

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 1228/90
T.A. No.

199

DATE OF DECISION 14.9.1990.

Shri D.S. Aggarwal

Petitioner Applicant

Shri G.B. Tulsiani

Advocate for the Petitioner(s) Applicant

Versus

Union of India & Another

Respondent

Shri M.L. Verma

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. Kartha, Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravarty, Administrative Member.

1. Whether Report local papers may be allowed to see the Judgement ?
2. To be referred Reporter or not ?
3. Whether their ships wish to see the fair copy of the Judgement ?
4. Whether it r to be circulated to other Benches of the Tribunal ?

Judgement of the Bench delivered by Hon'ble
Mr. D.K. Chakravarty, Administrative Member)

The applicant, who is working as Assistant Meteorologist in the Directorate General of Meteorology, filed his application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (a) to allow the application of the applicant for voluntary retirement dated 13.6.1988;
- (b) to allow the applicant the salary for the period from 28.12.1984 to 6.4.1986 which has been wrongfully withheld by the respondent. Also salary for leave period from 7.4.1986 to 13.6.1986; and
- (c) directions be issued restraining the respondent from continuing with the enquiry and the charge-sheet dated 6.2.1990 be quashed.

2. The application has not been admitted. We feel that it could be disposed of at the admission stage itself and we proceed to do so.

3. The facts of the case in brief are that the applicant was initially appointed in 1968 in the Office of the respondents. He is presently working as an Officiating Assistant Meteorologist. He met with an accident in 1984. According to him, on account of the injuries received, he had been on medical leave and continued to be on medical leave till date. He applied for voluntary retirement on 13.6.1988, but the respondents informed him on 31.8.1988 that his request for voluntary retirement could not be acceded to as he had not completed 20 years of qualifying service upto 25.3.1986. They added that his nature of leave from 26.3.1986 to-date in the absence of his medical examination report, is yet to be decided.

4. On 6.2.1990, the respondents have issued to the applicant a Memorandum under Rule 14 of the CCS(CCA) Rules, 1965, togetherwith Article of Charge, statement of imputation of misconduct or misbehaviour in support of the Article of Charge and the list of documents by which the Article of Charge is proposed to be sustained. The respondents have also appointed an Inquiry Officer on 4th April, 1990 to conduct the inquiry.

5. The applicant has contended that he is entitled to voluntary retirement and that it does not require acceptance by any authority. In this context, he has relied upon the decision of this Tribunal in Raj Pal

Gaindh Vs. Union of India & Others, 1987 (3) ATC 533.

He has also contended that even if an employee is absent and has overstayed on leave, it cannot be construed to be a misconduct.

6. The respondents have contended in their counter-affidavit that the applicant had been on unauthorised absence from duty under one pretext or the other. According to them, he did not have 20 years of qualifying service as on 13.6.1988 and as such, he was not entitled to seek voluntary retirement under Rule 48-A of the C.C.S. (Pension) Rules, 1972. They have also stated that out of a total period of approximately six years of service, he attended duties for a period of 35 days only. They have also stated that the application is premature as the disciplinary proceedings, which have been initiated, have not yet been completed.

7. We have gone through the records of the case carefully and have considered the rival contentions. Under Rule 48-A(1) of the C.C.S. (Pension) Rules, 1972, at any time after a Government servant has completed 20 years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service. Sub-rule (2) of Rule 48-A provides that such a notice shall require acceptance by the Appointing Authority. According to the proviso to Sub-rule (2), where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period.

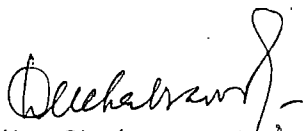
8. In the instant case, the request for voluntary retirement was made by the applicant by his letter dated 13.6.1988 wherein he has stated that he was submitting his application for voluntary retirement "with immediate effect of the acceptance of my this application". It is quite clear that he did not stipulate any time-limit for acceptance of his request. Taking a period of three months as the notice period, the respondents have rejected his request within the notice period vide Office Memorandum dated 31.8.1988.

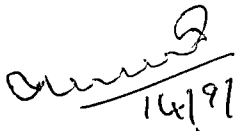
9. In the above view of the matter, the applicant cannot be deemed to have voluntarily retired from service. The decision of this Tribunal in Raj Pal Gaiindh's case, is not applicable to the facts and circumstances of the present case. The applicant in that case did not seek voluntary retirement under Rule 48-A of the C.C.S. (Pension) Rules, 1972.

10. As regards the other prayers made in the application, the same are subject to the outcome of the disciplinary proceedings initiated against him by the respondents. There is no substance in the contention of the applicant that unauthorised absence from duty does not amount to misconduct. Whether he was on medical leave or not during the relevant period, will be gone into in the inquiry. We do not express any opinion in this regard, one way or the other. We also do not see any reason or justification for restraining the respondents from holding the inquiry.

11. In the conspectus of the facts and circumstances of the case, the applicant has not established any prima facie case for the admission of the application. We hold that the rejection by the respondents of the request for voluntary retirement made by the applicant, cannot be faulted. The applicant cannot also challenge the disciplinary proceedings instituted against him at this stage, when the inquiry has not been completed. The application is premature as regards the relief sought against the disciplinary proceedings initiated against him. We, however, direct that the respondents should complete the inquiry as expeditiously as possible, but in no event, later than six months from the date of receipt of this order. The application is disposed at the admission stage itself with the aforesaid findings and directions.

There will be no order as to costs.


(D.K. Chakravorty)
Administrative Member
14/2/1990


(P.K. Kartha)
Vice-Chairman(Judl.)
14/2/90