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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 1860/88

New Delhi this the 7th day of December, 1993.

CORAM :

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)
THE HON'BLE MR. B. S. HEGDE, MEMBER (J)

S. P. Shangle
S/O Dr. R. K. Shangle,
6, Central Avenue,
Maharani Bagh,
New Delhi.

... Applicant

By Advocate Mrs. Pankaj Verma though
none appeared on behalf of Applicant

Versus

1. Union of India through
Secretary,
Ministry of Urban Development,
Nirman Bhawan,
New Delhi.
2. Director General,
C.P.W.D., Nirman Bhawan,
New Delhi.
3. Deputy Director (Administration),
C.P.W.D., Nirman Bhawan,
New Delhi.

... Respondents

By Advocate Shri M. L. Verma

ORDER (ORAL)

Hon'ble Shri S. R. Adige, Member (A) —

None appeared for the applicant in this case
although the case was called out more than twice.
It also appears that nobody has appeared for the
applicant on 22.5.1989, 9.6.1989, 4.7.1989 and
26.7.1989. Shri M. L. Verma, learned counsel for
the respondents is, however, present.

2. In view of the absence of the applicant, we
proceed to dispose of this application, after perusing
the material on record and hearing Shri Verma.

3. The applicant joined the C.P.W.D. in August, 1955 as Section Officer Civil and was promoted as Assistant Engineer in 1975. According to him, his wife was a mental patient and he was also suffering from high blood pressure, diabetes and lenkoplankia. On account of his wife's illness, he applied for 20 days' leave on 7.6.1982 and thereafter prayed for extension of leave upto 13.8.1992, 30.9.1982 and 30.11.1982 and then upto 26.2.1983. According to him, due to his wife's illness, while he was on leave, he applied for voluntary retirement. He states that having received no reply from respondent No.2 to his letter dated 10.12.1982, he sent a reminder on 26.2.1983 wherein he informed respondent No.2 that his leave was to expire on 27.2.1983 and was due to join on 28.2.1983, and in case the respondent was to take some time to give a decision, he prayed he be given a posting. He avers that the respondent did not inform him of the decision on his application for voluntary retirement within the prescribed period of three months, but on the expiry of the said period, he received a letter dated 10.3.1983 intimating refusal of the acceptance of his voluntary retirement ^{request for} on the plea that a vigilance case was under investigation. The applicant further avers that he had applied for voluntary retirement vide his letter dated 10.12.1982 and his retirement became effective on the expiry of three months, that is, on 9.3.1983. The applicant's further case is that despite his retirement, he was chargesheeted for wilful absence from duty, vide memorandum dated

5.8.1985, and departmental proceedings were initiated by the S.E. (Enquiry) in which the applicant admits that he participated. The inquiry officer, according to the applicant, arrived at a finding that as the applicant had retired from service, no action could be taken against him. However, in order to harass the applicant, the respondents launched another inquiry against the applicant vide memo dated 27.3.1986 on the plea of negligence on duty. The applicant avers that since he had retired from service on 9.3.1983, he was not bound to reply to the aforesaid memo and yet he wrote to the Suptd. Engineer (Vig.) that he was prepared to help the department in clarification of the matter and requested for relevant records to be made available to him. He alleges that no cognizance was taken of this reply, and he was informed vide impugned order dated 11.6.1987 (Annexure-F) an inquiry under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 was proposed to be held against him in which the Chief Engineer (Vigilance), C.P.W.D. had been appointed the inquiry officer vide order dated 19.7.1988 (Annexure-G). However, the date of the preliminary inquiry has not so far been intimated to him.

4. In the above background, the applicant has impugned the disciplinary action being taken against him vide memo dated 11.6.1987 and has prayed that the same be quashed, and the arrears of pension, gratuity, leave salary etc. along with interest at the rate of 12 per cent be released to him consequent to his having retired on 10.3.1983.

5. The application has been contested by the respondents, who in their reply, have pointed out that the applicant had applied for 20 days earned leave

from 7.6.1982 to 26.6.1982, but instead reporting to duty on the expiry of the leave period, the applicant went on praying for extension of leave. The Executive Engineer, P.W.D. Division, XXI (DA), New Delhi did not recommend the extension of leave and directed the applicant to resume duty, and this order was reiterated by the Suptd. Engineer PWD Cir. V(DA). The applicant was also directed to produce Medical Certificate (MC) from C.G.H.S. but the applicant failed to comply and further applied for leave on 24.8.1982 for 48 days. He was informed that he had been absenting himself from duty without prior sanction of competent authority and was again directed to report for duty along with M.C. but he did not comply with the orders. After being wilfully absent from duty w.e.f. 27.6.1982, the applicant subsequently gave a three months' notice for voluntary retirement which was considered by the competent authority, but it was not accepted owing to vigilance case pending against him. The applicant was informed accordingly. The respondents contend that the office memorandum refusing voluntary retirement was issued on 9.3.1989, that is, within the period of three months before the expiry of the notice period and as such, the applicant's contention that he is deemed to have retired from service voluntarily on 10.3.1983, that is, after expiry of the notice given by him, is not correct. The respondents have also refuted the applicant's contention that the Office memorandum dated 9.3.1983 conveying the refusal of voluntary retirement was not valid as it was issued under the signatures of an

authority subordinate to the competent authority. They state that this assertion is incorrect as the subordinate authority was fully competent to convey the decision of the competent authority. It is further submitted by the respondents that the applicant was chargesheeted for unauthorised absence from duty w.e.f. 27.6.1983 and for not obeying the orders of the superior officers. A formal inquiry into the charges against the applicant was conducted by an inquiry officer who held that charges 1 and 2 had been proved against the applicant but not charge 3. As it was felt that the part of the inquiry report relating to charge 3 was not in conformity with the rules, the case was remitted by the competent authority for further inquiry.

6. It is a well settled principle of law that the appointing authorities are not compelled to accept the notice for voluntary retirement given by a Government servant, particularly when charges are pending against that Government servant. On the basis of the materials on record and the averments made by the learned counsel for the respondents, we see no reason to disbelieve the stand taken by the respondents that the memorandum rejecting the applicant's prayer for voluntary retirement was issued within the notice period of three months and was signed by the competent authority.

7. The Hon'ble Supreme Court has also deprecated the practice of courts in issuing inter locutory orders in departmental proceedings while the inquiry

is in progress. If upon the conclusion of the departmental proceedings the applicant has any grievance in regard to the order passed, he has the statutory right of appeal, and even thereafter if any grievance remains, it is always open to him to file a fresh application before this Tribunal, if so advised, provided that the same is within the prescribed period of limitation which will be considered in accordance with law. Furthermore, it appears that the applicant joined the C.P.W.D. in August, 1955 and in 1983 itself had completed 27 years of service and, doubtless, would have retired by now.

8. For the reasons stated above, the impugned orders warrant no interference and this application is accordingly dismissed. No costs.

(B. S. Hegde)
Member (J)

(S. R. Adige)
Member (A)

/as/