



CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(Order reserved on: 16th DECEMBER, 2020)

O.A.No.060/01359/2018

Chandigarh, this the 17th DECEMBER, 2020

CORAM: **HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

Silvraj @ Selvaraj s/o Late Sh. Rama Swami, regular Beldar, O/o Sub Divisional Engineer, Construction Sub Division No.10, Sector 26, Chandigarh, resident of #1739, Bhaskar Colony, Sector 25, UT Chandigarh-160014, Group 'D'.

Applicant

(BY ADVOCATE: Mr.Barjesh Mittal)

Versus

1. Union Territory, Chandigarh Administration through its Secretary, Engineering Department, U.T. Civil Secretariat, Sector 9-D, Chandigarh-160009.
2. Chief Engineer, Union Territory, Chandigarh Administration, U.T. Civil Secretariat, Sector 9, Chandigarh-160009.
3. Executive Engineer, Capital Project Division No.2 (Road), Sector 9, Chandigarh-160009.

(BY ADVOCATE: Mr. Rohit Sharma)

.. Respondents

ORDER

HON'BLE MRS.AJANTA DAYALAN, MEMBER(A).

1. The present OA has been filed by the applicant Silvraj seeking directions to the respondents to treat his



voluntary/premature retirement notice dated 22.5.2018 (Annexure A-7) as deemed accepted as per Punjab Civil Service (Premature Retirement) Rules, 1975 (Annexure A-11). Further, the applicant has sought disbursement of pensionary benefits. The applicant has also sought disbursement of salary for the period November 2017 till May 2018 or till date of acceptance of his voluntary retirement.

2. The relevant facts of the case are undisputed. The applicant was initially engaged as Beldar on daily wage basis in U.T. Chandigarh Administration with effect from 1.3.1978 in the office of respondent no.3 and was regularized as Beldar in March 2016 vide order dated 18.3.2016. His date of birth is 1.2.1961 and hence he completed 50 years of age on 31.1.2011. The applicant had also completed almost 40 years of service in 2018. The applicant gave voluntary/premature notice dated 22.5.2018 (Annexure A-7) for retiring him from service with immediate effect on account of acute medical condition, with further request to waive three months advance retirement notice in terms of the Punjab Civil Service (Premature Retirement) Rules, 1975. The applicant further gave a reminder on 31.7.2018 (Annexure A-8). The department felt the necessity for second medical opinion and on 3.8.2018 wrote to the Principal Medical Officer, Government Multi Speciality Hospital, Sector 16, U.T. Chandigarh, to get the official



examined and issue necessary medical certificate. The applicant appeared before the Medical Authority accordingly and underwent certain tests (Annexure A-10). However, no final order on his retirement notice was passed by the department till November 2018 and hence the present OA was filed before this Tribunal.

3. During the pendency of the OA, order dated 26.12.2018 was passed by the respondents voluntarily retiring the applicant with effect from 31.12.2018.
4. The applicant is before this Court against this order as well which has been passed during the pendency of the present OA. The main ground taken by the applicant's side is that the respondents have never taken a final decision on his voluntary retirement notice with effect from 22.5.2018 and they cannot choose a random or adhoc date of 31.12.2018 for retiring him. As such, the counsel for the applicant contended that this order needs to be quashed and the applicant be retired as per his original request. The counsel also argued that as the applicant's request for waiving three months notice period has not been rejected and no decision has been conveyed thereon, it should be presumed to have been accepted and the applicant should logically stand retired from 22.5.2018 itself and all his retiral benefits be paid accordingly.



5. Besides above, the counsel for the applicant further stated that the applicant has not been paid any salary right from November 2017 onwards and hence salary due to him for the period from November 2017 till his voluntary retirement notice be disbursed to him.

6. The counsel for the respondents has contested the claim of the applicant. The counsel for the respondents stated that the applicant has been absenting himself from duty without any leave or information to the office right from 27.10.2017 itself. Number of memorandums was given to him for his wilful absence from government duty starting from 6.11.2017. Subsequent memos are dated 24.10.2017 and 15.1.2018. The office of the applicant also took up the matter with respondent no.3 to take disciplinary action against the applicant vide references dated 6.3.2018, 5.4.2018, 8.5.2018, 7.6.2018 and 10.7.2018. Finally, taking a lenient view of the whole situation and the pending OA, the applicant was allowed to retire voluntarily from government service with effect from 31.12.2018. The respondents counsel contended that as the applicant absented from duty for this period, he is not entitled for any salary. The period from 27.10.2017 to 31.12.2018 has been treated as absence from duty and without pay vide order dated 8.4.2019 (Annexure R-7).



7. The counsel for the respondents further contended that the Premature Retirement Rules are very clear. The applicant has to give notice of not less than three months in writing to the appropriate authority, and it is only after acceptance of this notice by the appropriate authority that the applicant can be deemed to have voluntarily retired. In the instant case, the applicant had continuously absented himself from duty even prior to his retirement notice and without any information to the office and hence he is not entitled or eligible for any payment for the continuous period of unauthorized absence. Repeated memos given to him were not even replied and it is only after taking a lenient view that this period has been treated as only absence from duty and no other penalty has been imposed on him. The counsel for the respondents further informed that the case of the applicant for his pensionary dues consequent upon his voluntary retirement has already been forwarded to the concerned authorities. In view of all above, counsel for the respondents concluded that the OA does not deserve any consideration and needs to be dismissed.
8. I have perused the pleadings in the case, have heard the arguments of the opposing counsel and have also considered the matter.



9. First of all, I note that the relevant Rules in this case are Punjab Civil Service (Premature Retirement) Rules, 1975. Rule 3, which is relevant, reads as follows:-

"3. Premature Retirement. - (1)(a) The appropriate authority shall, if it is of the opinion that it is in public interest to do so, have the absolute right, by giving an employee prior notice in writing, to retire that employee on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice.

(b) The period of such notice shall not be less than three months:

Provided that where at least three months' notice is not given or notice for a period less than three months is given, the employee shall be entitled to claim a sum equivalent to the amount of his pay and allowances, at the same rates at which he was drawing them immediately before the date of retirement, for a period of three months or, as the case may be, for the period by which such notice falls short of three months.

(2) Any Government employee may, after giving at least three months' previous notice in writing to the appropriate authority retire from service on the date on which he completes twenty-five years of qualifying service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no employee under suspension shall retire from service except with the specific approval of the appropriate authority.

(3) (a) At any time after an employee has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appropriate authority, retire from service.

(b) The notice of voluntary retirement given under this sub-rule shall require acceptance by the appropriate authority.

(c) Where the appropriate 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.

(4) The employee, who has elected to retire under sub-rule (2) or sub-rule(3) and has given the necessary notice to that effect to the appropriate authority, shall be precluded from withdrawing his notice except with the specific approval of the appropriate authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.'

10. A perusal of this Rule shows that sub-rule (2) would be relevant in the instant case as the applicant had completed over 25 years of service and was also 50



- years of age at the time of his notice for voluntary retirement. Under this sub rule, a minimum of three months advance notice is required.
11. I further note that when it is a question of voluntary retirement, the date of retirement has to be related to the request of the government employee. In such cases, it is not open for the administrative authorities to choose their own date of retirement unrelated to the date of request of voluntary retirement sought by the employee. In the instant case, the date of request for voluntary retirement sought by the employee was undisputedly 22.5.2018 and as such, the date of retirement has to be related to this date. As per Rule quoted above, minimum three months notice was required to be given to the appropriate authority. In the instant case, although the employee sought waiver of notice period of three months, the same was admittedly not granted by the appropriate authority. It is true that the same was also not rejected and no rejection order for waiver of notice period was passed by the appropriate authority. However, I am of clear view that such a waiver is not the right of any employee. As the Rule mandates three months notice period and no approval of waiver of notice period has been granted by the appropriate authority, I deem it appropriate that the voluntary retirement of the applicant would be effective only after expiry of three months from the date of his notice i.e. with effect from



22.8.2018. The retiral dues of the applicant need to be finalized accordingly.

12. As regards the period of absence from October 2017 till his date of voluntary retirement, I note that the department has continuously pursued the matter of wilful absence of the applicant from government duty and has been repeatedly issuing memorandums to the applicant calling for his explanation which are annexed at Annexures R-1, R-2 and R-3. The applicant's side has not produced any documents to show that he replied to these letters and has in fact, during arguments, even denied that the same were ever received by him. During arguments, the counsel for the applicant also contended that these letters were addressed to the applicant at his office address whereas if he was absent from duty, the letters should have been addressed at his residential address. However, this argument can be turned the other way round also - that is that if the applicant was going to office even periodically as claimed by the applicant's counsel, the letters should have been received by him. Even irrespective of the issue of receipt or otherwise of these letters, there is nothing before me to prove that the applicant himself was present in the office and did his office duty. In fact, the notice for voluntary retirement given by the applicant himself - and that too with immediate effect - itself stated that he had acute difficulty in breathing and his health had also



considerably deteriorated, and as such, he was not in a position to perform his duties effectively and diligently. Further, I find that despite repeated memos and inspite of intention of taking disciplinary action, the department has taken a lenient view and has not initiated any disciplinary proceedings against the applicant despite his continuous absence of more than six months even prior to his voluntary retirement notice. As such, I consider the order of the respondents to treat the period of absence from 27.10.2017 till his date of voluntary retirement as absence from duty as justified. No case is, therefore, made out for payment of salary to the applicant from October 2017 onwards.

13. Thus, I direct the respondents to treat the applicant as having voluntarily retired from service with effect from 22.8.2018 and to disburse his pensionary benefits accordingly. This exercise may be completed within a period of three months from the date of receipt of certified copy of this order.
14. The O.A is disposed of in above terms, leaving the parties to bear their own costs.

(AJANTA DAYALAN)
MEMBER (A)

Place: Chandigarh
Dated: 17th DECEMBER, 2020

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