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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. RA-42/91 In
DA-2346/90

Date: 19-11-1991

Shri K.R. Guglani Petitioner

Versus

Union of India through Respondents
Secy., Ministry of
Finance & Others

For the Petitioner In person

For the Respondents Shri R.S. Aggarwal, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. D.K. Chakravorty, Administrative Member.

(Judgement by Hon'ble Mr. P.K. Kartha, V.C.)

The petitioner in this R.A. is the original applicant in DA-2346/90 which was disposed of by judgement dated 8.2.1991. In DA-2346/90, the petitioner prayed for a direction to respondent No.3 (Commissioner of Income Tax, Jodhpur) to notify the date of his retirement and that he may also be directed to pay leave encashment and refund of the deposit in C.G.I.E. Scheme standing to his credit. He had also prayed for a direction to respondent No.4 (Asstt. Commissioner of Income Tax) to determine his final/provisional pension payable to him consequent on his retirement under Rule 48-A of the C.C.S. (Pension) Rules, 1972.

2. After going through the records of the case and hearing both the parties, the Tribunal held that the Petitioner had not established a prima facie case and

that he was not entitled to the relief sought. Accordingly, the application was dismissed at the admission stage itself.

3. The petitioner had filed the S.L.P. (Civil) No. 8465/91 in the Supreme Court against the aforesaid judgement, which was rejected by the Supreme Court on 8.5.1991.

4. In the meanwhile, the present R.A. had been filed by the petitioner on 21.2.1991. In the grounds to the R.A., he has stated that the judgement of the Tribunal has proceeded on erroneous assumption as to the material facts and that the application has been decided against him on matters which were not in issue. After going through the R.A., the Division Bench felt that OA-2346/90 required to be re-heard after giving notice to both parties. Accordingly, both the sides were heard on 25.9.1991 and orders reserved thereon.

5. The Tribunal has in para.7 of its judgement dated 8.2.1991 observed that the petitioner joined the Income Tax Deptt. on 5.3.1983. This was based on the averment made by him in para.4 at page 3 of the paperbook in OA-2346/90. It has transpired that this was a typographical error and the correct date of his joining the Income Tax Department was 5.3.1963. In para.10 of the judgement, it has been observed that the petitioner has not produced any documents to substantiate his claim that at the time of giving of

notice, he had completed 20 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 C.C.S.(Pension) Rules, 1972. In para.14 of the judgement, it has been observed that the petitioner has not substantiated his assertion that his service prior to joining the Income Tax Department had been recognised by the Government under Rule 26 of the C.C.S.(Pension) Rules, 1972.

6. The petitioner has stated that the correct factual position is that he joined the Income Tax Department on 5.3.1963 and not on 5.3.1983, and that there is no doubt as regards his having completed 20 years of qualifying service at the time he sought voluntary retirement under Rule 48-A of the C.C.S.(Pension) Rules, 1972. This has not been denied by the respondents. As the above error has crept into the judgement, we recall our judgement dated 8.2.1991 and proceed to deal with the case of the petitioner afresh.

7. The issue arising for/consideration in this application is whether the petitioner 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

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to the petitioner, he sent a notice dated 18.4.1990 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 did not arise.

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

"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

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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."

9. The notice dated 18.4.1990 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 of 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 Deptt.

(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

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

10. The version of the petitioner 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-1, page 10 of the paper-book. He has stated that the said notice was delivered to the Commissioner of Income Tax on 20.4.1990 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 becomes effective on 20.7.1990.

11. The version of the respondents is that the 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

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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."

12. 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.

13. In this context, it is relevant to note that the petitioner had sought to voluntarily retire from Government service earlier, but the respondents had refused to grant him the permission. He had sought voluntary retirement under Rule 48A of the CCS (Pension) Rules by letter dated 24.4.1987 which was not accepted by the respondents in public interest. This is clear from letter dated 17.7.1987 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

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To

Shri K.R. Guglani
378/10, Ashok Nagar
UD AIPUR

Please refer to your letter dated 24.4.87 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.

14. On 12.7.1987, 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 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"

15. The respondents had contended that the petitioner had sought to voluntarily retire under FR-56(K) by notice

dated 5.7.1990 and that the said request was rejected and communicated to him *vide* letter dated 24.8.1990.

The petitioner has stated that this is not factually correct. On going through the records of the case, it is noticed that the Petitioner himself had annexed to the rejoinder as Annexure P-5 a copy of a letter dated 24th August, 1990 written by the Commissioner of Income Tax addressed to the applicant to the following effect:-

"Sub: Your notice dated the 5th July, 1990 under F.R. 56(k).

Please refer to your application dated the 5th July, 1990 submitted to the Chief Commissioner of Income Tax, Rajasthan, Jaipur for voluntary retirement under F.R.56(k).

2. I am directed to inform you that your above request has been rejected.

Sd/-
(S. S. Rohela)
Commissioner of Income-tax,
Jodhpur."

16. In our considered view, the preponderance of probabilities lead to the inference that the notice said to have been sent by the petitioner seeking to voluntarily retire from Government service under Rule 48-A of the C.C.S. (Pension) Rules, 1972, did not come to the knowledge of the appointing authority within the notice period of three months. We are fortified in this conclusion by the conduct of the respondents in the past while dealing with similar requests for voluntary retirement. On reconsideration, we are of the opinion that the

petitioner is not entitled to the relief sought by him. RA-42/91 is, accordingly, dismissed. Let a copy of this order be given to both the parties immediately.

D.K.Chakravorty
(D.K. Chakravorty) 19-11-1991
Administrative Member

P.K.Kartha
(P.K. Kartha) 19/11/91
Vice-Chairman (Judl.)