecting his appeal. He, on 18.8.1988 made a representation to the authority concerned to apprise him of the grounds on which his appeal had been rejected. This OA was presented in this Tribunal on 14.9.1989. The applicant could wait for a period of six months after making of the aforementioned representation and thereafter file this OA in this Tribunal within a period of one year from the date of making of the representation. This OA was, therefore, filed by the applicant within time.

19. In the event, the application succeeds and is allowed. The impugned order dated 4.12.1987 passed by the Director Postal Services, Rajasthan Eastern Region, Jaipur is quashed. The appellate order too is quashed. The applicant shall be reinstated in service but no backwages shall be paid to him. For the purpose of determining the seniority of the applicant, the respondents shall treat him to be in continuous and interrupted service throughout.

20. There shall be no order as to costs.

B.N. Dhoondiyal
(B.N.DHOUNDIYAL)
MEMBER(A)

S.K. Dhaon
(S.K.DHAON)
VICE-CHAIRMAN(J)

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