

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. C.A. 442 of 1989

Date of decision : 23.4.1990.

Dr. B. B. Misra Applicant
Shri Rishi Prakash Counsel for Applicant

-Versus-

Delhi Admn. & Others Respondents
Mrs. Raj Kumari Cho-pra Counsel for Respondents

CORAM : Hon'ble Mr. P. C. Jain, Member (A)
Hon'ble Mr. J. P. Sharma, Member (J)

1. Whether Reporters of local papers may be allowed
to see the Judgment? yes
2. To be referred to the reporter or, not? yes
3. Whether their lordships wish to see the fair
copy of the judgment? no
4. To be circulated to all Benches of the Tribunal? no

J. P. Sharma
(J. P. SHARMA)
MEMBER (J)

P. C. Jain
(P. C. JAIN)
MEMBER (A)

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Applicant.

Shri Rishi Prakash

Counsel for the Applicant.

V/s.

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Respondents.

Mrs. Raj Kumari Chopra

Counsel for Respondents
1 to 3.

Shri C.S.S. Rao

Counsel for Respondent
No.4.

CORAM: - Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered
by Hon'ble Mr. J.P. Sharma, Member)

JUDGEMENT

The applicant, Lecturer in Physiology, Maulana Azad Medical College (in short, M.A.M.C.) joined Central Health Service Group 'A' on 26.3.1980. He tendered a notice of voluntary retirement from service w.e.f. 1.6.1988 to the Ministry of Health and Family Welfare (Annexure V) on 29.2.1988 under Rule 28-A of CCS (P) Rules 1972 contending that he is in continuous Government service from 9.2.1967 and as such had completed 20 years of qualifying service for entitlement to premature retirement.

2. In reply, the Ministry of Health and Family Welfare, by letter dated 12.10.1988 (page 31), observed that the service rendered under the Government of Orissa could not be counted as the applicant had submitted resignation on 29.6.1979 and Rule 23(2)(iv) of Orissa Pension Rules 1977 does not entitle him for the pensionary benefits. Another letter dated 28.12.1988 was also sent to the same effect to Delhi Administration as well as to the applicant (Annexure-VI). The applicant has assailed the above letters. The applicant seeks the relief for counting of the service under Government of Orissa which is also respondent No.4.

3. The facts are that the applicant joined the Medical Service under Orissa Government on 9.6.1967 and worked in various capacities as Assistant / Surgeon /

Demonstrator. He went on deputation from 1.6.1975 for a period of four years to I.A.F. service. His term for further deputation in I.A.F. was not extended after 31.5.1979. He was posted in the Medical College, Berhampur, Orissa as a Demonstrator in Physiology Department. However, the applicant did not join that post. The applicant was relieved from the I.A.F. service on 1.6.1979 and was granted terminal leave upto 28.6.1979. When the applicant did not join under the parent department, he was charged and an explanation was called from him. The applicant did not represent and instead tendered his conditional resignation w.e.f. 29.6.1979 (Annexure-I), being dissatisfied, as his request for an impartial judicial enquiry by a Judicial Magistrate was not acceded to.

4. Some time afterwards, the applicant applied in Central Health Service to the Union Public Service Commission mentioning in the Application Form that he was a treating physician. The fact that the applicant was still in service under Government of Orissa had not been mentioned in the said Form. The applicant after selection joined on 26.3.1980. in Central Health Service in Maulana Azad Medical College as Lecturer in Physiology. On 29.2.1988, the applicant gave the notice to the Ministry of Health and Family Welfare for pre-mature retirement from 1.6.1988. This request was not accepted and the impugned letters dated 12.10.1988 and 28.12.1988 were sent to the applicant in reply by the Ministry of Health and Family Welfare.

5. The respondent No.4, Government of Orissa, in the reply contended that since the applicant resigned on 29.6.1979, the services rendered under them cannot be considered for the pensionary benefits in view of Rule 23(2)(iv) of Orissa Pension Rules, 1977. It was further contended that the applicant wanted to continue on deputation in I.A.F. Service but the extension of deputation period was not allowed. The applicant did not join the place of posting allotted by the Director of Medical Health

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and instead resigned from service on 29.6.1979.

6. We heard the learned counsel of the parties at length. The contention of the applicant is that under Rule 48(a) of C.C.S. (Pension) Rules, 1972, the applicant is entitled to seek pre-mature retirement from 1.6.88 for which he has given a valid notice on 29.2.88 (Annexure-V). In order to qualify for pre-mature retirement under Rule 48(a) of the aforesaid rules, the person must have put in 20 years of service. It is not disputed that the applicant joined under Government of Orissa on 9.6.1967. The applicant went on a deputation post in the Indian Air Force service from 1.6.1975. The applicant was repatriated to the parent department after deputation period expired. On repatriation the applicant was posted as Demonstrator of Physiology in the Medical College, Berhampur, Orissa by the Director of Medical Education and Training by the order dated 24.5.79. The applicant did not join on that post. However, the applicant was called upon to explain on which the applicant submitted his resignation by a letter dated 7.6.79, which is reproduced below: -

"Respected Sir,

CONDITIONAL RESIGNATION FROM GOVERNMENT OF
ORISSA OF DR. B.B. MISRA.

I, a permanent resident and domicile of G.K. Nivas, DEOGARH, DISTRICT SAMBALPUR (ORISSA), have the honour to refer to TWO LETTERS (Copy attached, Appendix A&B) of my wife Mrs. Saraju Misra, B.Sc. dt. 30.8.78 and 17.4.79 from Bangalore, I am ashamed to note with deep regret that the top of a department could be so much silent over a true and genuine issue.

I therefore, tender my prestigious resignation from your Government to be effective from 29th June, 1979 to uphold justice and truth due to the following conditions: -

Corruption at the bottom level is with the good knowledge of the people higher up as has been done by Professor of Physiology who kept the charge sheets hidden to play a nice mischief (Appendix A) and yet uncaught by law.

" 2. Officers are just passing relaxing time in the office slipping aside the daily issues in question depending simply

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upon the Subordinates. That is why the "No objection" for a commission reached me on 20.5.75 i.e. 10 days before my joining Lucknow (Appendix A). With no further instructions as a corollary to that it was imperative on my part to move promptly and immediately to Lucknow being obedient to Central Government order with concurrence of the State Government in anticipation of regularisation.

"3. With repeated runnings to Hqrs only a work is done, indicating that this type of administration is the definition of the day and amounts to public wastage of time and man power.

"4. Careless actions by the people at various level have been protected and sheltered to undermine moral forces (Appendix A & B).

"5. Foolish, blind and negligent mastership of the bureaucrats over the technocrats has converted the Health Directorate etc. to trouble-creating post office only (Appendix A).

"6. Demoralising, anti-public and extravagant attitudes of the public servants (Appendix A & B) are increasingly atrocious in the face of a statement by Sri Morarji Desai, Hon'ble Prime Minister of India, asking Ministers to cut red tapes (Times of India dt. 18.4.79, page 3).

"Necessary actions may please be communicated to me in above address within a fortnight, and I may be given justification as to why shall I not take the matter to the court of law (for defamation, for quashing the career prospect of a public servant and for compensation for the financial loss) for impe-lling me to this state of resignation.

" Thanking you,

Yours sincerely,

Sd/- Dr. B. Misra.

To

Shri P.K. Das
Hon'ble Minister of Health
Government of Orissa, Bhubaneswar. "

7. In 1982 the applicant submitted a reply (Annexure-H) to the draft charge sheet which was published in a local paper 'Samaj'. The applicant placed reliance on the authority 1978 SLJ (6) p. 467, DESU Vs. TARACHAND, on the point that resignation should be unconditional. But in the reported case, the resignation was submitted under protest due to cruel

and unfairness of DESU and so being compelled to resign from the service. The facts of that case are different from the present one because the applicant after repatriation from the deputed post did not join service in the Government of Orissa and rather desired extension of deputation period which was not acceded to.

8. A reliance has also been placed on a decision of the Jabalpur Bench in SHIVNATH SINGH Vs. UNION OF INDIA SLJ page 645 where it has been held that resignation can be accepted only when it is clear, explicit, unambiguous, unequivocal and unconditional. The Tribunal has placed reliance on the authority of the Hon'ble Supreme Court reported in 1978 SSC (L&S) 393 - Union of India Vs. Gopalchandra Misra.

9. The challenge of the applicant is that his resignation (Annexure-I) dated 7.6.79 was not out of free will and he was compelled to tender the same. The applicant had written in his letter dated 7.6.79 "I, therefore, tender my prestigious resignation from your Government to be effective from 29.6.79 to uphold justice and truth due to the following conditions." In the conditions mentioned thereafter under 6 heads, there is no such fact stated therein which could show or reflect that the applicant was pressurised or compelled to submit his resignation. Moreover, in the year 1982, when he submitted reply to the charge sheet, he had not cared to state that he had resigned under pressure or victimisation. Thirdly, while applying to the C.G.H.S., the applicant in the form submitted to the U.P.S.C. did not mention that he was under the employment of Government of Orissa, nor the application form by itself could show that the applicant was working under the Government of Orissa. In the form submitted to U.P.S.C., the applicant had shown himself as a Treating Physician and did not state that he was in the service of State Government of Orissa. All these facts

are by themselves clear that the applicant had resigned from the service of Government of Orissa. The Government of Orissa in their counter have stated that if a person resigns from the service then his services rendered in Government of Orissa do not count for pensionary benefits (Annexure C). The extract of Rule 23(2)(iv) of Orissa Pension Rule, 1977 is quoted below:

"23. (2) The entire continuous temporary or officiating service under Government without interruption in the same post or any other post shall count for the purpose of pension in respect of all categories of Government servants except in the following cases: -

xxx xxx xxx

(iv) Where the employee concerned resigns and is is not again appointed to service under Government or is removed / dismissed from public service.

xxx xxx xxx

10. The resignation of the applicant was accepted on 1.6.82 after the submission of his representation (Annexure H) dated 19.3.82. Thus, at no time between 1979 to 1982, the applicant had shown his eagerness to withdraw this resignation or to challenge it before any court of law. The applicant is estopped to take another plea after all these 12 years.

11. As regards the fixation of pay it has been argued by the learned counsel for the respondents that the applicant was given benefit only of the services rendered on deputation in Indian Air Force from 1.6.75 to 31.5.79. The applicant joined the Central Health Service on 26.3.80. There has been a break in service in the intervening period from the date of tendering of resignation to the date of appointment, during which period, the applicant admittedly remained out of employment.

12. In order to qualify for the pensionary benefits of pre-mature retirement, there must be a continuous 20 years

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service which is not in the case of the applicant. The application is, therefore, devoid of merits and is hereby dismissed with no order as to costs.

Domane
(J.P. SHARMA) 23/4/90
Member(J)

Leone
(P.C. JAIN) 23/4/90
Member(A)

April 23, 1990.