

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(7)

O.A.No. 2318/89

Date of decision:

12.2.93

Sh. Nirankar Singh Applicant
Versus
Union of India & Anr. Respondents.

Coram:-

The Hon`ble Mr. P.C. Jain, Member(A)

The Hon`ble Mr. J.P. Sharma, Member(J)

Counsel for the applicant : Sh. B.S. Mainee
Counsel for the respondents : Sh. J.C. Madan, proxy counsel
for Sh. P.H. Ramchandani, Sr.
Counsel.

JUDGEMENT

(delivered by Hon`ble Sh. J.P. Sharma, Member(J))

The applicant has been working as Sr.Store Superintendent in the Air Headquarters, New Delhi. He availed of 198 days sanctioned leave upto 30.9.1986 for going to U.S.A. to meet his brother employed as Structure Maintainer in New York City Transit Authority. He applied for futher leave of 145 days upto 31.3.1987 from abroad. He was also granted this leave. After the expiry of the sanctioned leave the applicant did not join and gave further application dated 25.3.1987 for grant of leave of 183 days which was rejected by the respondents. His absence was treated as unauthorised

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and proceedings under Discipline Rules i.e. 14(1) of CCS(CCA) Rules, 1965 were initiated against him and he was issued a memo of charge sheet dated 27.7.1987 which was served on him at the New York residence. The applicant submitted the reply to the aforesaid memo of charges on 9.9.1987 denying the charges and further requesting Joint Director(Personnel) Air Headquarters, New Delhi to grant him leave upto 31.3.1989 and in case it is not feasible then his request for voluntary retirement may please be considered. The respondents in the reply dated 20.10.1987 with reference to his letter dated 9.9.1987 informed him that he is unauthorisely absent from duty w.e.f. 1.4.1987. He was also informed that if he desired to seek voluntary retirement from service he is advised to submit a proper application for the purpose. In the meantime, the disciplinary action was processed further as required under the Rules. In reply to this letter of 20.10.1987 the applicant again sent a request on 30.11.1987 for voluntary retirement. In this letter he has stated that he be given voluntary retirement w.e.f. 1.12.1987. Alongwith this he also enclosed a medical certificate of his wife. The request for voluntary retirement was rejected by memo dated 4.2.1988 (Annexure-A-1-A) and the applicant is aggrieved by this order.

2. In the memo charge sheet dt. 27.7.1987, Sh. K. Ayyanar was appointed Enquiry Officer who issued notice to the applicant to appear in the enquiry proceedings and this notice dated 23.2.1988 was sent to his New York address (Annexure-11). The applicant in reply to this notice again

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made a request for voluntary retirement by the letter dt. 14.3.1988 (Annexure A-12) but he did not join the enquiry proceedings. The enquiry officer submitted his report dt. 8.4.1988 to the Disciplinary Authority who passed the punishment order dt. 11.11.1988 dismissing the applicant from service (Annexure A-1) enclosing a copy of the enquiry officer's report. This order of dismissal from service has also been assailed in the present application. The applicant also preferred an appeal against this order of dismissal from service and the appellate authority by the order dt. 28.12.1989 (Annexure iv to the counter) dismissed the appeal.

3. The present application has been filed on 16.11.1989 against the order of the Disciplinary Authority dt. 11.11.1988 and against the order of CSO Asstt. Director (Personnel), Airheadquarters dt. 4.2.1988 rejecting the request of the applicant for voluntary retirement claiming the following reliefs:-

"(i) that this Hon`ble Tribunal may be pleased to quash the impugned orders dated 11.11.1988 and direct the respondents to reinstate the applicant in the service with all consequential benefits;

(ii) that this Hon`ble Tribunal may be further pleased to quash the impugned order dated 4.2.1988 (Annexure A 1A), being illegal, arbitrary and malafide;

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(iii) that any other or further orders, which this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case, may also be passed in favour of the applicant;

(iv) that the costs of the proceedings may also be awarded in favour of the applicant.

4. The applicant has stated in the application that his wife who had accompanied him to USA, due to unavoidable circumstances and her sickness prevented the applicant to come to India and join his duties. He, therefore, applied for extension of 183 days from 1.4.1987 to 30.9.1987. The refusal to grant leave was communicated to him by letter dated 22.6.1987. He submitted representation alongwith medical certificate of the illness of his wife. Thus, it is the case of the applicant that due to the sickness of his wife he could not join the duty and come to India. In the alternative he had also made a request for voluntary retirement, however the ex parte disciplinary proceedings were proceeded against him and a order of dismissal from service was passed against which he filed an appeal to the Chief of Air Staff, Air Headquarters, New Delhi on 31.8.1989. The applicant has also assailed the proceedings of enquiry that the same were not held in accordance with the rules.

5. The respondents contested the application and filed the reply opposing the grant of relief to the applicant on the ground that the applicant while working as Sr. Store

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Superintendent went to USA on the sanctioned leave from 17.3.1986 to 30.9.1986 and again he was granted leave upto 31.3.1987. After the expiry of the leave a communication dated 10.5.1987 was sent to him that he is unauthorisedly absent and if he was sick he should produce a medical certificate failing which he will render himself liable to disciplinary action. The applicant had moved an application for extension of leave on 25.3.1987 requesting for extension of leave upto 30.9.1987 on domestic grounds. The leave was not granted because neither the rules permitted nor it was feasible to grant any extension of leave to the applicant. This position was also communicated to him by the letter dated 22.6.1987 with a categorical warning that he was being treated as unauthorisedly absent from duty w.e.f. 1.4.1987. There was, however, no response from the applicant. The Disciplinary Authority decided to initiate disciplinary proceedings and accordingly a charge sheet dated 27.7.1987 was issued under Rule 14 of the CCS(CCA) Rules, 1965. The enquiry officer was appointed who gave two notices to the applicant dated 21.2.1988 and 18.3.1988 but the applicant did not participate in the enquiry and only sent a letter dated 14.3.1988 expressing his inability to join the enquiry and reiterating his request for voluntary retirement. Enquiry was, therefore, held ex parte and the impugned order dt. 11.11.1988 was passed which was received by the applicant on 19.12.1988. The applicant did not file any appeal within the time only sent an application dated 27.5.1989 followed by reminder dated 21.7.1989 reiterating his request for voluntary

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retirement. The applicant thereafter sent an appeal dated 31.8.1989, 8 months after the receipt of the penalty order. Even though the appeal was time barred, the same has been examined by the Chief of Air Staff and has been dismissed by the order dated 28.12.1989.

6. The applicant filed the rejoinder reiterating the same facts as taken in the original application.

7. We have heard the learned counsel for both the parties at length and have gone through the record of the case. The learned counsel for the applicant argued that applicant wife who accompanied him to USA had fallen ill. However, the applicant could not substantiate this fact and there are only averments in the application except that with the letter dt. 30.11.1987 a certificate of same doctor was enclosed. In an earlier letter dated 9.9.1987 in reply to the memo of charges the applicant only referred to the illness of his wife.

8. The learned counsel for the applicant also argued that the report of the enquiry officer was not furnished but the applicant firstly did not join in the proceedings at all and secondly in view of the decision in S.P. Vishwanathan Vs. U.O.i. decided by the Hon'ble Supreme Court reported in 1992 SCC (L&S) P.155, the ratio of Mohd. Ramzan Khan case applies to all those cases in which the orders have been passed after the decision of that case i.e. after 23.11.1990.

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9. The learned counsel for the applicant also assailed the order of rejection of the application for voluntary retirement by the order dt. 4.2.1988. The applicant had already been served with a memo of charges to which he filed reply on 9.9.1987. He cannot claim as of right voluntary retirement from service when disciplinary proceedings are pending against him. It is evident from the record that all the requests made by the applicant were conditional and in none of the requests he has given 3 months required notice which is mandatory. Thus there is no application according to law under Rule 48(A) of the CCS Pension Rules, 1972, the order passed by the respondents only on a representation made to the memo of charges cannot be said to be in any way illegal order.

10. In view of the above facts and circumstances, we do not find any merit in the application and the same is dismissed. The parties to bear their own costs.

J.P. Sharma
(J.P. Sharma) 12.2.93

Member(J)

P.C. Jain
(P.C. Jain)

Member(A)