

(8)
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No. 760/90

Date of decision 20-2-95

Hon'ble Shri N.V.Krishnan, Vice Chairman (A)

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

Mahesh Ahluwalia,
WZ-169,
Virender Nagar,
New Delhi-110018.

... Applicant

(By Advocate Shri B.B.Raval)

Versus:

1. Union of India through the
Officer on Special Duty
Cabinet Secretariat, Room No.88,
South Block, New Delhi
2. Joint Secretary(Pers.),
Cabinet Secretariat,
Room No.88, South Block,
New Delhi
3. Raj Singh Saroha,
Inspector of Police(CBI),
SPE/GOW/Delhi Branch,
Block No.4, CGO Complex,
Lodhi Road, New Delhi.

... Respondents

(By Advocate Shri M.K. Gupta)

O R D E R

[Hon'ble Smt. Lakshmi Swaminathan, Member (J)]

The applicant, who was posted as a security guard, now redesignated as Field Assistant at the Special Bureau, Gangtok, had sought voluntary retirement which has not been accepted by the respondents vide their Order dated 5.9.1989(Annexure P-11). He was placed under suspension by order dated 31.8.89(Ann.P.10) against which his appeal dated 25.11. 1989

(Annexure P-12) has also been rejected by the

..

appellate authority vide Order dated 22.12.1989(Ann.P.13)

Hence this application under Section 19 of the Administrative Tribunals Act, 1985, to quash the order dated 22.12.89 and to declare that the applicant had retired from service on 30.6.89.

2. The brief facts of the case are that while the applicant, who had joined the Cabinet Secretariat, Government of India on 27.6.1969 as a security guard, was posted at Gangtok, he desired to seek voluntary retirement. Accordingly, he had sent an application dated 27.6.1988 to the Deputy Commissioner, Special Bureau, Gangtok (D.C. for short) seeking information of the date when he completes 20 years of qualifying service for seeking voluntary retirement (Ann.P.1). The Incharge, FIP, Chungthanga, under whom the applicant was posted ^{he was} informed by the letter of Deputy Commissioner dated 7.9.1988 (Ann.P.2) as follows:-

" Sub:- Voluntary retirement after completing 20 years of qualifying service.

2. Transfer from SB Gangtok to Hqs. or Ahmedabad.

Please refer to the application dated 27.6.1988 submitted by Shri Mahesh Ahluwalia FA(GP) on the subject cited above.

2. The both case of the official in question was forwarded to Hqs. On 13.7.88. Hqs have informed us that the official would be eligible for voluntary retirement after completing 20 years since w.e.f. 30.6.89 and in reply to his second case, it is not possible to accept his request due to administrative reasons at present.

3. These may please be informed to the concerned official accordingly."

10

The Deputy Commissioner, who had referred the applicant's case on 29.4.1988, was also informed by Memorandum dated 19.10.1988 issued by the Under Secretary (Pers.1), Cabinet Secretariat that the official can submit his papers for voluntary retirement only 3 months in advance (Ann.P.3). The applicant states that, accordingly, by his letter dated 29.3.1989 he intimated the Joint Secretary (Personnel), Cabinet Secretariat, New Delhi through proper channel, his desire to take voluntary retirement from service u.e.f. 30.6.1989 for which purpose he gave notice from 1.4.89 to 30.6.1989 (Ann.P.4 this is, however, dated 22.3.1989). He followed up this letter by a letter to the D.C. enclosing a notice dated 30.3.1989 (Ann.P.5) requesting that his pension papers may be processed at the earliest. By the Memo. dated 12.4.89 (Annexure P.6) the Assistant Commissioner, Special Bureau, Gangtok, sent the applicant's representation dated 29.3.1989 to the Cabinet Secretariate, New Delhi, in which it is stated that the applicant can, according to the existing rules, serve notice of voluntary retirement on completion of 20 years qualifying service well in advance by three months. To support this, a reference has been made to the earlier Memo. dated 19.10.88 from the Cabinet Secretariat to the D.C. (Ann.P.3) - wherein it was advised, inter-alia, that the official can submit his papers for voluntary retirement only 3 months in advance.

JS

(11)

3. The applicant states that since he did not receive any reply to his notice for voluntary retirement by 30.6.1989, he and the D.C. assumed that the same had been accepted. Thereore, on 30.6.1989, he surrendered his identity card to the D.C. at Sikkim and was relieved from duty immediately. A certificate was issued by the D.C. on 1.7.89 (Annexure P-7) stating that he was an employee upto 30.6.89 and has tendered his voluntary retirement from the afternoon of 30.6.1989. Thereafter, he left Sikkim and reached New Delhi by 4.7.1989. This was followed by the D.C.'s Memo. dated 6.7.1989 to the HQs. at New Delhi requesting that his pension papers be processed. A copy was forwarded to him at his New Delhi residence (Annexure P-8).
4. After receipt of the above Memo. dated 6.7.89, he was surprised to receive another Memo. dated 19.7.89 from the D.C. that the HQs. has intimated that the applicant should not be relieved till further orders and he was advised to report back on duty immediately on expiry of leave (Annexure P-9). He states that since this Memo. of 19.7.1989 was totally illegal, he ignored it on advice.
5. Then a search was conducted by the CBI in his residence on 25.8.89 in which nothing was recovered. However, an order was issued by the Joint Secretary (Personnel), Cabinet Sectt. dated 31.8.89 by which he was informed that he was placed under suspension with immediate effect under Rule 10 of the CCS(CCA) Rules, 1965 as a criminal offence was under investigation vide case No. RC 42(A) 89-DLI dated 25.8.89 u/s 13(2) read with 13(1)(e) of P.C. Act, 1988 with C.B.I. Delhi (Annexure P-10). By this order, the applicant was also ordered that during the period the order was in force, his HQ should be at

Gangtok, and he shall not leave the place without obtaining the permission of the D.C. He was also ordered to return the identity card. The applicant states that till now he has not been given any charge sheet. The order of 31.8.1989 was followed by another memorandum dated 5th September, 1989 from the Joint Secretary (Personnel), Cabinet Sectt. which states that with reference to his application dated 30.6.1989 for voluntary retirement, it is rejected as a criminal case has been registered against him dated 25th August, 1989 under Sections 13(2) r/w 13(1)(e) of the P.C. Act, 1988 and is pending investigation (Annexure P-11).

6. The applicant categorically denies any such application made on 30.6.1989 for voluntary retirement in para 14 of the O.A. because according to him, he has already retired on 30.6.89 and relieved from duties. As such, there was no question of his applying again for voluntary retirement.

7. Since the applicant did not get his pensionary benefits, he preferred an appeal on 25.1.89 under Rule 23 of the CCS(CCA) Rules, 1965, to the Additional Director, RAW, Cabinet Sectt. against the Ann. R-10 order of suspension, requesting that his voluntary retirement w.e.f. 30.6.89 be accepted and his retirement benefits, including pension be paid to him (Annexure P.12). This appeal was rejected by the impugned order dated 22.12.1989 which also confirmed the suspension order as being justified since a criminal case was under investigation by CBI on the information that he had accumulated assets disproportionate to his known sources of income (Annexure P. 13).

8. The applicant states that the appellate authority in its order of 22.12.1989, did not consider his case for voluntary retirement, and the order is based on totally wrong and non-existent facts. He states that about 4 months after the search of his premises, on 4.1.90 he was called by Shri Raj Singh Saroha, Inspector, CBI (Respondent 3) to produce the gas tanker No.DIG 7420 and to tell the sources of payment for its purchase (Ann.P.14). He had said he will duly furnish the papers to Mr.Saroha, and orally submitted to him that the tanker had been purchased after obtaining a loan from Delhi Finance Corporation. He had also received subsequent reminder dated 17.1.90 (Ann.P.15) and explained the sources before Sh.Saroha on 22.1.90(Ann.P.16) who wanted further particulars as given in Ann.P.17, including his resignation letter submitted to the respondents and copy of last pay certificate. Annexures P-18 and P.19 are further summons dated 22.1.90 and 19.2.90, respectively, calling upon the applicant to appear before Inspector Saroha with certain documents, which he did, and thereafter nothing further has been heard. So he sent a notice dated 9.3.90, through his advocate to Saroha(Ann.p.20) to which till he filed the OA on 20.4.90, he had not received any reply from the CBI or the respondents. In the circumstances, the applicant states that he assumes that the charges and proceedings against him have been dropped, and he claims that the impugned order dated 22.12.89 should be set aside as there is no basis for it and he should be further treated as having voluntarily retired w.e.f. 30.6.1989.

19

9. The reply of the Respondents 1 and 2 (Govt.) in brief is as follows :-

- (1) The D.C.'s attention was drawn by Memorandum dated 6.6.1989 (Annexure R-1) to an earlier memo. dated 10.1.89 in which it was indicated that the applicant should be informed that according to the Rules, notice for voluntary retirement is to be given after completion of 20 years of qualifying service i.e. after 26.6.1989.
- (2) The D.C. was not the competent authority under Rule 48-A of the CCS (Pension) Rules to accept the notice of voluntary retirement.
- (3) Govt. have produced a photo-copy of the applicant's letter dated 30.6.89 in his own handwriting (Annexure R-2) in which he gives three months notice from 1.7.89 to 30.9.89 as he wishes to take voluntary retirement from 30.6.1989 on completion of 20 years service on 26.6.1989.
- (4) The applicant's notice for voluntary retirement can be given only after 20 years of qualifying service i.e. after 26.6.89 in accordance with the provisions of Rule 48-A of the CCS(Pension) Rules. Therefore, the notice dated 29.3.89 is invalid. His presumption that it had been accepted by the Appointing Authority is hypothetical.
- (5) The registration of a criminal case by the CBI justified both his suspension by order dated 31.8.89 and the further action of the competent authority to reject his request for voluntary retirement by the Memorandum dated 5.9.89 (Ann. P-2).
- (6) The suspension order dated 31.8.89 was passed by the Joint Secretary (Personnel) under Rule 10(1) of the CCS(CCA) Rules within the statutory three months notice period for voluntary retirement required to be given under Rule 48-A of the Pension Rules. The reasons given for passing this order are valid and within the discretion of the competent authority.

13/

10. We have heard both the learned counsel and perused the records. As per our direction the Respondents also produced the relevant files in which the Memos/orders pertaining to the case were available for our perusal.

11. The learned counsel for the applicant, Shri B.B.Raval relies heavily on the certificate issued by the D.C. dated 1-7-1989 in which it is stated that the applicant " was an employee" of the organisation till 30-6-1989 (Ann.P.7). His contention is that, the applicant stood retired w.e.f. 30-6-1989. Therefore, he has questioned the validity of the subsequent memorandum issued by the same D.C. dated 19th July, 1989 in which the applicant had been asked to report back for duty immediately on expiry of leave (Ann.P.9). The counsel argues that when the applicant had already tendered his notice for voluntary retirement which has been accepted w.e.f. 30-6-89 by his immediate controlling authority, namely, the D.C., there was no question of being on leave or thereafter reporting back on duty after 30-6-89. In the circumstances, he has also questioned the validity of the Order dated 31-8-1989 issued by the Joint Secretary (Personnel) Cabinet Secretariat, placing the applicant under suspension under Rule 10(1) of the Central Civil

Service (Classification, Control and Appeal) Rules, 1965 on the grounds mentioned therein. According to Shri B.B. Raval, this order of suspension is of no consequence inasmuch as the applicant had already been relieved from duty on 30.6.1989 by the D.C. Similarly, he contends that the subsequent order dated 5.9.1989, whereby his application dated 30.6.1989 for voluntary retirement was rejected was also bad in law as the applicant already stands retired w.e.f. 30.6.1989, and relieved from duty. Accordingly, the rejection of the applicant's appeal by the appellate authority by the order dated 22.12.1989 is also illegal and liable to be set aside. The other main contention of the applicants' counsel is that annexures P-14 to P-19 show that the applicant had merely been called as a witness to assist in certain investigations being conducted by the C.B.I. and since he was not an accused person, he cannot be put under suspension nor can his request for voluntary retirement w.e.f. 30.6.1989 be rejected on this ground.

12. Learned Counsel for the respondents, Shri M.K. Gupta has stoutly denied the above averments made by the applicant. He has reiterated the averments made in the reply of Govt. and has produced the records relating to the application for voluntary retirement. He also pointed out that action was being taken against the D.C for the lapses in his handling of the case regarding the applicant's voluntary retirement.

13. Rule 48-A of the CCS(Pension) Rules provides as under:-

- " (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."

Sub Rule (2) of this Rule further provides as under:-

- " 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 an admitted fact that the applicant joined service on 27.6.1969 and completed his 20 years qualifying service only on 26-6-1989. Therefore, the applicant's notice for voluntary retirement dated 29-3-1989(Ann.P.4 in which the date given is 22.3.1989) referred to in para 5 of the OA, seeking voluntary retirement w.e.f. 30-6-89 is not in accordance with the rules because it is only after he has completed 20 years of qualifying service that the applicant could have given the necessary 3 months notice to the appointing authority requesting for voluntary retirement. In view of the provisions of rule 48-A of the CCS(Pension) Rules, the contention of the applicant that by his notice dated 29.3.89 he stands retired w.e.f. 30.6.89 is clearly contrary to this Rule and hence illegal and is rejected.

12'

18

14. Rule 48-A also provides that the notice is required to be accepted by the appointing authority before the retirement becomes effective and in terms of the proviso, if the appointing authority does not refuse to grant him permission before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. In other words it means that within the period of notice, it is open to the appointing authority to reject his request. We have to examine the contention of the learned counsel for the applicant in the context of this rule.

15. At a late stage of the arguments the learned counsel for the applicant admitted that the applicant could not have sent a notice under Rule 48-A before he completed 20 years of qualifying service. Therefore, the Annexure P-4 notice dated 22.3.89(sic. 29.3.89) was incompetent and Govt was entitled to ignore it. But what we are surprised is about the conduct of the DC who chose to nevertheless forward it, even though he was clearly advised about the legal position. In his letter dated 12.4.89(Ann.R.6) forwarding this incompetent notice he has, inter-alia, referred to the letter dated 10.1.89 of the Headquarters. This is the memo referred to in the Ann.R.1 letter dated 6.6.89 of Govt. vide para 9(1)(supra). A perusal of the records produced by the respondents shows that by this letter dated 10.1.1989

gr

19

the D.C. was advised, inter-alia, to inform the applicant as follows:-

* He may also please be informed that according to rules, notice for voluntary retirement may be given after completion of 20 years of qualifying service. Before such a notice is forwarded to HQ, please examine at your end as to when he would really be completing 20 years of qualifying service, as, he has, in the past, availed of various kinds of leave and, for this purpose, his service book has to be scrutinized in your office."

His forwarding the applicant's notice dated 29.3.89 is thus a flagrant violation of instructions. That was further compounded by him when he relieved the applicant on 30-6-89 even though the applicant had given him a fresh notice on 30-6-89 (Ann.R.2) seeking voluntary retirement. This application, as can be seen from the original records, was furnished by the DC to Headquarters with his letter dated 6.7.89. It was then that Govt. rejected on 5.8.89 his request for voluntary retirement (Ann.P.2). It is thus clear that the relief of the applicant on 30-6-89 on voluntary retirement by the DC, Gangtok was illegal and unauthorised.

16. Shri Raval, nevertheless, submits that since the DC who was the applicant's immediate superior officer at Gangtok had accepted his notice for voluntary retirement and had relieved him on 1-7-89, thereafter he had returned to Delhi as a free person, and the further action taken by the respondents is illegal. This argument cannot be accepted for the following reasons. The applicant has failed to show that the DC is his appointing authority. Under

Rule 48-A of the CCS(Pension) Rules, his notice for voluntary retirement has to be accepted only by the appointing authority. Records show that the DC himself had forwarded the applicant's notice for voluntary retirement dated 30-6-89 along with the other relevant papers to the Joint Secretary(Personnel) at New Delhi for further necessary action as per the Memorandum dated 6th July, 1989 as stated above.

The Joint Secretary(Personnel) being the competent authority, has vide his memorandum dated 5-9-89 rejected the application dated 30-6-89 for voluntary retirement on the ground that a criminal case has been registered against him by the CBI. This rejection is, therefore, according to the Rules and is valid.

17. We have also seen the original application submitted by the applicant dated 30-6-89 addressed to the Joint Secretary(Personnel) New Delhi, copy of which is placed at Annexure R-2, in which the applicant states that he wishes to take voluntary retirement w.e.f. 30-6-89(AN) and he, therefore, gives 3 months notice effective from 1.7.89 to 30-9-89 with the request to accept the same w.e.f. 30.6.89. This application shows clearly that the applicant was well aware of the position under Rule 48-A, namely, (1) that he had to get the approval of his appointing authority i.e. the Joint Secretary(Personnel) (2) that he had to give 3 months notice after completing his 20 years qualifying service i.e. after

26th June '89. In spite of this, he has requested that the application for voluntary retirement may be accepted w.e.f. 30.6.89. He did not make a specific request that the period of notice be waived. The retirement, if accepted would have been effective only from 1.10.1989.

18. What is disturbing is that despite these facts concerning the application dated 30-6-89, the applicant has categorically denied making any such application vide para 14 of the O.A. This is a deliberate false statement as evident from the records. This shows that the applicant has tried to mislead the Tribunal and has not come to this Tribunal with clean hands. This is a serious matter and deserves no sympathy or consideration. On this ground alone, this application deserves to be dismissed with costs. In Welcome Hotel & Ors. v. State of Andhra Pradesh (ATR 1983 SC 1015), the Supreme Court held that the petitioners obtaining ex-parte stay, suppressing material facts are not "entitled to any consideration at the hands of the court" and dismissed the petitions with costs in each of them. (See also the observations of the Supreme Court in the Ramias Foundation and Ors v. UOI & Ors 1992(3) scale 121 and S.P. Chengalvaraya Naidu (dead) by L.Rs. v. Jagannath (dead) L.Rs. (Kuldeep Singh. J) (JT 1993(6) SC 331)).

19. From the facts given above and the records in the case, we are satisfied that the respondents' action in rejecting the notice dated 30-6-1989 for volunt retirement

vide order dated 5-9-1989 is legal and valid and in accordance with rules.


20. The order of suspension dated 30.8.89 (Ann.P.10) is fully justified for the explicit reasons given therein. In view of our earlier findings the applicant was still in service on the date this order was passed. He had only sent a notice for voluntary retirement. The period of three months notice was to expire only on 30-9-89. Before that date the applicant was suspended. His contention that he had already retired on 30-6-89 (AN) is false and baseless.

21. Therefore, the appellate authority's order dated 22.11.1989 rejecting his appeal against his suspension order dated 31-8-89 is also valid. We also see from the records that since then a regular departmental enquiry proceeding has been initiated against the applicant.


22. In the result, the applicant's prayer for quashing and setting aside the impugned appellate order dated 22.11.1989 is rejected. The rejection of the applicant's request for voluntary retirement with effect from 30-6-1989 by the competent authority is valid and is upheld.

23. The application is devoid of any merit and it is dismissed. As the applicant has come with unclean hands and has tried to mislead the Tribunal, we are of the view that he should also be saddled with costs. Considering the

fact that he is facing a disciplinary proceeding, we take a lenient view and quantify the costs of Rs 1000 (Rs One thousand only), which shall be paid by him to the second respondent within two months from the date of receipt of this order. On receipt, the second respondent shall deposit it or have it deposited in the appropriate Govt. account.


(Lakshmi Suaminathan)

Member(J) 20/2/95


(N.V. Krishnan)

Vice Chairman(A)