

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 2346/90
T.A. No.

199

DATE OF DECISION 8.2.1991.

Shri K.R.Guglani

Petitioner Applicant

In person.

Advocate for the Petitioner(s) Applicant

Versus
Union of India through Secretary,
Ministry of Finance and others. Respondents

Shri R.S.Agarwal

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, 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? 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 it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. P.K.KARTHA, VICE CHAIRMAN)

The issue arising for consideration in this application is whether the applicant can be deemed to have retired from Government service and on that basis, entitled to pension and other retirement benefits as claimed by him. According to the applicant, he sent a notice dated 18.4.90 under Rule 48A of the CCS(Pension) Rules, 1972 to the Commissioner of Income Tax, who was his appointing authority, by registered post. The Commissioner of Income Tax did not refuse to grant the permission for retirement before the expiry of the period specified in the notice and as such his retirement became effective from the date of expiry of the said period. According to the respondents, they did not receive the said notice and consequently, the question of granting or refusing to grant permission for his retirement

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did not arise.

2. We have gone through the records of the case carefully and have heard the applicant in person and the learned counsel of the respondents. We feel that the application could be disposed of at the admission stage itself and we proceed to do so.

3. Rule 48A of the CCS(Pension) Rules, 1972, in so far as it is relevant for the instant case, reads as under:-

It 48-A. Retirement on completion of 20 years' qualifying service.

(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.

(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.

(3-A) (a) A Government servant referred to in sub-rule(1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule(2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any

administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of part of his pension before the expiry of the period of notice of three months."

4. The basic condition of eligibility for seeking voluntary retirement under the aforesaid rule is that the Government servant concerned should have completed twenty years' qualifying service.

5. The notice dated 18.4.90 said to have been sent to the Commissioner of Income Tax under registered post reads as follows:-

"To

The Commissioner of Income Tax
Jodhpur.

Sir,

Sub: Notice under sub-rule (1) and (3A) of rule 48A of CCS(Pension Rules) 1972 K.R.Guglani ITO Gr.B.

(1) This is to give you notice for voluntary retirement in terms of rule 48A(1) of CCS(Pension Rules) 1972 and pray that the same be accepted.

(2) It is also prayed that in terms of sub rule 3A of rule 48A, the period of notice may be reduced from 3 months to fifteen days from its service. You are requested to accept the notice of a period less than three months for following reasons:

(a) My prayer for change of Hd.Qr from Udaipur to Jaipur where my wife was working has been arbitrarily refused and I cannot keep two establishments.

(b) In last seven years of suspension, there has been no legal enquiry against the petitioner and no fair enquiry is expected from the Department.

(c) I am fed up with my life because of compulsory non-employment and am afraid I may not end my life in case this idleness continues.

Humble Petitioner

Sd/-
(K.R.Guglani)
378/10, Ashok Nagar
Udaipur(Raj)
18.4.90 "

6. The applicant has not stated in the aforesaid notice as to when he completed twenty years' qualifying service. He has also not mentioned his designation.

7. In para 4 of the application, the applicant has stated that he joined Punjab Government on 8th May 1958 and that on resigning his job in that Government, he took up with prior permission appointment in the Income Tax Department on 5.3.1983. According to him, this period has been recognised by the Commissioner of Income Tax as qualifying service in terms of Rule 26 of the CCS(Pension) Rules, 1972. He has not, however, produced any documentary evidence in support of the above assertion. The respondents have stated in their counter-affidavit that the question of recognition of any qualifying service in terms of Rule 26(2) of the CCS(Pension) Rules, 1972 does not arise at this stage as his claim of retirement has not been accepted as yet.

8. The version of the applicant is that he dispatched the notice under Rule 48A of the CCS(Pension) Rules vide postal receipt No.600 dated 19.4.1990, a copy of which has been set out at Annexure A-2, Page 10 of the paper-book. He has stated that the said notice was delivered to the Commissioner of Income Tax on 20.4.90 and the fact of delivery has been confirmed by the postal authorities. The Commissioner of Income Tax did not refuse to grant him permission for retirement before the expiry of statutory period of three months which expired on 19.7.90 and the retirement in terms of proviso to Rule 48A(2) of the CCS(Pension) Rules became effective on 20.7.90.

9. The version of the respondents is that the

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receipt register maintained by the Commissioner of Income Tax does not show any receipt of the alleged notice of the applicant. The Commissioner of Income Tax has filed a separate affidavit wherein he has stated as follows:-

"3)That the Registered Letter No.600 dated 19.4.90 alleged to have been served in my office on 20.4.90 as per averments made in the aforesaid application and as per the certificate of Deputy Superintendent of Post Offices, Udaipur Annexure A-2 of the aforesaid Original Application which is shown in the records of the Kutchery Post Office, Jodhpur as having emanated from A.M., Ajmer has not been entered in any of the Receipt Registers of this Office.

4)That the said letter alleged to be sent by the applicant by Registered Letter No.600 dated 19.4.90 was never put up before the undersigned.

5)I have checked up the Receipt Registers of my office and state that it does not contain any record of receipt of such notice during the period 20.4.90 to 30.4.90, both days inclusive."

10. In a case of this kind where the fact of communication of the notice in question is disputed between the contesting parties, a view has to be taken on the basis of preponderance of probability . As already stated, the applicant has not produced any document to substantiate his claim that at the time of giving of notice, he had completed twenty years' qualifying service or that the period of service rendered by him before joining the Income Tax Department has been recognised by the respondents as qualifying service in terms of Rule 26 of the CCS(Pension) Rules, 1972.

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11. Apart from the above, on two earlier occasions, he had sought to voluntarily retire from Government service and on both occasions, the respondents refused to grant him permission. He had sought voluntary retirement under Rule 48 A of the CCS(Pension) Rules by letter dated 24.4.87 which was not accepted by the respondents in public interest. This is clear from letter dated 17.7.87 of the then Commissioner of Income Tax which reads as follows:-

" REGISTERED A.D.

No.CIT/JU/87-88/Vig./107 OFFICE OF THE
COMMISSIONER OF INCOME-TAX
Jodhpur.

Dated, the 17th July, 1987

To

Shri K.R.Guglani
378/10, Ashok Nagar
UOAIPUR

Please refer to your letter dated 24.4.1987 addressed to me seeking voluntary retirement.

2. I have very carefully considered all the facts of your case and I may inform you that your application for voluntary retirement cannot be accepted in public interest.

Sd/-

(P.C.MISRA)
Commissioner of Income-tax
Jodhpur. "

12. On 12.7.87, the Commissioner of Income Tax passed the following order:-

" ORDER

WHEREAS Shri K.R.Guglani, Income-tax Officer, Group 'B' (under suspension) has applied for voluntary retirement under Rule 48-A of the Pension Rules by tendering three months notice with effect from 24-4-1987.

AND WHEREAS an inquiry under Rule 14 read with Rule 10(4) of the C.C.S(CCA) Rules is pending against the said Shri K.R.Guglani.

Now, therefore, after considering the facts of the case, the undersigned in exercise of the

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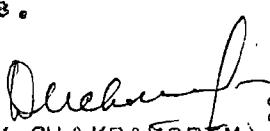
powers conferred in this behalf refuses to accept the request of the said Shri K.R.Guglani, I.T.O., Group 'B' (under suspension) for voluntary retirement.

Sd/-

(KAWALJIT SINGH)
COMMISSIONER OF INCOME TAX
JAIPUR "

13. The respondents have stated that the applicant had submitted notice of retirement under FR 56(k) dated 5.7.90 and the said request was rejected and communicated to him vide letter dated 24.8.90. This has not been controverted by the applicant in his rejoinder affidavit.

14. For disposal of the present application, it is not considered necessary to refer to and discuss the other aspects of the career of the applicant, including his suspension and the pendency of departmental enquiry against him which is pending adjudication, as they are not germane to the relief sought by the applicant. In our view, the preponderance of probabilities lead to an inference that the notice said to have been sent by the applicant seeking to voluntarily retire from service under Rule 48 A of the CCS(Pension) Rules did not come to the knowledge of the appointing authority within the notice period of three months. The applicant has also not substantiated his assertion that his service prior to joining the Income Tax Department has been recognised by the Government under Rule 26 of the CCS(Pension) Rules, 1972. As the applicant has not established a prima facie case, he is not entitled to the relief sought and the application is dismissed at the admission stage itself. There will be no order as to costs.


(D.K.CHAKRAVORTY) 8/2/89
MEMBER


(P.K.KARTHA) 8/2/89
VICE CHAIRMAN