

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

OA No.2144/89

NEW DELHI THIS THE 2ND OF DAY OF JUNE, 1994.

Shri T.S.Tyagi MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN(J)  
S/o Shri S.R.Tyagi MR.B.N.DHOUNDIYAL, MEMBER(A)  
R/o R-11/23, Surti Building  
New Raj Nagar  
Ghaziabad(U.P.)

..... APPLICANT

BY ADVOCATE SHRI B.S.MAINEE.

Vs

Union of India:through

1. Lt.Governor  
Union Territory of Delhi,  
Raj Niwas  
Delhi.
  2. The Chief Secretary  
Delhi Administration  
5, Sham Nath Marg  
Delhi.
  3. The Secretary(Medical)  
Delhi Administration  
5, Shyam Nath Marg  
Delhi.
  4. The Medical Superintendent  
Hospital for Mental Diseases  
G.T.Road, Shahdara  
Delhi-32
- ... RESPONDENTS  
NONE FOR THE RESPONDENTS

ORDER(ORAL)

JUSTICE S.K.DHAON:

By a communication dated 17.3.1989 addressed to the Medical Superintendent, H.M.D Shahdara, Delhi with a copy thereof forwarded to the applicant, the Joint Secretary(Medical) informed that he had been directed to state that since the applicant was one of those officials against whom disciplinary proceedings were likely to be initiated, his notice for voluntary retirement may not be considered. The decision of the authority concerned in/ accepting the notice of voluntary retirement given by the applicant is being impugned in the present OA.

2. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed.

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3. The undisputed facts are these. The applicant was born on 2.2.1938. He entered service on 26.11.1963. He attained the age of 50 years on 2.2.1988. On 29.12.1988, he served a notice of voluntary retirement upon the Medical Superintendent, H.M.D. Shahdara, Delhi that he wished to seek voluntary retirement with effect from 1.4.1989. It was also stated that that application may be treated as his three months' notice.

4. A reading of the communication dated 17.3.1989 of the Joint Secretary (Medical) (supra) discloses that the aforesaid application/notice of the applicant was considered to have been given by him under Fundamental Rule 56(k). We have, therefore, to examine first the question as to whether the authority concerned refused to accept the offer of voluntary retirement of the applicant on valid and legal considerations.

5. Rule 56(k) of the Fundamental Rules, as material, lays down that any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after attaining the age of fifty years if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he attained the age of fifty-five years.

6. In clause (c) of the FR 56 (K), it is provided that it shall be open to the appropriate authority to withhold permission to a Governemnt servant under suspension who seeks to retire under FR 56(k). The clause:

7. The impugned communication may be read again in the light of the provisions of FR 56(k). It is apparent that the appropriate authority could withhold permission to the applicant only in one situation and that was that he was under suspension.

8. We have already referred to the contents of the impugned communication and in it, it is

categorically recited that there was a proposal to suspend the applicant from service. Therefore, there can be no escape from the conclusion that permission had been withheld for a reason which was extraneous and not germane to the requirements of clause (c) of FR 56(k).

9. We have already stated the undisputed facts from which it is crystal clear that the applicant fulfilled all the requirements of Rule 56(k) as would be applicable to his case.

10. In the counter-affidavit, no attempt has been made to defend the impugned communication. However, it is asserted that the applicant was not accorded permission to seek voluntary retirement as he did not fulfil the requirements of Rule 48 A of the CCS(Pension) Rules. It appears that the Fundamental Rules as well as CCS (Pension) Rules are equally applicable to the applicant. We see no reason to take the view that an option has not been given by law to a Government servant seeking voluntary retirement to either take recourse to the provisions of the Fundamental Rules or the provisions as contained in CCS(Pension) Rules. The respondents are, therefore, not right in taking the stand that the applicant could not seek voluntary retirement as he did not fulfil the requirements of CCS(Pension) Rules.

11. This OA succeeds and is allowed. The decision of the relevant authority refusing to accord permission to the applicant to seek voluntary retirement from service is quashed. The applicant shall be deemed to have retired from service on expiry of three months from the date of receipt of the application/notice dated 29.12.1988.

12. The other prayer in this OA is that the respondents may be directed to pay to the applicant the pensionary benefits as would have been available to him on being

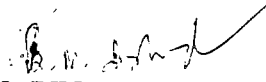
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treated as retired from service. We having held that the applicant should be deemed to have retired from service on a particular date, it necessarily follows that the respondents are liable to pay to the applicant all the pensionary benefits which are available to him (the applicant). The matter appears to be pretty old. The department would surely take some time to compute the pension payable to the applicant. We have no doubt that the respondents would act expeditiously in making all the payments to the applicant which are due to him towards pension, gratuity etc. However, keeping in view the fact that these are hard days, we direct the authority concerned to pay provisional pension to the applicant within a period of three months from the date of production of a certified copy of this order by the applicant before the relevant authority.

13. The learned counsel for the applicant strenuously urged that this is a fit case where we should award interest to the applicant. Having given a thoughtful consideration to the matter, we feel that this is not a fit case where interest should be awarded. The question as to whether the applicant would be deemed to have retired from service was under litigation and that has been decided today by us. We, however, make it clear that if the respondents fail to pay <sup>the</sup> entire amount payable to the applicant either towards Pension or gratuity or General Provident Fund or any other amount due to him within a period of one year from the date of presentation of a certified copy of this order by the applicant to the relevant authority, interest at the rate of 12% p.a shall be paid to him from the date of the expiry of a period of one year from the date of the presentation of a certified copy of this order till the date of payment.

14. There shall be no order as to costs.

  
(B.N. DHOUNDIYAL)  
MEMBER(A)

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