

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2569/1989
T.A. No.

199

DATE OF DECISION 22.8.1991

<u>Dr. Ravindra Nath Misra</u>	Petitioner
<u>Shri Pradeep Misra</u>	Advocate for the Petitioner(s)
Versus	
<u>C.S.I.R. & Others</u>	Respondent
<u>Shri A.K. Sikri</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, 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? *No*

JUDGMENT(ORAL)

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

We have heard the learned counsel of both parties when the case came up for admission today. The applicant who has worked as Senior Scientific Assistant in the CSIR has prayed that the impugned order dated 5.10.1989 passed by the respondents be quashed and that they be directed to grant him permission/sanction to voluntarily retire from service.

2. The notice of voluntary retirement dated 28th August, 1989 mentions about the ill health of the applicant as the main reason for seeking voluntary retirement. He has stated that he was on medical leave at the time of applying for voluntary retirement.

3. The respondents have informed ^{the applicant} vide their letter dated

5.10.1989 that his request for voluntary retirement cannot be accepted on the ground that he has not completed 20 years of qualifying service. They have also stated that the period of his suspension with effect from 11.5.1983 is a non-qualifying period for all service benefits and cannot be counted for pensionary benefits.

4. The learned counsel of the applicant has relied upon the Government of India's decision No.(1) under Rule 23 of the CCS(Pension) Rules, 1972, according to which, where the suspension has been held to be wholly unjustified,

appropriate entries as to how the intervening period is to be treated, have to be made in the service book of the Government servant concerned. In the absence of any specific entry, the period of suspension shall be taken as counting towards the qualifying service (Vide OM dated 28.2.1976).

5. The applicant had been placed under suspension on 11.5.1983. The order of suspension was revoked and the penalty of reduction to a lower rank with opportunity for promotion in the normal course was imposed on him by order dated 30th June, 1988.

6. The respondents have not passed any order as to how the period of suspension will be regulated.

7. In our opinion, the respondents should have given a show cause notice to the applicant and after considering his

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representation, passed specific order as to how the period of suspension is to be regulated, namely, as to whether it would be treated as duty for all purposes or for some purposes or as not duty for any purpose. No such procedure was followed by the respondents. The mere fact that a penalty has been imposed on the applicant would not be sufficient for the purpose of deciding whether the period of suspension will ^{not} be treated as duty or as qualifying service for the purpose of pension.

8. The respondents have not given permission to the applicant to voluntarily retire from service within the notice period. Though the reason given by them for not giving the permission is not legally sustainable, the refusal of permission by them cannot be faulted. The respondents have the discretion to grant the permission or to refuse the permission sought for voluntary retirement in terms of Rule 48-A of the CCS(Pension) Rules.

9. While conceding the right of the respondents to refuse the permission, we do not agree with the reason given by them in the impugned order dated 3.10.1989. We are also of the opinion that having regard to the circumstances in which the applicant had sought for voluntary retirement, the respondents should consider his case sympathetically.

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In the facts and circumstances of the case, we feel that the respondents should so regulate the period of suspension, ^{A. proportionate} that the applicant will not be deprived of his pension and other retirement benefits. The application is disposed of with the above observations.

There will be no order as to costs.

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

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN (J)