

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 303/ 1987
~~PA-No.~~

DATE OF DECISION September 11, 1989.

Shri O.P. Jain Applicant (s)

Shri B.S. Gupta Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri M.M. Sudan Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. B.S. Sekhon, Vice Chairman (J).

The Hon'ble Mr. D.K. Chakravorty, Member (A).

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. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(Judgement of the Bench delivered by
Hon'ble Shri B.S. Sekhon, V.C. (J).)

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Aggrieved by the alleged non-acceptance of the notice of voluntary retirement dated July 22, 1982, the applicant had initially prayed for a direction to the respondents to pass orders accepting the aforesaid notice on the expiry of the notice period and also for an order to the respondents to pay him his dues i.e., leave salary, salary for the duty period, arrears of D.A., pension, D.C.R. gratuity, General Provident Fund accumulation etc., together with compound interest @ 24%. During the course of the pendency of the Application, penalty of dismissal from service was imposed on the applicant vide order dated April 6, 1987. By amendment of the Application, the applicant seeks to get the order of his dismissal also quashed.

2. In so far as the facts germane to the adjudication of the instant application are concerned, the explanation of the applicant who was working as Junior Engineer, in respect of some allegations was called. The applicant gave a notice of voluntary retirement on July 22, 1982 (Annexure A to the Application) seeking voluntary retirement with effect from November 30, 1982. Vide communication dated September 25, 1982, the Project Manager, G.T.B. M.C. & H Project P.W.D. (DA), inter-alia, informed the applicant that certain cases having disciplinary aspects were undecided against him and till the same were settled and clearance accorded by the concerned authorities, action on his application for voluntary retirement could not be processed. It was also stated in the aforesaid communication that the applicant's confessional statement that his wife is doing insurance business which he had not intimated to the Department earlier, was receiving attention of the Vigilance and that his explanation regarding acquisition / disposal of immovable property was also unsatisfactory and till he joined the post and gave satisfactory explanation or faced consequences, the question of consideration of his request for any type of retirement did not arise. The applicant was further advised that the entire period of his absence from the date of relief till he joins his place of posting is likely to be treated as unauthorised entailing loss of pay for the period in question under proviso to F.R. 17, thereby resulting in break in service. After receipt of the aforesaid communication, the applicant made a representation (Annexure A-2 to the Application) requesting the Project Manager, G.T.B. M.C.H. Project, to review his decision on his applications for retirement and leave to run concurrently with the notice period. By virtue of Memorandum dated 17.2.83 (Annexure A-7 to the Application), the applicant was informed by the Superintending Surveyor of Works-II that the explanation submitted by the applicant vide his letter dated 15.12.1982 had been carefully considered and it had been established that there was a lapse on his part of not informing the department that his wife had taken an

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insurance agency. The applicant was warned to be careful in future. Efforts of the applicant to persuade the competent authority for accepting his request for voluntary retirement ended in vain so much so that he was advised vide communication dated 13.1.1984 that disciplinary case against him had been finalised. The applicant was also advised to apply afresh for voluntary retirement and was further intimated that his absence from 22.1.1983 onwards was considered as wilful absence from duty. Vide Memorandum dated 21.6.1984 (Annexure A-14), departmental inquiry under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was proposed to be initiated against the applicant in respect of the following charges: -

- (1) That the applicant had been absenting himself from duty without any intimation / permission since 22.1.83 and thus failed to maintain devotion to duty and had contravened Rule 3 (i)(ii) of C.C.S. (Conduct) Rules, 1964.
- (2) That the applicant refused to take the delivery of office Regd. letter No.15(142)/SSWII/DA/1618-21 dated 15.4.83 and thus he behaved in a manner unbecoming of a Government servant and contravened Rule 3(i) (iii) of C.C.S. (Conduct) Rules, 1964.

As a result of the aforesaid departmental inquiry, penalty of dismissal from service was imposed on the applicant, vide Order dated 6.4.1987 made by the disciplinary authority.

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3. The salient grounds on which non-acceptance of the notice of the applicant for voluntary retirement has been assailed are: §2

The competent authority could refuse to accept the notice of voluntary retirement only under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (for short, the Rules) and in accordance with the instructions contained in the Ministry of Home Affairs O.M. No.25013/7/77 Estt (A), dated the 26th August, 1977 (Annexure A-4) which lays down that the Government may refuse to accept the notice of voluntary retirement in case disciplinary proceedings are contemplated or pending

for imposition of a major penalty and that as no disciplinary case was contemplated and/or pending against the applicant, the Government was bound in law to accept the notice dated July 22, 1982. The order of dismissal has been impugned on the ground that the respondents did not take the final decision on the report of the inquiry within the prescribed period of three months as envisaged by the Government of India, Cabinet Secretariat (Department of Personnel) O.M. No. 39/43/70-Estt.(A), dated January 8, 1971, and they failed to finalise the proceedings within a month or so as per the assurance given by them to the Delhi High Court. The applicant has also labelled the dilatory attitude of the respondents as malafide and against the principles of natural justice. Another ground on which the order dated 6.4.1987 has been challenged is that the same has been passed after the relationship of employer and employee between the respondents and the applicant had come to an end and the disciplinary authority has illegally exercised its powers during the pendency of this Application.

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4. The respondents' defence as set out in the counter is that the application has become infructuous in view of the termination of the applicant's services vide order dated April 6, 1987 and the notice for voluntary retirement was rightly not accepted by the competent authority; proviso to sub-rule (2) of 48-A is not applicable to this case as some disciplinary proceedings were under contemplation against the applicant. Refuting the allegations of mala-fide, the respondents have averred that the request for voluntary retirement was rejected vide letter dated September 25, 1982. The respondents have also refuted the grounds on which the dismissal order has been assailed.

5. We have heard the arguments of the learned counsel for the parties and have also given our utmost consideration to the pleadings and documents on record.

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6. We may pause here to point out a threshold objection on the basis of which the learned counsel for the respondents has questioned the very right of the applicant to agitate the issue relating to the validity of the action of the respondents in respect of non-acceptance of the notice for voluntary retirement. The aforesaid objection is founded upon the order of the Delhi High Court made on October 12, 1984 in C.W. No. 1425 of 1984 (Shri D.P. Jain Vs. U.O.I.). A copy of this order is at Annexure A-13. It is in the following terms:-

" The petitioner has made a grievance that he had applied for retirement but no action was being taken on it. In the reply it is stated that the original notice of retirement had expired and the petitioner had not applied subsequently. It is also stated that some fresh instances have come to the notice of the respondent and it is processing the matter for the purpose of holding an inquiry. That is the reason for not accepting the request. The respondent says that it hopes to finalise the process within a month or so. In that view no reason to interfere at this stage. The writ petition is disposed of as above."

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The learned counsel for the respondents submitted that the applicant's writ petition assailing the non-acceptance of the notice for voluntary retirement having been dismissed by the Delhi High Court, he cannot reagitate this question in the instant Application. Upon a specific query from the Bench, the learned counsel for the respondents read out the relief clause in the writ petition decided by the Delhi High Court. The applicant had claimed the same relief in regard to the non-acceptance of the notice for his voluntary retirement which he has claimed in the instant Application. Another point which was conceded by the applicant who was present in person was that the SLP filed by the applicant against the aforesaid order of the Delhi High Court had not been granted by the Supreme Court. In view of the foregoing decision of the Delhi High Court, ~~it~~ had attained finality and is binding on the parties there. That being the position, the applicant cannot now be permitted to challenge the non-acceptance of the notice of voluntary retirement in this Application. The threshold objection raised by the respondents is, therefore, sustained.

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7. During the course of arguments, the learned counsel for the applicant launched a three-pronged attack against the non-acceptance of the notice dated 22.7.1982 of voluntary retirement given by the applicant. It was contended by the learned counsel in the first instance that the competent authority had not refused to grant the request for voluntary retirement and as such the retirement became effective from the date of expiry of notice i.e., November 30, 1982. Reliance in support of this contention was placed by the learned counsel on the proviso to Rule 48-A (2) of the Rules. This sub-rule reads as under: -

"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. "

Banking on the above extracted proviso, the learned counsel submitted that as the appointing authority had not rejected the request of the applicant for voluntary retirement, the notice for voluntary retirement became effective on November 30, 1982 and snapped the relationship of master and servant. The proposition that if the request for voluntary retirement is not accepted, the retirement shall become effective from the date of the expiry of the period of notice, which is not to be less than three months as envisaged by sub-rule 3A (a) of Rule 48-A, admits of no doubt. But the crucial point which remains to be seen is as to whether or not in the context of the circumstances of the case, the appointing authority had refused to accept the notice. The learned counsel for the applicant vehemently urged that the appointing authority had not intimated the applicant prior to November 30, 1982 that the request of the applicant for voluntary retirement had been refused. The learned counsel for the respondents countered by stating that disciplinary proceedings were contemplated against the applicant and that for that reason, the request for voluntary retirement made by the applicant

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had not been accepted which is evident from the communication dated 25th September, 1982 (Annexure A-1 to the Application). By virtue of Annexure A-1, the applicant had been advised, inter-alia, that action on the application for voluntary retirement cannot be processed as certain cases having disciplinary aspects are undecided against him and that his explanation regarding acquisition / disposal of immovable property is unsatisfactory and that till he joins his place of posting and gives satisfactory explanation or face consequences, the question of consideration of his request for any type of retirement does not arise. On the basis of the aforesaid communication, it can be legitimately and safely ^{stated} that the request for voluntary retirement made by the applicant in the notice dated 22.7.82 had been refused. This would appear to be the true intendment of Annexure A-1. It may also be added that the applicant's conduct in resuming duty subsequent to 30.11.82 is clearly ^{he considered that} indicative of the fact that his request for voluntary retirement had not been accepted. This conduct of the applicant also lends support to the view that the competent authority had refused to accept the applicant's request for voluntary retirement. The communication dated 15.4.1983 (copy at page 66 of the paper book) also strengthens the aforesaid view. As per the aforesaid communication, the applicant had been informed that acceptance of his request for voluntary retirement with effect from November 30, 1982 had been refused by the Project Manager GTBMC&H Project vide his letter dated 25.9.1982 and that the office of Superintending Surveyor of Works-II, PWD, Delhi Administration on getting his reminder had intimated on the same lines vide their office No.15(142)/SSN-II/DA/7401-02, dated 30.11.1982. The applicant was also directed to join his ^{he} duties immediately and was further told that his absence was considered as wilful absence from duty and he had made

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himself liable for disciplinary action. The factum of refusal of the request of the applicant for voluntary retirement by the competent authority thus admits of little doubt.

8. It was next urged by the learned counsel for the applicant that the alleged refusal is not valid inasmuch as there were no disciplinary proceedings pending or contemplated against the applicant for the imposition of a major penalty and the disciplinary authority had not formed the view that imposition of the penalty of removal or dismissal from service would be warranted in the case. This submission was based on the instructions contained in the Ministry of Home Affairs O.M. No.25013/7/77 Estt (A), dated the 26th August, 1977 (Annexure A-4). Admittedly, no disciplinary proceedings were pending against the applicant during the relevant period. It can, however, be stated without fear of contradiction that disciplinary proceedings against the applicant were under contemplation. Cognizant of the aforesaid position, the learned counsel for the applicant further submitted that these proceedings were not such as warranted imposition of penalty of removal or dismissal from service. Reliance in this behalf was placed by the learned counsel on Memorandum No.7(6) 82-SSW-II/DA/14-16, dated February 17, 1983 (Annexure A-7). This Memorandum states that the explanation submitted by the applicant vide his letter dated 15.12.1982 had been carefully considered and it had been established that there was a lapse on his part of not informing the department that his wife had taken an insurance agency. The applicant was also warned to be careful in future. According to the learned counsel for the applicant, Annexure A-7 clearly establishes that the disciplinary proceedings contemplated against the applicant were not such as would warrant imposition of the penalty of removal / dismissal from service.

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9. The plea of the learned counsel for the applicant proceeds on an incorrect premise inasmuch as the disciplinary authority has not to form a view referred to in Annexure A-4 on the basis of the ultimate result of the disciplinary proceedings/departamental inquiry. Instead, the view referred to in the said O.M. has to be formed not on the basis of the final decision of the disciplinary authority but even prior to initiation of the disciplinary proceedings i.e., during the period when the same is under contemplation. It is, however, ^{an} altogether a different question as to whether the disciplinary authority had in fact formed such a view. We are not inclined to pursue this question further for the simple reason that the applicant is precluded from challenging the non-acceptance of the notice for voluntary retirement in view of the judgment of the Delhi High Court dated October 12, 1984. It may, however, be inci-dentally ^{other} added that any argument was also sought to be raised for the respondents. This argument was that the administrative instructions contained in O.M. dated 26.8.1977 do not bind the Government and that the competent authority is to be guided by the provisions of Rule 48-A. Suffice it to mention in this connection that administrative instructions can fill up the gap, the same are binding on the authorities concerned unless these are in-consistent with the statutory rules. No such inconsistency has been pointed out to us in the instant Application. That apart, the Government cannot disown or resile from the policy instructions issued by it.

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10. It was lastly submitted by the learned counsel for the applicant that the applicant is a loyal and faithful employee who resumed his duty subsequent to November 30, 1982 and that this fact should not tell against the applicant's case. We are afraid such a ^{submission} is difficult of acceptance. The case of the applicant pertaining to non-acceptance of the notice dated 22.7.1982 seeking voluntary retirement is, therefore, held to be devoid of merit.

11. Turning to the impugned order of dismissal of the applicant's services passed on April 6, 1987 (Annexure A-21), the applicant has assailed the same on the grounds set out and expressed hereinafter. Relying on the provisions of Section 19 (4) of the Administrative Tribunals Act, 1985, the learned counsel for the applicant vehemently contended that this application having been admitted on March 17, 1987, ^{against the applicant} no proceedings/should have been taken subsequent thereto. The aforesaid sub-section lays down that 'Where an application has been admitted by a Tribunal under sub-section (3), every proceeding under the relevant service rules as to redressal of grievances in relation to the subject-matter of such application pending immediately before such admission shall abate and save as otherwise directed by the Tribunal, no appeal or representation in relation to such matter shall thereafter be entertained under such rules.' As per this sub-section, the ^{proceedings} specified therein shall abate only if they relate to the subject-matter of such application and they ~~were~~ pending before the admission. A perusal of the ~~relief~~ clause of unamended O.A. goes to show that the applicant had merely sought direction to the respondents for passing orders accepting his notice for voluntary retirement of 22.7.1982 and also for other monetary and consequential benefits. The disciplinary proceedings on the basis of which the penalty of dismissal from service was imposed by virtue of order dated April 6, 1987 were not the

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subject-matter of the application, nor were any such proceedings pending at the time the application was admitted i.e., on March 17, 1987. The disciplinary proceedings had been initiated subsequent to the date of admission of the O.A. The aforesaid order could not thus be deemed to have abated and the order dated 6.4.1987 is not hit ^{by Section 19(4) of the Act.} The next point urged by the learned counsel was that the order is unsustainable as the same is in contravention of the assurance of completing the disciplinary proceedings within a period of one month given to the High Court which is reflected in the order dated October 12, 1984 (Annexure A-13), referred to above. All that is stated in the said order made by the High Court is that the respondents say that 'it hopes to finalise the process within a month or so'. The High Court has also observed in the said order that 'It is also stated that some fresh instances have come to the notice of the respondent and it is processing the matter for the purpose of holding an inquiry' and that 'The respondent says that it hopes to finalise the process within a month or so.' The aforesaid observation in the order, even if it is deemed to be an assurance, merely pertains to processing the matter for the purpose of holding an inquiry. That apart, such a statement cannot, by any stretch of imagination, vitiate the order passed by the disciplinary authority. It was lastly submitted that the order having been passed beyond the prescribed period of three months is not valid. This submission is ^{noticed} only to be rejected as it is without any merit.

12. For all what has been stated in the foregoing paragraphs, the application merits rejection and the same is hereby rejected with no order as to costs.

D.K. Chakravorty
(D.K. CHAKRAVORTY)
Member (A)
11-9-88

B.S. Sekhon
(B.S. SEKHON)
Vice Chairman (J)
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