

In the Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 1117/87

Date of decision: 18.01.1993.

Shri Ved Ram

...Petitioner

Versus

Union of India through
Secretary, Ministry of Urban
Development & Another

...Respondents

Coram:-

The Hon'ble Mr. Justice V.S. Malimath, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member(A)

For the petitioner

Shri S.S. Tewari, Counsel.

For the respondents

None

1. Whether reporters of local papers may be allowed to see
the Judgement?

2. To be referred to the Reporter or not? *Y*



(V.S. MALIMATH)
CHAIRMAN

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OA No.1117/87

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Coram:-

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For the petitioner

Shri S.S. Tewari, Counsel.

For the respondents

None

Judgement(Oral)
(Hon'ble Mr. Justice V.S. Malimath, Chairman)

The petitioner was facing a disciplinary enquiry in pursuance of the memo of charges issued to him on 19.3.1976. In pursuance of the enquiry held the petitioner was imposed the penalty of removal from service with immediate effect by the order of the Government dated 9.9.1980. The petitioner appears to have challenged the said decision by his representation dated 5.12.1980. He was informed on 14.1.1981 as per Annexure A-3 that under Rule 22(i) of the CCS (CCA) Rules, 1965, no appeal/representation lies against this Ministry's order dated 9.9.80 which was issued by order and in the name of the President. A further review petition was filed by the petitioner on 26.9.1986. That came to be rejected on 17.2.1987 on the ground that no discovery of new material evidence having been claimed as the basis for the review, the review petition cannot be entertained, having regard to the provisions contained in Rule 29(a) of CCS (CCA) Rules.

2. During the pendency of the disciplinary proceedings the petitioner made a representation as per Annexure A-10 dated 20.5.1977 in which he has stated that as he is mentally upset, he could not join duty for quite some time and that he having put in continuous service of more than 20 years his request may kindly be considered for voluntary retirement on compassionate grounds. No order either granting or refusing this request for voluntary retirement was communicated to the petitioner, it is alleged.

3. It is in this background that the petitioner has approached the Tribunal for relief.

4. The only contention urged by the learned counsel for the petitioner is that the authorities not having communicated any rejection of his request for voluntary retirement made by him as per Annexure A-10, it must, as provided in Rule 48 (A)(2), be deemed to have been granted on the expiry of three months from the date of service of the notice. If the petitioner retired on the expiry of three months from the date of service of the notice, all further proceedings taken against him including the order of removal must be regarded as non-est and void. It is on that basis that the petitioner claims that a direction should be given to the respondents to give him all monetary benefits flowing from his voluntary retirement from service. This takes us to the examination of the relevant provisions of Rule 48(A) of the Pension Rules. Sub-Rules 1&2 which are relevant for our purpose may be extracted as follows:-

"(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.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical

expert who is--

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministry/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(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."

It is clear from sub-rule (1) of Rule 48-A that a government servant who has completed 20 years' of qualifying service can by giving notice of not less than three months in writing to the appointing authority, retire from service. Sub-rule (2) says that the notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority. The proviso to sub-rule (2), however, says 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. The learned counsel for the petitioner submits that the notice of retirement having been given on 20.5.1977 it would become effective on the expiry of the period of three months, the appointing authority not having communicated the rejection of the request made by the petitioner. The proviso to

sub-rule (2) creates a statutory fiction of deemed acceptance of the notice of voluntary retirement when the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice. The expression 'said notice' is of crucial importance. The learned counsel for the petitioner submits that the expression 'said notice' means the period of notice specified in the notice and if no specific period is specified in the notice it would mean three months from the date of service of notice. He maintains that if no period is specified in the notice of voluntary retirement it must be presumed that the notice seeks voluntary retirement on the expiry of three months from the date of service of the notice. Firstly, it is necessary to point out that there is no deeming provision creating a fiction of the deemed notice ~~for~~ of a period of 90 days in case where the precise period of notice is not specified in the notice. The expression used in the proviso is "the retirement shall become effective from the date of expiry of the said period." The expression 'said period' obviously adverts to the period of notice contemplated by sub-rule 1 of Rule 48-A. When we read sub-rule-1 carefully it becomes clear that the Government servant has an option of choosing the date on which he intends to retire from service. The only limitation is that the period of notice should not be less than three months. The period of three months contemplated by sub-rule-1 cannot in the circumstances be read into the notice which does not itself specify the date from which the government servant intends to retire from service. If the interpretation put-forward by the learned counsel for the petitioner is accepted it would lead to absurd results. We asked the learned counsel as to what would happen in a case where the government servant gives six months' notice of retirement and the appointing authority does not communicate refusal of the said request, the learned counsel for the petitioner submitted

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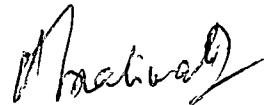
that in such a situation the permission shall be deemed to have been granted on the expiry of the period of three months. It would mean that though the Government servant seeks retirement after six months, it would be deemed against the intention of the Government servant that he retired from service/ This is the absurd result that would flow from accepting such interpretation. Sub-rule 4 says that a government servant who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority, provided that the request for withdrawal shall be made before the intended date of his retirement. This clearly indicates that the right to withdraw the request of retirement will continue to remain operative till the last date specified in the notice for his retirement. The intended date of retirement is the date of retirement that is specified by the petitioner himself in his notice and not the deemed date. We have, therefore, no hesitation in holding that the expression 'said notice' contemplated in sub-rule 2 of Rule 48-A refers to the period specified by the petitioner in his notice of retirement and not statutory minimum period of notice of three months specified in sub-rule 1 of rule 48-A. If the government servant does not specify in the notice the date from which he intends to retire the proviso to sub-rule-2 of Rule 48-A will not come into operation. The said proviso would come into operation only in cases where the government servant specifies the date from which he intends to retire from service. As in the notice given in this case as per Annexure A-10 the petitioner has not at all specified the date from which he intends to retire from service, we hold that there is no deemed acceptance of the voluntary retirement of the petitioner on the ~~expiry~~ of three months from the date of service of notice.

5. Besides we find that the cause of action accrued in favour of the petitioner in regard to the consequences flowing from the issuance of notice of voluntary retirement and non-communication of the response to the same by the end of the year 1977. The cause of action having accrued on a date prior to three years of the constitution of this Tribunal, we have no jurisdiction to entertain this petition, having regard to the bar contained in Section 21 (2) of the Administrative Tribunals Act, 1985.

6. For the reasons stated above, this petition fails and is dismissed. No costs.


(I.K. RASGOTRA)
MEMBER(A)

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(V.S. MALIMATH)
CHAIRMAN