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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 350/88
T.A. No.

198

8.7.1993.

DATE OF DECISION

Prem Pal Ohri

Petitioner

Ms Nitya Ramakrishna,

Advocate for the Petitioner(s)

Versus

Director General, CSIR

Respondent

Shri A.K. Sikri

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice V.S. Malimath, Chairman.

The Hon'ble Mr. S.R. Adige, Member(A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? *44*
3. Whether their Lordships wish to see the fair copy of the Judgement ?

(Signature)
(V.S. Malimath)
Chairman

(13)

CENTRAL ADMINISTRATIVE TRIBUNAL
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Director General, Counsel
of Scientific and Industrial
Research.

Respondent.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioner.

Ms Nitya Ramakrishna,
Counsel.

For the Respondents.

Mr. A.K. Sikri, Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner, Prem Pal Ohri, joined service in the Indian Institute of Petroleum under the C.S.I.R. as an Engineer on 27.10.1965. After serving for about 17 years, he went abroad after securing earned leave. When he was in the United States enjoying his leave, he decided to take up higher studies leading to the degree of M.S. For that purpose, he applied for leave. The authorities have granted extraordinary leave to enable the petitioner to undertake higher education in the United States. The leave was granted upto 31.7.1985. Before the expiry of the said period, the petitioner made an application on 7.2.1985 seeking voluntary retirement from service stating that he has completed 20 years of qualifying service, which is the period prescribed for securing such retirement

under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules') which are admittedly applicable to this case. The request of the petitioner was rejected by order dated 6.6.1986 stating that the petitioner not having completed 20 years of qualifying service on the crucial date, he is not entitled to seek voluntary retirement from service. It is in this background that the petitioner has approached the Tribunal challenging the said order and seeking a direction to the respondents to grant his request for voluntary retirement under Rule 48-A of the Pension Rules.

2. It is necessary to understand the real controversy between the parties in the light of the stand taken by the respondents. The only ground put forward by Shri Sikri, learned counsel for the respondents, for holding that the petitioner does not satisfy the condition of 20 years of qualifying service is that the period of extraordinary leave granted for higher education cannot be counted for the reason that the petitioner did not report to duty on the expiry of the extraordinary leave granted for higher educational purposes. If the said period is counted, it is stated that the petitioner fulfils the required conditions of 20 years of qualifying service and would be entitled to seek retirement from service. Hence, the only question for consideration is as to whether the period of extraordinary leave granted to the petitioner for

higher education in the United States cannot be counted as qualifying service for the reasons that the petitioner did not report to duty after expiry of the extraordinary leave. This takes us firstly to the provisions of Rule 48-A of the Pension Rules under which the petitioner has sought voluntary retirement. Clause 1 of Rule 48-A of the Pension Rules which is relevant for our purpose, may be extracted as follows:

"(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".

The expression 'qualifying service' has been defined in Rule 3(q) of the Pension Rules which reads as follows:

" 'qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules".

This definition makes it clear that all period which count for the purpose of pension is regarded as qualifying service. Rule 21 of the Pension Rules speaks of counting of periods spent of leave and reads as follows:

"All leave during service for which leave salary is payable (and all extraordinary leave granted on medical certificate) shall count as qualifying service.

Provided that in the case of extraordinary leave (other than extraordinary leave granted on medical certificate) the appointing authority may, at the time of granting such leave, allow the period of that leave to count as qualifying service if such leave is granted to a Government servant.

(ii) due to his inability to join or rejoin duty on account of civil commotion; or

(iii) for prosecuting higher scientific and technical studies".

3. It is clear from this provision that if extraordinary leave is granted for prosecuting higher scientific and technical studies, the said period shall count as qualifying service. In Swamy's Pension Compilation is extracted the decision of the Government under this Rule wherein it has been held by the Government that the extraordinary leave sanctioned for the following purposes shall automatically count as qualifying service for pension and for increments without any further sanctions:

(i) E.O.L. granted due to inability of a Government servant to join or rejoin duty on account of civil commotion.

(ii) E.O.L. granted to a Government servant for prosecuting higher technical and scientific studies.

This rule thus makes it clear that extraordinary leave granted to a Government servant for prosecuting higher technical and scientific education shall count as qualifying service without any further order being required to be passed in this behalf. The grant of extraordinary leave for the purpose of higher technical and scientific studies is enough to qualify the extraordinary leave so granted as qualifying service without any further order to that effect. In view of this statutory provisions, it is clear that the petitioner

who was admittedly granted extraordinary leave for prosecuting higher scientific studies in the United States is entitled to count the period of extraordinary leave granted for that purpose as qualifying service. It is, however, maintained by Shri Sikri, learned counsel for the petitioner, that having regard to the mandate of Rule 21 of the Central Civil Services (Leave) Rules, 1972, the extraordinary leave granted for prosecuting higher scientific studies cannot count as qualifying service unless the employee after availing of the extraordinary leave reports to duty. Let us examine the language of Rule 21 of the Leave Rules which reads:

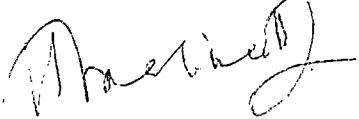
"Except as provided in Rule 22, leave ordinarily begins on the day on which the transfer of charge is effected and ends on the day preceding that on which the charge is resumed".

At the outset it is necessary to say that this Rule only speaks of the commencement and termination of leave and does not speak on the subject of the leave granted for higher scientific studies being counted as qualifying service. Even otherwise, the language employed in Rule 21 says that leave ordinarily begins on the day on which the transfer of charge is effected and ends on the day preceding that on which the charge is resumed. In other words, there may be cases in

which the leave may begin on a date other than the date the transfer of charge is effected and may stand terminated on any date other than the date ending than the date preceding on which the charge is resumed. There may be situations even before the leave granted is fully utilised, the persons granted leave may die whereby it may not be possible for reporting to duty. That is the reason why the expression 'ordinarily' is used. Rule 21 does not in any way affect the view we have taken on consideration of the relevant provisions of the Pension Rules discussed earlier. We have, therefore, no hesitation in holding that the extraordinary leave granted to the petitioner for higher education in United States of America is qualifying service which counts for service. As it is admitted by the respondents that if the said extraordinary leave is taken into account, the petitioner satisfies the condition of 20 years requiring him to secure the voluntary retirement under Rule 48-A of the Pension Rules. As we hold that the extraordinary leave granted in this case is qualifying service, the rejection of the petitioner's request must be annulled. It is ordered accordingly.

4. The order rejecting the petitioner's request for voluntary retirement is quashed and the respondents are directed to sanction voluntary retirement under Rule 48-A of the Pension Rules as sought by him and grant him consequential benefits flowing from the same. No costs.


(S.R. ADIGE)
Member (A)


(V.S. Malimath)
Chairman