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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2507/89

New Delhi, this the 28th day of August, 1994.

HON'BLE SHRI J.P.SHARMA MEMBER(J)

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

Shri C Hasija
s/o Shri Suraj Bhan Hasija,
r/o 26/4, Easter Patel Nagar,
New Delhi.

..Applicant

(By Shri GD Gupta, Advocate)

Vs.

1. Union of India, through.

The Secretary,
Ministry of Science & Technology,
Technology Bhawan,
New Mehrauli Road, New Delhi.

2. Director General of Meteorology,
India Meteorological Department,
Lodi Road, New Delhi.

3. The Director,
Regional Meteorological Centre,
Lodi Road, New Delhi.

..Respondents

(By Shri VSR Krishna, Advocate)

ORDER

HON'BLE SHRI P.T.THIRUVENGADAM MEMBER(A)

The applicant who was working as Senior Observer under the Meteorological Department was deputed as Hydro Meteorologist with the Ground Water Authority, Libya initially from 4-2-75 for a period of one year. He was allowed extension on deputation to 3-2-78 and further extension upto 3-2-80 was to be regularised after his reporting back for duty in the department. However, the applicant reported back only on 2-9-86. He gave three months' notice for voluntary retirement on 5-9-86. From 7-9-86 he was on leave and thereafter did not report for duty. On 5-9-89 an office memorandum was issued that his application for voluntary retirement dated 5-9-86 was invalid as his notice did not satisfy the requirements under rule 48(A) of the CCS Pension Rules. The applicant was also asked to resume duties on or before 15-9-89. Since the applicant did not

8

join duties even after this office memorandum, a charge sheet was issued on 26-9-89. The article of charge stated that the applicant had been on leave upto 4-12-86 and thereafter did not report for duty despite instructions to report and his unauthorised absence was being treated as violation of the relevant Conduct Rules.

2. This O.A. has been filed with the following prayers:-

a) Issue appropriate direction or directions order or orders

i) quashing the Memo. dated 5-9-89 and the charge sheet served vide Memo dated 26-9-89;

ii) declaring that the applicant stood voluntarily retired from service with effect from the forenoon of 5-12-86;

iii) further declaring the charge sheet dated 26-9-89 as being incompetent and hence illegal in view of the fact that the applicant already stood voluntarily retired from service from forenoon of 5-12-1986;

iv) also declaring the applicant entitled for all the retiral benefits, like, pension, gratuity etc.;

v) directing the respondents to retire the applicant voluntarily with effect from forenoon of 5-12-86 and grant him all consequential retiral benefits, such as, pension, gratuity etc. immediately with retrospective effect from 5-12-86.

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3. Brief facts of the case relevant to this D.A are as under:-

4. The applicant had been deputed with the Govt. of Libya from 4-2-75 and the respondents had not extended the terms of deputation beyond 3-2-1980. The applicant did not return to his parent post but continued to remain in Libya.

5. It is the case of the respondents that repeatedly the applicant was asked to report back on the expiry of the original period. However, the applicant requested for extension beyond 3-2-80 stating that the Ground Water Authority of Libya was very much in need of his service and they were not agreeable to relieve him and in fact contracted his service upto 30-6-86. The applicant finally reported back and joined duty at Chandigarh on 2-9-86. Notice of voluntary retirement was given on 5-9-86 and it is the case of the respondents that this notice was given without the applicant having completed 20 years qualifying service for pension and also without serving for at least one year on return to parent department from assignment to a foreign government, as required under rule 48(a) of the Pension Rules. The relevant rule reads as under:-

"48-A. Retirement on completion of 20 years' qualifying service.

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,
- (ii) posted abroad in foreign based offices of the Ministries/Department,
- (iii) on a specific contract assignment to a foreign government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

6. On 29-5-86 a charge of disciplinary proceedings under Rule 14 of CCS(CCA) Rules was started against the applicant; the charge being that he did not report back to duty on expiry of the approved period of deputation. The disciplinary proceedings were however closed by office memorandum dated 9-11-87 in view of the letter from the Libyan Authorities that the services of the applicant were required by them and they were not in a position to relieve him before 30-6-86.

7. With regard to the notice for voluntary retirement dated 5-9-86, the first reaction from the respondent was by way of a telegram dated 19-12-86 stating that his request for voluntary retirement had not been agreed to. The applicant was also advised to join duties immediately. This was followed by a further office memorandum dated 22-12-86 informing the applicant that his request for voluntary retirement would be considered only after decision on the disciplinary case pending against him is decided. Ultimately on 5-9-89 the applicant was advised that he had neither completed the 20 years qualifying service at the time of submitting the voluntary retirement notice nor he served for one year on return from contract assignment to a foreign government. He was also advised that his service from 3-2-80 till 30-8-86 in Libya was not regularised.

8. On 26-9-89, a second charge sheet was issued for the charge of the applicant not having resumed the duty after the expiry of sanctioned leave upto 4-12-86.

9. The ld. counsel for the applicant argued that the voluntary retirement notice submitted on 5-9-86 should be deemed to have become effective on the expiry of three months since the respondents did not refuse permission for retirement within this period.

10. However, the stand of the respondents is that the notice itself was not valid and even as per rule 48(2) of CCS Pension Rules only a notice given under sub-rule (1) required acceptance. A perusal of sub-rule (1) brings out that a government servant opting for voluntary retirement should have completed 20 years qualifying service and also should have put in one year service on return from a specific contract assignment with a foreign government. As regards the first requirement it is the case of the respondents that the applicant having joined service only in August 1964 and the service between 1980 and 1986 not having been regularised, he was short of the 20 years qualifying service when he submitted his request for voluntary retirement in September, 1986. This was firmly contested by the ld. counsel for the applicant who stated that with the final decision to close the departmental proceedings which were initiated for the over-staying after 1980, there is no case for the respondents to deny regularisation of the period from 1980 to 1986. At the time of submitting the notice for voluntary retirement the applicant was under the bonafide belief that his services with Libyan government which had been necessitated because of the Libyan government were needing it cannot be deemed to be not qualifying for pensionary purposes. The conduct of the respondents right through supported this belief. And the closing of the proceedings only ratified the same. If the

respondents had taken undue time in ^{not} regularising the services beyond 1980 and upto 1986 the applicant should not be made to suffer. On the other hand, the respondents have averred in their reply that this case was considered by the Government who found it to be a case of wilful over-stay abroad in total disregard of Government directives and, therefore, the proposal for regularisation from 4-2-80 to 30-6-86 was rejected. Thus the applicant did not qualify for 20 years of service with respect of voluntary retirement.

11. We have considered the contentions of both sides and we note that mere dropping of proceedings need not result in the relevant period being treated as qualifying service. The charges were for unauthorised stay and if the charges are condoned still the issue as to how to treat the period remains. It is well within the discretion of the Government to decide as to whether such period could count for qualifying service for pension or not. Hence we are not convinced by the grounds advanced by the applicant.

12. Apart from the above, respondents have also taken a stand that the applicant did not put in one year service on return from Libya. The ld. counsel for the applicant argued that the applicant had been sent only on deputation and not on a specific contract assignment to a foreign Government. Respondents, however, drew attention to the applicant's letter dated 9-4-86 wherein he had mentioned that his present contract with the Libyan Government would expire by 30-6-1986. The respondents argued that the applicant was on a private arrangement with the Libyan Authorities from 1980 onwards and on return he did not complete the minimum one year requirement for serving before submitting the notice of voluntary retirement. In view of the contract assignment of the applicant with the foreign Government beyond 1980 we do not

consider it necessary to go into the deputation terms applicable to the earlier period. In view of this even on this ground the non-acceptance of the voluntary retirement notice cannot be faulted nor can we hold that respondents not having reacted within three months of the notice would result in deemed acceptance of voluntary retirement.

13. It was then argued that the applicant had acted under bonafide impression and the relaxation powers available under rule 88 of CCS (Pension) Rules should be extended to him. We are not convinced that the relaxation could be claimed as a right but we do not want to express any opinion on this issue and we leave it to the respondents to take a view keeping in mind the totality of the circumstances. The respondents may note that the applicant has not been willing to rejoin due to personal reasons. With these observations the O.A. is disposed of with the reliefs as claimed as dismissed being devoid of merits. Stay granted restraining respondents from proceeding further in pursuance of charge sheet dated 26-9-89 (An.A27) is vacated. No costs.

P. J. - 26
(P.T. THIRUVENGADAM)
Member(A)

J. P. Sharma
(J.P. SHARMA)
Member(J)