

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(12)

DA No. 2310/90.	..	Date of decision: 23.10.92
Sh. Ajit Singh Rahi	..	Applicant
Sh. D.C. Vohra	..	Counsel for the applicant

Versus

Union of India & Anr.	..	Respondents
Sh. K.C. Mittal	..	Counsel for the respondents.

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Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dhoundiyal, Member (A)

J U D G E M E N T

(Of the bench delivered by Hon'ble Sh. B.N.
Dhoundiyal, Member(A))

The issue raised in this DA is whether the applicant who sought voluntary retirement from the Government Service under Rule 48-A of CCS (Pension) Rules, 1972, could be deemed to be retired on the ground that the appointing authority did not communicate the refusal of the notice of retirement within the stipulated period of three months? Another related issue is whether departmental proceedings can be initiated against him after the date of deemed retirement.

2. The applicant while working as UDC in the Ministry of External Affairs, was posted in the High Commission of India, London as UDC. The tenure of the applicant in High Commission

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commenced from 3.3.75 and was due to expire on 2.3.78. It was extended upto the end of June 1978 on the basis of his request on the ground of his daughter's education. The applicant requested ex-India leave upto the end of December 1978 on grounds of medical treatment of his wife i.e. for Hysterectomy operation. The leave was refused by the Ministry of External Affairs on the ground that this operation can be safely performed in any large hospital in India. The applicant was relieved by the High Commission of India, London on the fore-noon of 18.9.78 and his application for grant of ex-India leave upto the end of December 1978 was refused. The required operation was performed on applicant's wife on 29.11.78 at London and when the applicant requested for grant of extension of leave, he was advised to secure a certificate from the medical advisor of the High Commission. The applicant contended that his wife was reluctant to be examined by a male doctor and again requested for extension. The applicant claims to have applied for voluntary retirement vide his letter dated 30.3.79, while the respondents have stated that copies of two letters dated 30.3.79 and 2.5.79 were received under the High Commission's letter dated 9.5.79. The request of the applicant for voluntary retirement was refused by the Ministry vide its memorandum dated 12.6.89, the receipt

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of which was acknowledged by the applicant vide his letter dated 8.7.89. An enquiry under Rule-14 of the Central Civil Services CCS(CCP) Rules, 1965 was initiated against the applicant on 14.6.79 with the charge that he has been absenting himself from duty in an unauthorised manner w.e.f. 25.9.78 and that he did not comply with the Government orders transferring him to Headquarters of the Ministry of External Affairs. The enquiry officer Sh.E. Barua, First Secretary in the High Commission, found the charges as proved ^{by} on 31.3.84. An order of dismissal from Government service was imposed on the applicant. The applicant has prayed that the impugned order of dismissal dated 31.3.84 be set aside and quashed and he be deemed to have voluntarily retired w.e.f. 30.6.79 when the period of three months after the notice of retirement expired. He has also prayed for payment of sums due as terminal benefits.

3. We have gone through the records of the case and heard the learned counsel for both parties. The applicant has contended that he had given a notice for voluntary retirement on 30.3.79 with immediate effect and after the expiry of the prescribed period of three months on 29.6.79, he stood retired and entitled to pensionary benefits. No enquiry under Rule 14 of the CCS(CCA) Rules 1972 could be conducted against him after his retirement and the

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only action that the respondents could take was under the ambit of Rule-9 of the CCS(Pension Rules) 1965. He has named similarly situated employees, who have been given the facility for voluntary retirement.

4. The respondents have stated that the scheme of voluntary retirement on completion of 20 years qualifying service is laid down in Office Memorandum No. 25013/7/77-Estt.(A), dated 26th August, 1977 of Department of Personnel and Administrative Reforms. In accordance with this scheme, the notice for voluntary retirement requires 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 becomes effective from the date of expiry of the said period of notice. Further, the acceptance can be refused in a case where disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that refusal to retirement from Government service would be warranted in the case. Though the request of the applicant for voluntary retirement was not addressed to the Appointing Authority, the same was still considered.

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Disciplinary proceedings were contemplated against him for imposition of a major penalty and in similar cases, where Government servants had refused to return to Headquarters on the expiry of their term of duty abroad, the penalty imposed, after disciplinary proceedings, had been either dismissal or removal from service. Hence, his request was refused by the Ministry vide its memorandum No. Q/Vig/842/11/79, dated 12.6.1979, the receipt of which was acknowledged by the applicant vide his letter dated 8.7.1979. They have also claimed that the applicant's letter dated 30.3.79 seeking voluntary retirement was not received by the High Commission of India, London, and only a copy was received with his letter dated 2.5.79. No period of notice was specified and the letter was not addressed to the appointing authority, as required. They have also contended that the applicant has not been able to prove that the Ministry's letter dated 12.6.79 was received by him only on 2.7.79.

5. Though in their counter, the respondents have stated that they never received the earlier letter for voluntary retirement dated 30.3.79, this matter has never been raised by them earlier in order to justify the departmental proceedings initiated by them. The applicant had completed 20 years of service which is

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a pre-requisite for seeking voluntary retirement. The refusal of the appointing authority to accept the notice of voluntary retirement was purportedly in accordance with the O.M. dated 26.8.77 issued by the Department of Personnel. According to the said O.M., such acceptance may be generally given in all cases except those in which disciplinary proceedings are pending or contemplated against the Government servant concerned. There is nothing on record to indicate that disciplinary proceedings were contemplated or pending against the applicant on 30.3.79 or 2.5.79. Disciplinary proceedings were initiated against the applicant on 14.6.79, i.e. two days after the Ministry of External Affairs issued their Memorandum stating that they refused voluntary retirement to the applicant on the ground that formal departmental proceedings are contemplated against him. The said Memorandum also refers to "the policy and past practice of this Ministry". The said Memorandum was forwarded to the applicant by the First Secretary of the High Commission on 26.6.1979 and the same was received by the applicant on 2.7.1979.

6. The policy and practice of not allowing such requests for voluntary retirement by persons while posted abroad

came to be incorporated in Rule 48A of the CCS (Pension) Rules, 1972 by an amendment which came into force with effect from 20.7.85 with prospective effect. When the applicant sought for his voluntary retirement in 1979, there was no such embargo. In the facts and circumstances of the case, the action taken by the respondents was neither fair nor just. The disciplinary proceedings initiated against the applicant by issuing the impugned Memorandum dated 14.6.79 are also not legally sustainable.

7. We, therefore, hold that the applicant stood retired from Government service by the time the respondents initiated disciplinary proceedings against him. He is, therefore, entitled to his retirement benefits with 12% interest from 2.7.79. We also hold that the applicant having retired on 2.7.79, could not be proceeded against under the CCS (CCA) Rules, 1965.

8. In view of the above, the application is disposed of with the following orders :-

- (i) The impugned order of dismissal dated 31.3.84 is hereby set aside and quashed ;

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- (ii) The applicant shall be treated as voluntary retired w.e.f. 2.7.79;
- (iii) Orders regarding his retirement and payment of proportionate pension to him along with other retirement benefits shall be issued within a period of three months from the date of receipt of this order;
- (iv) Interest at the rate of 12% would be payable on all delayed payments calculated from the date of retirement to the date of actual payment.

Parties shall bear their own costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Member (A)

23/10/72

P.K. Kartha
23/10/52

(P.K. Kartha)
Vice Chairman (J)