

8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 136/86. 198
T.A. No.

DATE OF DECISION 4.5.1987

Shri Kulbushan Bhatia **Petitioner Applicant.**

Shri D.C. Vohra, counsel. **Advocate for the Petitioner(s)**

Versus

Union of India & Anr. **Respondent s**

Shri M.K. Gupta, **Advocate for the Respondent(s)**

CORAM :

The Hon'ble Mr. JUSTICE ZAHEER HASAN, VICE CHAIRMAN

The Hon'ble Mr. BIRBAL NATH, ADMINISTRATIVE MEMBER

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

4/5/87
(BIRBAL NATH)
Administrative Member.

(ZAHEER HASAN)
Vice-Chairman.

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. Date of Decision: 4.5.1987

vs.

Union of India & Anr. ... Respondents.

Hon'ble Mr. Justice Zaheer Hasan, Vice-Chairman.

Mr. Birbal Nath, Administrative Member.

For the applicant: Shri D.C. Vohra, counsel.

For the respondents; Shri M.K. Gupta; counsel.

(Judgment of the Bench delivered by
Mr. Birbal Nath).

JUDGMENT.

This is an application under Section 19 of the Administrative Tribunals Act, 1985 filed in January, 1986.

The applicant, Shri Kulbushan Bhatia, who was employed as a Personal Assistant, Grade II, of the Stenographers' Sub-Cadre of Indian Foreign Service, Branch "B", Ministry of External Affairs and was serving in the Embassy of India in the U.S.A., Washington, in 1983, has sought the following reliefs per this application:-

(1) He had applied for voluntary retirement under Rule 48-A of the Central Civil Services (Pension Rules) on 3.2.1983. Since the acceptance of the notice for voluntary retirement was not

refused by the Government, he may be deemed to have retired voluntarily from service with effect from 2nd May, 1983, and

(2) The penalty of dismissal from service imposed upon him vide order dated 29th April, 1985 (Annexure 'O') issued by the Director, Ministry of External Affairs, be quashed as the same is void and illegal.

2. Facts leading to the instant application are that the applicant joined the Ministry of External Affairs as Lower Division Clerk in November, 1956. He was promoted as a Personal Assistant in Stenographer Grade IV of the Indian Foreign Service in the year 1962-63. He served the Ministry of External Affairs at New Delhi and in some other foreign countries. He was posted in the Embassy of India in the USA at Washington on 23rd February, 1979. He was ordered to be transferred from the Embassy of India, USA on 16.1.1982, i.e. nearly after normal tenure of three years. He was relieved from the Embassy on 26.8.1982 and was granted leave ex-India upto 2.11.1982. Since then, he was asked to proceed to the Embassy of India, Sofia in Bulgaria but he stayed put in Washington. He was treated on unauthorised absence since 3.11.1982. The applicant continued to seek deferment of his passages, which were booked on different dates from Washington. Vide his note dated February 3, 1983 (Annexure 'B'), the applicant informed the Administration Section, Embassy of India, Washington, as follows:

"Reference Memo. No. WAS/ADM/661(30)/78 (from the Embassy of India, Washington) dated January 18, 1983, regarding my transfer to Sofia.

Vide your note referred to above, I have been asked to leave Washington for Sofia by February 5, 1983. Since it is a very

short notice for me to proceed to Sofia before settling my affairs, i.e. my children who are at the advance stage of their education, I am unable to comply with the above. I have, therefore, no alternative but to request for voluntary retirement from Government service under appropriate provisions. It is mentioned here that I have rendered more than 25 years of continuous Government service."

The applicant reiterated his request for voluntary retirement vide his note (Annexure 'D'). Unfortunately, a copy supplied to the Tribunal is undated. It reads as follows:-

"Vide my note dated 3rd February, 1983 (copy enclosed) to the Embassy of India, Washington, I requested the government for voluntary retirement from Government Service under appropriate provisions. There is a specific rule that one can ask for voluntary retirement if he has rendered more than 20 years of continuous government service. Since I fulfil this condition, I see no reason why my retirement is not being accepted. There are precedents where in similar cases, the retirement from government service has been accepted. Beside this, there is no such rule or government directive to its employees that such retirement cannot be accepted while he is serving abroad.

After completing my normal term of duty in the Embassy of India, Washington, I was transferred to Sofia (Bulgaria). The compelling family reasons with two grown-up children who are getting college education, formed me to make a request for voluntary retirement. I was not in a position to leave them alone here in this country without any proper arrangements for their stay etc. They had not completed their education and had I uprooted them at that time, their future would have been ruined. (My boy is receiving education on Computer Science and my daughter is doing Business Administration).

Since the college education in this country is very expensive and both of my children are receiving college education, I had later on requested the government to consider reviving my posting to Sofia or alternatively giving me a posting in some neighbouring mission in order to be able to meet partly their educational expenses for the remaining period of their education in the United States. I enclose herewith a copy of my last representation for your perusal. The Ministry has not agreed to my request for the posting.

I joined the Ministry of External Affairs, Government of India in 1956 and have since then served it faithfully.

I request that the voluntary retirement to which I am entitled for under the rules, be accepted. "

With reference to the note of the applicant dated 3rd February, 1983, he was informed by the Embassy of India, Admn. Section, vide their Memo. No. I/AS/ADM/661/30/78 dated February 22, 1983 (Annexure 'E') that the posting of the applicant to Sofia had been cancelled. He was advised to report for duty at Headquarters and then seek

voluntary retirement. He was also informed that non-compliance with the Ministry's directives would result in institution of disciplinary proceedings against him. It also appears that the applicant, vide his representation of June 10, 1983, withdrew the notice for voluntary retirement and by order dated January 11, 1984, he was permitted ^{by the Ministry of E.A.} to withdraw the same. In May, 1984, the applicant again pressed for acceptance of his notice of February 3, 1983 for voluntary retirement and cited the cases of S/Shri I.S. Ghai and L.S. Sivaraman, who had similarly been allowed to retire. The applicant was informed by the respondents vide their letter dated June 19, 1984 (Annexure I) that Shri Ghai had given notice of retirement under F.R. 56(K) which was not subject to acceptance/refusal by the Appointing Authority. In Shri Sivaraman's case, he had served valid notice of retirement on the Appointing Authority and he retired by default. In the meanwhile, disciplinary proceedings were instituted against the applicant under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. He was served a memo. in this regard vide No. Q/Vig./843/5/83 dated 21.5.1983 (Annexure J). The charge mentioned that he was relieved of his duties from the Embassy of India on 26th August, 1982 and he continued to be absent after availing ex-India leave for 60 days. In the statement of imputation, it was stated that the Government of India had not agreed to his request for voluntary retirement and through its Mission at Washington, vide their Memo. No. WAS/ADM/661/30/78 dated 22.2.1983, the applicant was informed that his posting to Sofia had been cancelled and he should report for duty at the Headquarters and then seek voluntary retirement. Vide his letter dated November 25, 1984, the applicant accepted the relevant charges and informed the Director (Establishment), Ministry of External Affairs as follows:

"In response to MEA letter No.Q/V IG/843/5/83 dated October 25, 1984, received a few days ago, I hereby state that I accept the relevant charges with the hope and request to kindly expedite settlement of my case without further delay and authorize the issuance of my passport. I have already informed the MEA about the urgent need for me to visit my father who is suffering from incurable cancer.

Just to express my sense of frustration, I would like to bring on record that having failed to find any reasonable argument to the facts stated in my communication dated September 9, (which clearly entitle me the grant of retirement) the Ministry has taken a rather frivolous stand i.e. 'the notice served by me was not in proper form'. I might say, though I know it may mean nothing (now that I am prepared to accept whatever charges the Ministry wishes to level due to my circumstances) that if my request dt. February 3, 1983 was not a notice for retirement then what gave rise to the question of retirement which has been the subject of all correspondence exchanged over the past two years. Why did the Ministry not say at any stage throughout this period that I have not served the necessary notice or sought retirement under appropriate rule(s)? Please forgive me if I may say so that this latest excuse is just another illustration of the fact that the intention of the Ministry is only to harass, penalize and deny the legitimate dues on untenable pretexts."

After receipt of this letter, the applicant was dismissed from service vide impugned order dated 29th April, 1985.

3. Against the background of essential facts enumerated above, we can now examine the rival contentions made through application and counter-affidavit as well as raised at the bar.

4. It is the case of the applicant that he served a valid notice of retirement under Rule 48A of the Central Civil Services (Pension) Rules, 1972, which reads as under:-

"48-A. Retirement on completion of 20 years' qualifying service.

(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.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing 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.

xxxxxxx xxx xxx"

The proviso to sub-rule (2) of this Rule, extracted above, clearly indicates that where the Appointing 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. In their averments, the respondents have maintained that the

applicant's note dated 3rd February, 1983, never mentioned any notice period and ^{it} does not specify as to under what provisions, the notice of voluntary retirement was served and hence, this note could not be treated as a valid notice in accordance with the provisions of Rule 48-A of the C.C.S. (Pension) Rules. It was further averred that it was not addressed to any authority in the Ministry but was addressed to the Admn. Section, Embassy of India in response to a memo. issued by them. It was their contention that the note was not a valid notice for retirement. The learned counsel for the respondents showed us the message issued to the Indian Embassy, Washington by the Ministry of External Affairs. It is not a classified document and the same is reproduced below:

"REFTEL FEBRUARY 4 REGARDING VOLUNTARY
RETIREMENT OF K.B. BHATIA, PA(.) HIS POSTING TO SOFIA
CANCELLED(.) HE SHOULD BE ASKED TO JOIN DUTY AT HEAD-
QUARTERS AND THEN SEEK VOLUNTARY RETIREMENT(.) NON
COMPLIANCE WITH MINISTRY'S DIRECTIVES WOULD RESULT IN
INSTITUTION OF DISCIPLINARY PROCEEDINGS(.)

It is, therefore, clear that the note dated 3.2.1983 seeking voluntary retirement had been passed on to the Ministry of External Affairs at New Delhi and it was considered by the competent authority and was virtually rejected. Memo. No. WAS/ADM/661/30/78 dated February 22, 1983 (Annexure 'E') is based on this message from the Ministry of External Affairs.

We find that in the given circumstances of the case, the note dated 3rd February, 1983 of the applicant for voluntary retirement was not addressed to the Appointing Authority, yet it had reached the Appointing Authority at Delhi and that the reply from the Embassy vide Memo. dated 22.2.1983 was issued on the advice of the Ministry of External Affairs. The Memo. had clearly said that the applicant could seek voluntary retirement only from the Headquarters. Since the refusal of the Ministry to permit retirement of the applicant from Washington was conveyed to the applicant within the same month in which he had applied for voluntary retirement, the action of the respondents in this regard cannot be legally challenged and the relief sought for by the applicant on the

- 7 -

basis of the so-called note seeking voluntary retirement cannot be granted to him.

5. The next issue to be decided is the imposition of the penalty of dismissal vide impugned order dated 29th April, 1985 in pursuance to the disciplinary proceedings instituted against the applicant in May, 1983. Vide his letter dated 25.11.1984, the applicant accepted the relevant charges, but he further requested settlement of his case and issuance of his passport so that he could visit his father who was suffering from cancer. The plea taken by the respondents through their counter as well as at the bar that the applicant did not want to leave Washington and he had deliberately got admission for his children knowing well that his tenure of three years was going to expire does appear to be true, particularly when passages were booked for him and his family at Government expense on more than one occasion and he sought their cancellation for one reason or the other. The respondents had every right to initiate disciplinary proceedings in case of such an unauthorised absence as well as for non-compliance of legal orders. However, it also remains to be commented that the applicant had applied for issue of ordinary passport to visit his father who was said to be suffering from cancer. Denial of such passport to him did cause him harassment particularly, when it is now well established in law that an Indian citizen cannot be denied his passport unless he has been given an opportunity to present his case. Whereas the conduct of the applicant was certainly blame-worthy, the denial of ordinary passport to him is questionable. In view of the above, we hold that the impugned order of dismissal from service does not suffer from any legal infirmity. However, in the given facts and circumstances of the case, the imposition of the penalty of dismissal under clause (x) of Rule 11 of the Central Civil Services (Classification, Control & Appeal) Rules appears to be too severe. The applicant had put in more than 25 years of service and the imposition of the severest penalty is not fully merited in the circumstances of the case. We hold that the punishment imposed is not commensurate with the

with the misconduct held proved against the applicant.
Having regard to the facts and circumstances of the case,
we are of the view that it will meet the ends of justice if
this penalty is reduced to that of compulsory retirement under
clause (vii) of Rule 11 of the CCS (CCA) Rules. We accordingly
direct that the penalty of dismissal imposed by order dated
29th April, 1985 on the applicant be reduced to that of
compulsory retirement from that very date. There will be no
order as to costs.

2 4/5/87
(BIRBAL NATH)

Administrative Member

(ZAHEER HASAN)
Vice-Chairman.