

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA 1881/87

30.04.1992

SHRI B.L. BHAN

...APPLICANT

VS.

UNION OF INDIA & ORS.

...RESPONDENTS

CORAM :

HON'BLE SHRI J.P. SHARMA, MEMBER (J)

FOR THE APPLICANT

...NONE

FOR THE RESPONDENTS

...SHRI P.P. KHURANA
AND HIS PROXY
COUNSEL,
SHRI J.C. MADAN

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT (ORAL)

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant has assailed the order dt. 23.12.1986 passed by Registrar General of India whereby the representation of the applicant for claiming pension and other related reliefs was rejected by the said order. The applicant in this case has claimed the relief that there should be a declaration that the applicant is deemed to have retired voluntarily w.e.f. 5.7.1983 from the services under the respondents by counting the period for which the applicant remained on foreign posting. He also prayed that he is entitled to all the post retirement benefits w.e.f. 5.7.1983. He also prayed for the consequential reliefs of arrears of retirement benefits etc.

J

...2...

4

The applicant was working as Deputy Director of Census and was given a foreign posting on deputation to Kabul by the order dt. 29.6.1976 (Annexure A1) under specific terms and conditions. Part (V) of the said order, the applicant was allowed to join the United Nations Joint Staff Pension Fund as pool member in terms of OM of Ministry of Finance dt. 4.6.1971 read with OM dt. 5.11.1966. Accordingly, during the period of foreign posting, no payment of pension contribution was to be made to the Government of India as the period of posting abroad was not to be counted for the purposes of calculation of pension under the Government of India. If the person was to be retired while serving with UNO, his pension under Government of India was to be calculated on the basis of the services rendered by him under the Government of India. Earlier OM dt. 4.6.1971 was modified and in terms of this modified OM of 1976, it was stipulated that a Government servant deputed on foreign service for a period of 5 years or more may exercise option to pay the pension contribution in respect of the foreign service and count such service as qualifying service for pension. The applicant continued to remain on deputation on foreign service upto 4.7.1983. The applicant has submitted a request for voluntary retirement from 1.1.1983. The applicant's request for seeking voluntary retirement could not be considered as the applicant was not eligible for seeking voluntary retirement under the rules. As

6 ...3...

such, the applicant tendered his resignation. The applicant in pursuance of the OM of November, 1976 has requested the respondent No.3 to treat the resignation of the applicant as a request for voluntary retirement. He has been pursuing the matter and made several repeated representations and finally was informed by the impugned letter dt.23.12.1986 wherein the applicant ^{was intimated} that his request was reconsidered in consultation with the Department of Personnel and Training, but it was not deemed possible to accede to his request as service rendered by him in the UNO does not qualify him for pension.

The respondents contested this application and stated that by the month of June, 1983, the applicant had completed 20 years of service, but out of this period 7 years' service was on deputation abroad. Under the terms of deputation, the applicant's services abroad will not count for pensionary benefits under the Government. Thus his effective service under the Government of India was only for a period of 14 years under the existing rules and orders and as such was not eligible for voluntary retirement from Government service. He was accordingly required to tender resignation from Government service as he had no intention to come back to Government service. It is also stated that in para 3 of the modified OM of November, 1976, it is specifically mentioned that a Government servant deputed to UN bodies for a period of less

J

than three years, will not be entitled to retirement benefits under the rules and regulations. In such a case, the Government servant is required to pay pension contribution as laid down under FR 16. Thus according to the respondents, the applicant has no case since the applicant has resigned on 5.7.1983. He could not be deemed to have retired voluntarily from the Government as no such facility was available to him under the rules.

I have heard the learned counsel for the respondents, Shri P.P.Khurana and his proxy counsel, Shri J.C.Madan as the applicant is not present and he was also not present yesterday. Basically, the question arises is whether a Government servant with less than 20 years' service can be considered for premature retirement and it is not permissible under FR 56. What the applicant desired is only the counting of the service he has rendered abroad on deputation to UNO. However, that service cannot be counted according to the rules and has to be excluded as there is another scheme under UNO

1

...5...

for the pension admissible to such employees for the period they have rendered service under that organisation. The applicant, therefore, cannot in relaxation of rules come forward and say that his service under the UNO be also counted for pension. The applicant cannot also get the benefit of amended OM of November, 1976 because the applicant has already proceeded on deputation under specific terms and conditions of deputation on 29.6.1976 (Annexure A1). These terms and conditions of service of the applicant abroad were based on the OM dt.4.6.1971 read with OM of November, 1966. Another aspect of the matter is that the applicant has tendered his resignation when his request for premature retirement was not favourably considered. If the applicant was sure of his case, then instead of tendering his resignation, he could have assailed that direction issued by Ministry of Home Affairs or Directorate General of India before the competent forum. He cannot now agitate the stale matter of 1983 to his advantage.

Firstly, he has served abroad with all pecuniary benefits and all privileges available on deputation post and over stayed the deputation period showing his unwillingness to resume the parent department, i.e., Government of India. In such a situation, the present application of the ~~applicant~~ also suffers from abnormal delay and shall not be in line with the limitation provided under Section 21 of the Administrative Tribunals Act, 1985.

Having considered the whole aspect on the basis of the available records and after hearing the learned counsel for the respondents, I find that the present application is devoid of merit and the applicant is not entitled to the reliefs claimed. The application is, therefore, dismissed leaving the parties to bear their own costs.

J.P.Sharma
30.4.92
(J.P.SHARMA)
MEMBER (J)
30.04.1992