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CAT/3/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 202
~~T.A. No.~~

1986

DATE OF DECISION 23.1.1989

P.D. ADITYA Petitioner

In person Advocate for the Petitioner(s)

Versus

Union of India and another Respondent

Mrs. R.K. Chopra Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Ajay Johri, AM

The Hon'ble Mr. G.S. Sharma, JM

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? No

23/1/89

Central Administrative Tribunal, Principal Bench,
New Delhi.

Registration O.A.No.202 of 1986

P.D. Aditya

.....

Applicant

Vs.

Union of India and another....

Respondents.

Hon. Ajay Johri, AM

Hon. G.S.Sharma, JM

(By Hon. Ajay Johri, AM)

This application has been received u/s.19 of the Administrative Tribunals Act XIII of 1985. The applicant was working as a Technical Officer (Photo) in the Intelligence Bureau (for short I.B.) New Delhi. By this application he has challenged the order dated 28th March, 1985 issued by the Assistant Director, I.B. on the subject of dropping of departmental proceedings with immediate effect, order dated 26.3.1985 issued by the Deputy Director, I.B. and the order dated 23.8.1985 issued by the Asstt. Director, I.B. on the subject of treatment of his unauthorised absence after dropping of the D.A.proceedings as Dies Non for all purposes, order dated 28.3.1985 issued by the Deputy Director I.B. on the subject of outstanding dues in respect of the applicant and the order dated 14.10.1985 passed by the Asstt. Director refusing him permission to resume duty at I.B.Headquarters and insisting on submission of pension papers.

2. The applicant after being selected as an Assistant Technical Officer (Photo) by the Union Public Service Commission, joined the post on 21.1.1973. In 1978, he was promoted to the rank of Technical Officer. During the course of his service in 1979 the applicant was elected to the Staff Council of the Central Police Organization and according to him, since he was too vocal in bringing to light the administrative faults and short comings, the officers were prejudiced against him.

When the Intelligence Bureau Employees' Association was formed, the applicant became an active worker of this Association. In 1980, the applicant alleges that he was advised to dissociate himself from this Association and since he did not do so, his tale of miseries started. The applicant has said that in March 1981 he applied for 13 days leave which was not granted to him and he was transferred to Chandigarh without being properly relieved. He, however, remained away from work and did not report at Chandigarh. The applicant represented against his transfer but no specific reply was given to him. In May 1981, he issued a legal notice. In Sept. 1983, he was served with a Memo under D.A. Rules for alleged violation of Rule 3 (i) ~~and~~ (ii) and 3 (i) ~~and~~ (iii) of the Central Civil Services (Conduct Rules), 1965 and he was advised that an enquiry under rule 14 would be held against him. He was served with the article of charges framed against him. An inquiry officer was nominated. The applicant showed his willingness to face the enquiry provided the respondents would let him know the date of enquiry and also requested to provide him a duplicate copy of the charges framed against him as he had misplaced the earlier one. In the alternative, he had requested that the said inquiry proceedings be dropped and his voluntary retirement, which ^{he} had submitted on 1.6.1981, be accepted. He repeated his request for voluntary retirement by another letter sent in Feb. 1984. He also mentioned in this letter that his circumstances did not permit him to go on transfer out of Delhi. He insisted that his voluntary retirement should be accepted within a month and also represented against the non-payment of his salary for the last 33 months. The applicant was informed that he could collect the articles of charges from the inquiring authority but no intimation was given to him in regard to the voluntary retirement. The

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The applicant appeared before the inquiring authority on 23.2.1984 but the inquiry was postponed to 7.3.1984. The applicant also requested for provision of a defence counsel. If a defence counsel was not provided, he requested for being allowed to engage a legal practitioner of his choice and he also requested for being given the subsistence allowance till the pendency of the proceedings. The inquiry was fixed for 9.4.1984, thereafter, On 9.4.1984, the applicant sent a letter bringing to the notice of the inquiring authority his request for engagement of a lawyer but he was advised that he was not entitled to any T.A. for attending the inquiry proceedings; that he was on unauthorised absence for which no pay and allowances were due ; that he was not even under suspension and that he was not allowed to engage a legal practitioner. His ^{or other} representations were not replied and the inquiry was fixed for 22.6.1984. Since his representations were not replied, the applicant sent a letter to the inquiring authority requesting that no further proceedings be taken against him in view of the fact that his representations have not been decided. On 24.7.1984, the applicant withdrew his voluntary retirement notice which he had given on 1.2.1984. The voluntary retirement, which he had requested and which he had subsequently withdrawn, was however accepted by the respondents vide their Memo dated 18.8.1984 and it was accepted with retrospective effect from 29.2.1984. On receipt of this intimation, the applicant again represented on 21.9.1984 saying that the acceptance of the voluntary retirement with retrospective effect was not legal and if he was retired on 29.2.1984, he could not be proceeded with under Rule 14 any more and no inquiry can be continued against him for unauthorised absence after his retirement. Instead

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of replying to his representations, he received two memos dated 22.12.1984 and 25.1.1985 in respect of pension application forms and no dues certificate to be submitted by him. The respondents also asked for refund of the House Building Advance taken by the applicant and certain amount as excess salary paid to him. His grievances were not redressed and his period from 7.7.1981 to 29.2.1984 was treated as Dies Non for all purposes. By the letter of 28.3.1985, he was advised that the departmental proceedings against him have also been dropped. The applicant requested for being allowed to resume duty and for the grant of consequential benefits but instead of allowing him to do so, he was advised about the recovery of the House Building Advance, the interest on the House Building Advance, the licence fee for the Govt. accommodation and the cost of one library book. The applicant requested the respondents to adjust the amount due, if any, from the salary of June 1981 on-wards and for consideration of his case sympathetically. By this application, the applicant is requesting for the following reliefs :-

- (1) for issue of a direction to the respondents to pay his salary for the period of medical leave from 1.6.1981 to 6.7.1981 ;
- (2) to issue a direction to the respondents to treat him as continuing in service since 7.7.1981 to 28.3.1985 and from 29.3.1985 till date with all privileges to which he would be entitled ;
- (3) to quash the order dated 26.3.1985 by which the period of absence w.e.f. 7.7.81 to 29.2.84 and 1.3.84 to 28.3.85 and 29.3.85 till date has been treated as Dies Non ;

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- (4) for quashing the order dated 18.8.1984 and 12.11.1984 by which his voluntary retirement was accepted and notified with retrospective effect ;
- (5) for quashing of the order dated 3.4.1981 by which he was transferred from Delhi to Chandigarh ;
- (6) for quashing of the order dated 28.8.1985 and restraining the respondents from recovering the outstanding dues by way of auctioning of the applicant's house; and
- (7) for quashing the order issued by the Asstt. Director who was subordinate to the appointing authority of the applicant.

3. The respondents in their reply to the application have challenged the maintainability of the application on the ground that an individual cannot move an application without mentioning any order by which he is aggrieved. According to the respondents, the order dated 28.3.1985 only dropped the disciplinary proceedings against the applicant and the order goes in his favour. Therefore, there can be no cause of grievance. The second ground taken by the respondents on the maintainability of the application is that the orders regarding his voluntary retirement were issued in 1984 and this matter is now barred by limitation. The respondents have further stated that the applicant has given distorted version with mala-fide intention to take certain concession to which he is not entitled. The applicant had, on his own, sought voluntary retirement, which was accepted w.e.f. 29.2.84. According to the respondents, the applicant has always been

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in the habit of making irresponsible and wild allegations against his senior officers. He was transferred in the exigencies of service and transfer was a condition of service. On his transfer to Chandigarh, the applicant made false and wild allegations in a complaint filed before the Chairman, Commission for Scheduled Castes and Scheduled Tribes. When the applicant was transferred to Chandigarh vide orders dated 2.4.1981, he applied for leave which was not granted. According to the respondents, leave cannot be claimed as a matter of right and can be refused for administrative reasons. When a notice was received from the applicant on 1.6.1981 seeking voluntary retirement, it was not accepted because it was conditional. The applicant again applied for voluntary retirement on 1.2.1984 and requested for acceptance of the same w.e.f. 29.2.1984. The Ministry of Home Affairs in consultation with Department of Personnel and Administrative Reforms accorded the necessary permission permitting the applicant to retire from service w.e.f. 29.2.1984 (A.N.) in terms of proviso (2) of Rule 48-A of the Central Civil Services (Pension) Rules, 1972 and the Governments' decision thereunder. As far as the disciplinary proceedings are concerned, the stand of the respondents is that the applicant was not denied access to copies of any document etc. In regard to the engagement of a defence Sub-counsel, the respondents have relied on Rule 8 of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 which prohibits engagement of legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is also a legal practitioner. According to the respondents, there was nothing irregular or malafide [✓] ~~for~~ ^{un} not accepting [✓] ~~to~~ his request for engaging a legal practitioner as his defence counsel. The respondents

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have stated that the applicant did not cooperate with the inquiry officer and adopted obstructionist tactics by raising various issues to thwart the D.A. proceedings against him. As a matter of fact, no hearings could be conducted as the applicant absented himself on the dates fixed for hearing and behaved in rowdy manner with the inquiry officer in June 1984. The respondents have denied that the applicant's letter of 23.7.1984 was ever received by their Department. They have further said that even if it has been received, no certificates in respect of income could be issued to him as he was on unauthorised absence and was, thus, not entitled to any pay and allowances. Even his letter dated 24.7.1984 withdrawing his resignation was not received by the answering respondents. According to the respondents, a permission could not be given for withdrawal as the notice of retirement under Rule 48-A of the Pension Rules automatically became effective from the date of expiry of the period of notice, which was 29.2.1984. After the retirement of the applicant w.e.f. 29.2.1984, the respondents say that they continued the disciplinary proceedings under Rule 9 of the Pension Rules which provides that the departmental proceedings if instituted while the Govt. servant is in service, shall, after his retirement, be continued and concluded by the authority by which they were commenced. The respondents have said that the applicant was never placed under suspension so the question of any subsistence allowance does not arise. For his medical leave, they had remitted the amount on 16.9.1983 but the cheque was returned by the applicant on 1.2.1984. The applicant remained continuously absent from 7.7.1981 to 29.2.1984 and, therefore, he was not entitled to pay and allowances for the period. According to the respondents, when the applicant's voluntary retirement

was accepted, he was asked to pay back the House Building Advance along with interest which he had taken. The applicant had, however, requested that the balance standing to his credit may be deducted from his gratuity and the commutation of pension and if these payments did not fully compensate the Govt. dues, he should be informed for arranging cash payment. Since the period from 7.7.1981 to 29.2.1984 was not covered by grant of any kind of leave, the same was treated as Dies Non for all purposes in accordance with rules. The respondents have said that the applicant was taken up departmentally for disobeying the transfer orders and for his unauthorised absence but after he was permitted to retire voluntarily, the departmental proceedings were dropped against him. His pension has not yet been finalised because the applicant has not submitted the necessary papers.

4. We have heard the learned counsel for the parties. On the first date when the hearing was fixed, at the request of the learned counsel for the applicant as well as respondents, the learned counsel for the applicant did not present himself. We had heard the learned counsel for the respondents, ^{and} the applicant, who was present in person, was given an opportunity to plead his case, but he declined to do so and requested that he may be allowed to submit written arguments. Subsequently, on the request of the learned counsel for the applicant, ^{heard him and also} we allowed him to present the written argument. The main contention raised by the learned counsel for the applicant is that since the applicant was representing the staff matters to his senior officers, they had got prejudiced and they transferred him out from Delhi to Chandigarh and made the applicant suffer

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humiliation unnecessarily. According to the learned counsel for the applicant, a notice of 3 months is necessary for voluntary retirement, therefore, a notice of one month given by the applicant unless it was accepted by the respondents by condoning the period, could not be considered as a valid notice and, therefore, it was ab initio wrong and should not have been accepted and that too retrospectively. On behalf of the respondents, Mrs. R.K.Chopra, learned counsel referred to the counter (Reply) filed by the respondents on the subject of maintainability of the application. She submitted that a transfer matter could not be challenged and since the applicant had applied for voluntary retirement, the same was accepted by condoning the period of notice under rule 48-A of the Pension Rules. According to her, the voluntary retirement became automatically effective. She denied that any request for withdrawal dated 24.7.1984 was received by the respondents. The learned counsel for the applicant further submitted that what was required to be seen is whether the notice was effective and whether the applicant is due for any wages. He claimed that since the retirement benefits have not been paid promptly, the applicant should, as a matter of fact, be entitled to interest on D.C.R.G. etc.

38 *issue raised*
5. We will now take up the written argument submitted by the learned counsel for the applicant. On the subject of withholding of permission to retire a Govt. servant when ^{he} is under suspension or against whom departmental proceedings are pending or contemplated on ^{the} continuing of inquiry after retirement, the rules are very clear that in case a disciplinary proceeding is pending against an employee, he can be allowed to retire and such proceedings become proceedings under Rule 9 of the Pension Rules, 1972 and they can be continued against him even after retirement. In any case,

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as far as the applicant is concerned, the proceedings were dropped subsequently. In our opinion, there was nothing wrong in the respondents' considering the notice of voluntary retirement under rule 48-A of the Pension Rules, which clearly authorises the Govt. to accept notice of a curtailed period. The period of 3 months is, as a matter of fact, given to provide the Govt. an opportunity to make arrangement in the place of the employee who has tendered resignation and if a shorter notice is accepted by the respondents, it does not, in any case, prejudice the case of the applicant because it would be in his own interest to get relieved as quickly as possible so that he can explore other avenues of employment etc., and may not remain on tenter-hooks. We, therefore, do not find any illegality in the respondents' making the notice effective from the date the notice expired. It is immaterial that they issued a gazette notification subsequently. If during the period of notice, the request for voluntary retirement was not withdrawn, the applicant cannot be permitted to take a plea that since he had sent some letter of withdrawal on 24.7.1984, the same should have been considered favourably, if it was received by the respondents. On the expiry of the notice period, the notice had become ~~ineffective~~³. In Union of India Vs. Gopal Chandra (A.I.R. 1978 S.C.-694), the Hon'ble Supreme Court had observed that an employee has a right to withdraw resignation before it became effective. The shorter period of notice given by the applicant could, in no case, make the notice ineffective unless the shorter period was not accepted by the respondents and, as already stated above, the applicant had a right to withdraw his resignation before it became effective but he had obviously not done so.

6. In Balram Gupta Vs. Union of India (A.I.R. 1987 S.C-2354) the Hon'ble Supreme Court had observed that till the resignation is accepted, the employee has locus poenitentiae but not thereafter and that withdrawal has to be done before the date the resignation is accepted. In the case of the applicant, the notice period ^{as had} ~~was~~ expired on 29.2.1984 and, therefore, the applicant had no locus standi thereafter. The respondents had not refused to the reduced period of notice and, therefore, we do not find anything wrong in the notice having become effective on its expiry.

7. As far as dropping of the departmental proceedings or charges is concerned, we agree that once the charges are dropped, the very charge on which the memorandum was issued does not survive any more. Therefore, the charge of unauthorised absence against the applicant does not exist any more and the period during which he did not report back for duty at Chandigarh on his transfer from Delhi to the date of his voluntary retirement has to be regularised according to the rules. There is no doubt that the applicant chose to remain away from duty and was on unauthorised absence but such an absence will need to be regularised once the respondents have decided to drop the charges against the applicant ^{in our opinion} and the best way to regularise it would be to grant leave of any kind due to the applicant for this period.

8. Another submission has been made by the learned counsel that the applicant should be considered for reinstatement with back wages. We are not impressed by this submission and we do not find any merit on the same as well. The applicant had in his full senses tendered his voluntary retirement which became effective from 29.2.1984 and a

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subsequent withdrawal after the same having become effective does not survive and cannot result in reinstatement of the applicant. It was not a case of illegal termination of the services where a workman may be entitled to full back wages and was also not a case of the termination of the services being invalid. The fact is that the applicant had wanted voluntary retirement and the respondents agreed to grant him the same and it became effective on the expiry of the notice and acceptance of the same by the respondents

9. The applicant has made an effort to establish malafides and bias on behalf of the respondents. The burden of establishing such allegations is very heavy on the person who alleges the same. The influence of extraneous matters can be undoubted where an authority making order admits on their influence. But an administrative order, which is based on reasons of fact cannot be held to be infected with an abuse of power, ³ and transfer, in any case, ³ *a condition of service & of made in* is an exigency of service and because a person is transferred, he cannot say that extraneous matters have been taken into consideration. Even if we lift the veil, we do not find that the respondents' action in transferring the applicant was as a result of malice or bias. If a person becomes a spokesman of the staff, there is no doubt that he carries a little more responsibility and also the hazards of being singled out but the employer would be the best judge to see whether in exigency of service an employee should be transferred to another station and such matters cannot be made a subject of adjudication on flimsy grounds. We, therefore, reject the plea of malafides raised by the applicant in his pleadings.

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10. In the words of His Lordship Hon'ble Mr. Justice Krishna Iyer :-

"..... Natural justice is no unruly horse, no lurking land mine, nor a judicial cure all. If fairness is shown by the decision maker to the man proceeded against, the form, feature and the fundamentals of such essential processual propriety being conditions by the facts and circumstances of such situation, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to administrative realities and other factors of a given case can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction."

11. In view of the above discussions, we reject this application with the direction to the respondents that the period of unauthorised absence to the date of his voluntary retirement will be regularised according to the rules as leave of any kind due to the applicant and if the applicant is due for any payment for the same, he will be paid accordingly. As far as the medical leave of the applicant is concerned, the same has already been sanctioned and its payment be also made to the applicant along with the above payment. The respondents will be at liberty to deduct the outstanding dues from the retirement benefits which are due to the applicant and the balance amount should be paid to the applicant along with the above payments. All these payments are to be finalised within 3 months from the date of the receipt of this order. Under the circumstances, we order the parties to bear their own costs.

G.S. Sharma
(G.S.SHARMA)
JUDICIAL MEMBER

अजय जोहरी
(AJAY JOHRI)
ADMINISTRATIVE MEMBER.

Dated: 23.1.1989
kkb.