

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH NEW DELHI

O.A.No. 903/91

Date of Decision: 03-04-92

A.P.Jain

.. Applicant(s)

Shri Shyam Moorjani (not present)

.. Counsel for the applicants

Vs

Union of India through Secretary
Ministry of Defence, ~~RAJYA BHAVAN~~

.. Respondents

Mrs. Rajkumari Chopra (not present)

.. Counsel for respondent(s)

CORAM

Hon'ble Mr. S.P. Mukerji, Vice Chairman

Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?

JUDGMENT

(Delivered by Hon'ble S.P. Mukerji, Vice Chairman)

In this application dated 15.4.91. the applicant a retired Engineer of the Military Engineering Service (MES) has sought the following reliefs:

"(A) The impugned letter dated 22.1.1990 (Annexure 10-A) along with its enclosure dated 18.1.1990 (Annexure 11-A) and E-in-C's Note No.48839/1996/EIB dated 22-09-1989, as well as the action/inactions on the part of the respondents in not granting Special Disability Leave due to accidental injuries to the applicant and further not making the payments of pay, pension, commutation of pension, DCRG, refund of GPF and other benefits to the applicant be quashed and the present application be allowed.

(B) Consequently declare the applicant to have retired from service with effect from 11-01-1990.

(C) Deleted.

(D) And consequently direct the respondents to make the payments of pay and allowances for the intervening period from 1-10-1989 till 22-01-1990 with all incidental benefits, and further direct the respondents to make the payment of pension, commutation of pension, DCRG, refund of GPF and all other retiral benefits to the applicant with effect from 23-01-1990 onwards.

(E) The respondents be further directed to pay interest to the applicant on the aforesaid outstanding payments at the rate of 18 per cent per annum from the date of actual till payment by the respondents.

(F) Award the costs of these proceedings.

(G) Such other and further orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of this case, be also passed."

2. The brief facts of the case are as follows. The applicant joined the MES as Assistant Executive Engineer on 16.1.67. While he was working as Dy. Project Engineer in Radar and Communication Project and while on an inspection duty on 20.9.89 he met with an accident and was hospitalised and remained under medical treatment till 17.1.90. It appears that on 9.6.89 he had given three months notice of voluntary retirement to take effect from 30.9.89 vide Annexure A.2. After he met with the accident on 25.9.89 he submitted an application (Annexure A.IV) praying inter-alia that the date of his voluntary retirement be changed from 30.9.90 to the date when he would join duty after being declared fit. The applicant did not receive any communication regarding acceptance of his application for voluntary retirement and his further communication changing the date of such retirement. He had been applying for medical leave from time to time during the period of his medical treatment which were duly recommended by the ^{Superior} medical officer and he was declared medically fit on 17.1.90. The applicant admittedly joined duty on 17.1.90 as is evident from the letter of the Ministry of Defence dated 17.1.90 at Annexure A.8. The applicant after joining duty on 17.1.90 worked in the office till 22.1.90 when the respondents served him with a letter dated 22.1.90 (Annexure A.10) enclosing a letter from the Ministry of Defence dated 18.1.90 accepting his voluntary retirement with effect from 30.9.89 and striking off his name from the strength of the Unit retrospectively from 30.9.89. His leave applications and medical certificates were also returned to him. The applicant relinquished his charge on 22.1.90.

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He has argued that he should not be retired on 22.1.90 retrospectively with effect from 30.9.89 when he had actually joined duty and was working. He made a representation which ~~is~~ remains unresponded. He submitted further representation along with pension papers on 16.4.90 and being in great hardship, in order to obtain the pension he indicated his date of retirement as 30.9.89 as required by the Engineer-in-Chief under protest. He has claimed pay between 1.10.89 to 22.1.90 alongwith pension, commutation of pension etc. with effect from 23.1.90 onwards.

3. In the counter affidavit the respondents have accepted that the applicant had given notice on voluntary retirement to take effect from October, 1989 which was accepted by the competent authority. They have referred to Rule 48-A(ii) of the CCS(Pension Rules) which lays down that where the appointing authority does not refuse to grant 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 period. Accordingly the voluntary retirement became effective from 1.10.89. Since the applicant did not request the competent authority for withdrawal of voluntary retirement notice the question of changing the date of retirement did not arise. They have conceded that the acceptance of voluntary retirement was communicated to the applicant through the Radar and Communication Project. They have also conceded that the applicant vide his representation dated 25.9.89 at Annexure A.IV had requested that he may be relieved as soon as he joined office after his fracture is healed. But they have argued that since this communication was not addressed to the Secretary, Ministry of Defence but to the CAO and Joint Secretary, Ministry of Defence it could not be taken to be a communication for changing the date of his voluntary retirement for which he had applied, ^{to} the Secretary Ministry of Defence.

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4. In the rejoinder the applicant has stated that he did not seek withdrawal of voluntary retirement at Annexure.A.IV but change of the effective date of retirement and that also he didn't within the period of notice. He has alleged that acceptance of his voluntary retirement from 30.9.89 was merely an after-thought as the same has been communicated to him on 22.1.1990 while he was on duty.

5. I have gone through the documents carefully. Neither the applicant nor his learned counsel nor the learned counsel for the respondent was present on 30.3.92 when the case was fixed for hearing under intimating ^{on} to the learned counsel for the respondents. Neither the applicant nor his learned counsel was present on 26.3.92 when the case was taken up under ^{had been earlier} intimation to the applicant in person, who was present on 17.2.92 when the date of hearing was fixed.

6. Admittedly the applicant had given three months notice for voluntary retirement which was to take effect from 30.9.89. Before it could take effect the applicant had sought on 25.9.89 at Annexure.A.IV permission to be relieved when he joins duty after getting physically fit. He had been applying for medical leave during the period of his medical treatment along with medical certificates and when he finally got a medical fitness certificate he was allowed to join duty on 17.1.90. The communication of the Project Engineer dated 17.1.90 at Annexure.A.8 reads as follows:

"4. Reference is made to this office ID No.4(387)/C18/RCP dated 11 Jan 90.

Shri A.P.Jain, EE, DPE(CI-8) has resumed his duties on 17 Jan. 90 (FN) after expiry of 114 days medical leave from 25 Sep.89 to 16 Jan.90. Fitness certificate bearing No. 83558 dated 17 Jan 90 issued by JP Hospital, New Delhi is also enclosed herewith."

From the above it is clear that the applicant was allowed to join duty on 17.1.90. Accordingly it cannot be said by the respondents

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that his original notice of voluntary retirement with effect from 30.9.89 had been accepted. The fact that he was allowed to join duty on medical fitness on 17.1.90 shows that the respondents had accepted his application dated 25.9.89 at Annexure A.IV in which he had prayed that he should be relieved after he joins duty. The communication of the respondents dated 22.1.90 at Annexure A.10 addressed to Shri Jain reads as follows:

- "1. Reference is made to this office ID No.2(132)/APJ/ ADM/RCP dated 18 Jan 90 (copy enclosed).
2. You are requested to deposit all the official documents held on your charge to admin section with immediate effect."

This also shows that the applicant/on duty on 22.1.1990.

7. It is established law that an employee on duty cannot be retired or discharged or removed with retrospective effect. The impugned order dated 18.1.90 accepting the applicant's voluntary retirement with effect from 30.9.89 and striking off his name from the strength of the Unit retrospectively with effect from 30.9.89 is *prima facie* illegal and void.

8. In the conspectus of facts and circumstances I allow the application to the extent of setting aside the impugned order dated 22.1.90 at Annexure A.10 along with its enclosure dated 18.1.90 at Annexure A.11 along with E-in-C's Note dated 22.9.89 and declare that the applicant had retired from service with effect from 22.1.90 with all consequential benefits. I also direct that the period between 1.10.89 till 22.1.90 be covered by grant of such leave with or without pay as was admissible to the applicant. I also direct that the applicant should be paid pension and retirement benefits within a period of three months from the date of communication of this judgment alongwith

12 per cent interest from 22.4.1990 (three months after his date of retirement) till the date of actual payment. There will be no order as to costs.

(S.P. MUKERJI)
VICE CHAIRMAN
03-04-92

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