

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

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O.A. No. 1103/87 198
T.A. No.

DATE OF DECISION 6.7.1988

Shri Hari Narain

Petitioner

Shri J.K. Mehta

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent s

Shri M.L. Verma,

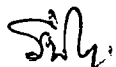
Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN

The Hon'ble Mr. S.P. MUKERJI, MEMBER

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 to be circulated to all the Benches ? No


(S.P. MUKERJI)
MEMBER


(P.K. KARTHA)
VICE CHAIRMAN

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DATE OF DECISION: 6.7.1988

REGN. NO. O.A. 1103/87.

Shri Har Narain ... Applicant

VS.

Union of India & Ors. ... Respondents.

COR AM:

Hon'ble Mr. P.K. Kartha, Vice-Chairman.

Hon'ble Mr. S.P. Mukerji, Member

For the applicant: Shri J.K. Mehta, Advocate.

For the respondents: Shri M.L. Verma, Advocate.

JUDGMENT

(delivered by Hon^{ble} Mr.S.P. Mukerji, Member)

The applicant, who has been working as an Assistant Engineer in the C.P.W.D., filed this application dated 28.7.1987, under Section 19 of the Administrative Tribunals Act, 1985, praying that he should be deemed to have retired with effect from 30.9.1985 with full pensionary benefits and that the charge-sheet dated 26.1.1986 be quashed and disciplinary proceedings stopped. He amended the application on 18.1.1988 praying for the same reliefs. The brief facts of the case can be recounted as follows: %

2. The applicant joined the C.P.W.D. as Junior Engineer

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on 9.2.1959. He was posted in Delhi in January, 1973 but sent to Nepal where he worked between 27.3.1974 and 23.3.1978. He was posted back to Delhi on 1.5.1978 and promoted as Assistant Engineer in Delhi on 8.7.1981. On 16.7.1984, he was transferred to Arunachal Pradesh and relieved on 3.8.1984. ^{of his post in Delhi}

On his representation, the transfer order was cancelled on 5.10.1984 and he was posted to Bombay. The applicant represented against his posting to Bombay but his representations were rejected.

The last rejection was ordered on 6.6.1985. During the pendency of his various representations, on 3.6.1985, the applicant sent an application for voluntary retirement to take effect from 1.4.1986. This application was rejected by the respondents on 25.6.1985 on the ground that his voluntary retirement was not unconditional.

The applicant, by another letter dated 1.7.1985, sought voluntary retirement with effect from 30.9.1985 giving three months notice.

In response to this application, he received a letter dated 26.7.1985 asking him to send an application for voluntary retirement in the prescribed proforma through the concerned Superintending Engineer.

The applicant, on 5.8.1985, asked for the necessary proforma but he did not receive any reply thereto. On 30.9.1985, the applicant wrote to the respondents that in accordance with his application of 1.7.1985, he stood voluntarily retired with effect from

30.9.1985. However, on 3.10.1985, the applicant received a

letter dated 27.9.1985 from the respondents rejecting his request for voluntary retirement. No reason was given for ^{the} rejection of his application.

According to the applicant, the rejection is invalid as he had received the rejection letter on 3.10.1985, after the expiry of three months of notice ^{period} and also because no reason was

given for the rejection of his application. The applicant received another letter on 17.10.1985 asking him to report at Bombay. But the applicant represented for retirement benefits. This representation was also rejected on 10.6.1986. On 4.11.1986, an Enquiry Officer was appointed for disciplinary proceedings when, according to the applicant, he had not received any charge-sheet. He wrote to the respondents on 14.11.1986 and a copy of the charge-sheet dated 16.1.1986 was sent to him on 18.1.1987.

3. According to the respondents, the applicant's transfer to Arunachal Pradesh or later to Bombay was an incident of service and he cannot allege harassment. According to them, he had been in Delhi between 1973 and 1984 when he was transferred to Bombay but he did not report for duty despite repeated reminders and directions dated 14.11.1984, 14.1.1985, 19.2.1985, 27.9.1985, 17.10.1985, 7.11.1985, 6.6.1986 and 25.6.1986. Disciplinary action was, accordingly, initiated against him and according to the respondents, he was served with the charge-sheet dated 26.1.1986 which he denied having received. He was ^{later} given a copy of the charge-sheet. As regards the voluntary retirement, the respondents have conceded that he applied for such retirement on 1.7.1985 to take effect from 30.9.1985. The notice of the applicant was duly considered by the competent authority and the decision taken thereon was conveyed to the applicant vide the letter dated 27.9.1985, i.e. well before the expiry of the notice period. The fact that he received it on 3.10.1985 makes no difference.

4. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Since the applicant has not sought any relief regarding his transfer, we need not go into that question. So far as the question of voluntary retirement is concerned, Rule 48-A.(2) of the Central Civil Services (Pension) Rules, 1972 lays down that "notice of voluntary retirement given under sub-rule (1) shall require acceptance of 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."

5. The main question to be decided in this case is whether rejection of the application of the applicant for voluntary retirement by the respondents through their letter dated 27.9.1985, which was received by him on 3.10.1985, is within the period of notice of three months with effect from 1.7.1985. It is an accepted principle of law that the date of decision is determined by the date on which the decision ^{is} emanates from the deciding authority because it will not be possible for that authority ^{to} recall it. Since the letter of rejection was, admittedly, issued on 27.9.1985, after which it was not possible for the respondents to recall it, the fact that it was received by the applicant on 3.10.1985 would not postpone the point of time at which the decision was taken. Accordingly,

the respondents were fully within the time of three months of notice period in rejecting the applicant's application for voluntary retirement. Since it is not the applicant's case that by asking him to apply for voluntary retirement in the prescribed proforma, the respondents deemed his application dated 30.9.1985 as non est, the applicant cannot derive any advantage of the respondents' communication of 26.7.1985. Accordingly, we find that the applicant did not stand retired with effect from 30.9.1985.

6. In S. Raghavan vs. the General Manager, Tele-communication and others, A.T.R. 1986 C.A.T. 227, the Madras Bench of this Tribunal had considered the question as to when the refusal to accept withdrawal of notice of voluntary retirement by the appointing authority would be operative. In that case, the applicant had sent a letter on 20.6.1981 seeking voluntary retirement. Subsequently, he sent another letter dated 15.9.1981 withdrawing the offer of voluntary retirement sent earlier. The appointing authority accepted the offer of voluntary retirement on 1.9.1981 but the applicant received the communication only on 15.10.1981. There was delay in communication of the order of the appointing authority. The Madras Bench observed as follows:-

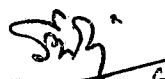
"Once a letter is sent by the applicant offering to retire voluntarily, whatever be the reasons for doing so, and that letter is accepted by the appointing authority as early as on 1.9.1981, the applicant cannot withdraw his earlier offer which has been duly accepted."

In that case also the acceptance was recorded on the relevant file on 1.9.1981 but it was despatched to the applicant only on 9.9.1981 and received by him on 15.10.1981. Thus, the crucial date is the date of the decision of the appointing authority ^{or its despatch by} ^{but in any case} and not the date of ^{its receipt by the Government servant.}

7. As regards the disciplinary proceedings, the respondents

have not given any documentary evidence to prove that the charge-sheet was served on the applicant before the Enquiry Officer was appointed. Accordingly, in the interest of justice, we quash the disciplinary proceedings with the direction to the respondents to start de novo proceedings from the stage of the show cause notice why disciplinary proceedings should not be started against the applicant. The respondents will be at liberty to frame fresh charge-sheet after getting the applicant's reply to the show cause notice, if so advised, in accordance with law.

8. The application is allowed in part on the above lines.
There will be no order as to costs.


(S.P. Mukerji)
Administrative Member


(P.K. Kartha)
Vice-Chairman.