

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2202/89  
T.A. No.

199

DATE OF DECISION 9.6.1990.

Shri I. J. Naik	<del>Petitioner</del> Applicant
Shri S. S. Tiwari	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
Administrator, Daman & Diu & Ors.	Respondent
Shri D. K. Sinha	Advocate for the Respondent(s)

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The Hon'ble Mr. P. K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D. K. Chakravorty, Administrative Member.

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 of the Bench delivered by Hon'ble  
Mr. P. K. Kartha, Vice-Chairman)

The applicant, who has worked as a Lecturer in Gujarati in the Government College of Science & Arts, Daman, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that a declaration be issued to the effect that he stood voluntarily retired on and from 3rd October, 1989, on the expiry of the notice period of 90 days from 3.7.1989, the date of his notice of voluntary retirement, and that he be declared entitled to get pension for the period from 3.10.1989 onwards and in the event of his death, his wife be entitled to get the family pension. The application was filed on 28.10.1989.

2. Despite several opportunities given to the respondents to file their counter-affidavit, they have not done so. The

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application has not been admitted. We have gone through the records of the case and have heard the learned counsel for both the parties. We feel that the issues involved require adjudication and we admit the application.

3. The facts of the case in brief are that <sup>the applicant</sup> joined the Government College at Daman in 1966 as a Lecturer in Hindi and continued in the same post till 1968. Thereafter, he joined as a Lecturer in Gujarati after he was selected for the same by the U.P.S.C. In 1976, his services were terminated under Rule 5(1) of the C.C.S. (Temporary Service) Rules, 1965, which was challenged in a Writ Petition filed by him in the Bombay High Court. The Bombay High Court, by its judgement dated 8.8.1983, allowed the writ petition and quashed and set aside the impugned order of termination. Thereafter, the respondents issued an order on 2nd April, 1984 for reinstating him in service, the operative part of which reads as follows:-

"Now, therefore, the Administrator of Goa, Daman and Diu hereby rescinds the said order with immediate effect. Consequently, Shri I.J. Naik shall be deemed to be in continuous service and holding the post of Lecturer in Gujarati from the date of termination of his services. Shri Naik is therefore directed to join his duties within a period of one week from the date of receipt of this order. The order for regularisation of the period of absence from duty from 5.6.1976, to the date of his joining the same will be issued as per rules."

4. Thereafter, the applicant joined duty on 9.3.85 and continued in service as a Lecturer till 3.1.1988.

5. With reference to his notice of voluntary retirement dated 3.7.1989 which the applicant handed over to the Administrator, Union Territory of Daman & Diu, the

Principal vide the impugned letter dated 29th September, 1989, was directed to inform him as follows:-

"Since your 20 years of regular Service record is not with the Government Office, and you have also not clarified the matter, the Govt. is unable to accept your notice of Voluntary Retirement".

6. Admittedly, the applicant has worked for over 20 years in three spells from <sup>12.5.1966</sup>~~12.5.1966~~ to 3.1.1988. The particulars of service put in by him are as under:-

<u>"Spell No."</u>	<u>From To</u>	<u>Years</u>	<u>Months</u>	<u>Days</u>
1st	12.5.1966 to 10.6.1976	10	-	29
2nd	11.6.1976 to 2.4.1984	07	10	23
3rd	9.3.1985 to 3.1.1988	02	09	26
GRAND TOTAL		20	09	18."


7. It will be noticed that there is a break of service between the 2nd and 3rd spells, mentioned above. He did not join duty from 2.4.1984 to <sup>8.3.1985</sup>~~9.3.1985~~. If this interruption between the 2nd and 3rd spells of service is to be ignored, he would be eligible for seeking voluntary retirement under 48-A of the Central Civil Services (Pension) Rules, 1972. If the said period is not to be ignored, he would not be eligible for seeking such retirement.

8. In the <sup>2</sup>~~1~~ order dated 2nd April, 1984, the respondents have held that the applicant shall be deemed to be in continuous service and holding the post of Lecturer in Gujarati from the date of termination of his services. It means that the first two spells of his service put together, will come to 17 years, 10 months and 23 days. It may be stated that the applicant has

also been paid full salary and allowances for the period from 10.6.1976 to 2.8.1984.

9. By the impugned order dated 2nd April, 1984, the applicant was "directed to join his duties within a period of one week from the date of receipt of this order." It was further stated that the order for "regularisation" of the period of absence from duty "from 5.6.1976 to the date of his joining the same" will be issued as per rules.

10. The question arises whether the direction to the applicant to join his duties within a period of one week from the date of receipt of the order dated 2nd April, 1984, is directory or mandatory. The impugned order did not make it a condition that in case he did not comply with the direction and join duty within the stipulated period, he would be liable to any adverse consequences. The respondents allowed him to join duty on 9.3.1985 without any precondition, or qualification. The impugned order also stated that the period of absence would be regularised as per the rules.

11. In our opinion, the direction given to the applicant to join his duties is only directory and not mandatory. According to Black's Law Dictionary, the word 'direct' means "to point to; guide; order; command; instruct. To advise; suggest; request." (Vide 5th edn., p.413). In Chambers' Twentieth Century Dictionary, the word "direct" means, inter alia, "to point or aim; to point out the proper course to; to guide; to order; to address; etc." 

12. In the instant case, the applicant was allowed to join after the period of one week within which he was directed to join. There were no preconditions. In view of this and having regard to the fact that the respondents had undertaken to regularise the period of his absence from duty from 5.6.1976 to the date of his joining duty, the period of service rendered by him in the third spell from 9.3.1985 to 3.1.1988, should not be treated as an interruption and it shall be treated as automatically condoned for the purpose of treating the period between the second and third spells as qualifying service. In this context, reference may be made to Rule 28 of the C.C.S. (Pension) Rules, 1972, according to which, in the absence of a specific indication to the contrary in the Service Book, an interruption between two spells of civil service rendered by a Government servant under Government, including civil service rendered and paid out of Defence Services Estimates or Railway Estimates, shall be treated as automatically condoned and the pre-interruption service treated as qualifying service. The period of interruption shall, however, not count as qualifying service.

13. In the facts and circumstances of the case, we are, therefore, of the view that the respondents have condoned the period of interruption between the second and the third spells of the applicant's service, which they are bound to regulate by granting leave to him of the kind due without pay and allowances for the said period.

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14. In our opinion, the non-acceptance of the applicant's notice of voluntary retirement on the ground that his service record is not with the Government Office, is not tenable. The applicant is in no way responsible for the non-availability of his service record in the office of the respondents. Though a notice under Rule 48-A of the C.C.S. (Pension) Rules, requires acceptance by the appointing authority, the proviso to Sub-Rule(2) of Rule 48-A provides that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. The Administrator of Daman & Diu, who is the appointing authority of the applicant, did not refuse to grant the permission for retirement of the applicant before the expiry of the notice period.

15. In the conspectus of the facts and circumstances of this case, we hold that the applicant must be deemed to have retired w.e.f. 3.10.1989, on the expiry of the notice period of 90 days from 3.7.1989. The applicant would, therefore, be entitled to proportionate pension and other retirement benefits admissible under the rules. The respondents shall comply with the above directions within a period of three months from the date of communication of this order. There will be no order as to costs.

*D.K. Chakravorty*  
(D.K. Chakravorty)  
Administrative Member  
9/8/90

*P.K. Kartha*  
9/8/90  
(P.K. Kartha)  
Vice-Chairman(Judl.)

*The typographical errors in Para 6 above have been corrected pursuant to our order dated 7-8-90 in RA No 111/90 filed by the applicant.*

*D.K. Chakravorty*  
(D.K. CHAKRAVORTY)

*P.K. Kartha*  
(P.K. KARTHA)