

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

O.A. NO. 146/2004

NEW DELHI THIS....^{9th} DAY OF March 2005

HON'BLE SHRI JUSTICE V.S. AGGARWAL, CHAIRMAN
HON'BLE SHRI S.A. SINGH, MEMBER (A)

Shri B.R. Sikka,
S/o Hira Nand Sikka,
Retired IFS (B) Gp. B Service
R/o 5970, Spout Spring Court,
Hay Markt VA 20169 USA

.....Applicant

(By Advocate: H.K. Gupta)

VERSUS

1. Union of India through
Secretary,
Ministry of External Affairs, South Block,
New Delhi - 110011
2. The Secretary ,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi –110011.

.....Respondents

(By Advocate: Sh. N S Mehta)

ORDER

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicant was posted to the Embassy of India in Washington and he joined as Assistant on 30.10.1978. The applicant requested for the appointment of his wife in the Embassy, which was refused. Thereafter, the applicant represented that the condition of his wife had deteriorated and he had no option but to seek voluntary retirement which,

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would take effect from 1st June 1979 or from a date following the date of his resuming duty in the Ministry, on transfer, as permissible under the Rules.

2. The respondents informed the applicant that under GOI instructions a clear and unconditional notice for voluntary retirement has to be given and they did not consider the letter dated 30.5.79 as a clear and unambiguous notice. On August 9, 1979 the applicant gave a three months' notice indicating his intention of retiring voluntarily. According to the respondents this letter was received through the Embassy of India Washington, in the Ministry (which is the competent authority to accept the voluntary retirement) on 20th August 1979.

3. The applicant vide his letter dated 4/9/79 informed the respondents that as he had not received a reply to his notice dated 30.5.79 of voluntarily retirement, he presumed its acceptance w.e.f. 31.8.79. He, thereafter, stopped attending office from 4.9.79. The three days 1-3.9.1979 being holidays.

4. The respondents informed the applicant vide their letter 27.8.1979 that his request for voluntary retirement cannot be accepted while he is serving abroad. He was also informed that he had been transferred to Headquarters and should report to Headquarters for duty after he is relieved from the Mission. The applicant did not comply with the order and the respondents issued him a charge sheet under rule 14 of CCS(CCA) Rules for major penalty. The charge sheet contained two articles of charge viz. (i) being on unauthorized absence since 4 September 1979 and (ii) disobeying government instructions to join duty in Headquarters. The charge sheet was issued on 21.12.1979.

5. The Charge sheet was decided on 23.1.2003 and a 100% cut in pension was imposed. The applicant attained the age of superannuation on 28.2.1994.

6. The applicant aggrieved by the impugned order dated 23.1.2003 imposing 100% cut in Pension has challenged the same through present O.A. He prays for quashing of the impugned order and the entire inquiry proceedings and prays for payment of retiral benefits as due, and Pension, DCRG, leave encashment, amount of CGEIS etc. for the total service period starting w.e.f. 01.01.1959 to 04.09.1979 along with interest.

7. The main ground of the applicant for seeking these reliefs is that it has taken the respondents 23 years for finalisation the enquiry and during pendency of the charge sheet 8 successive Enquiry Officers have been changed. Therefore, the charge sheet should be deemed to have been abandoned.

8. Further, respondents have erred in issuing the charge sheet because there was no order of transfer and that he was entitled for seeking voluntary retirement under rule 48(a), which reads as under:

(1) At any time after a Government servant has completed twenty year's qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

9. The amendment to this rule was made vide notification No. 38/15/85 dated 1.7.85 which reads as under:

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is –

i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme \$of

the Ministry of External Affairs
and other aid programmes.

- ii) Posted abroad in foreign based offices of the Ministries/Departments,
- iii) On a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

10. The applicant sought voluntary retirement in 1979, before the issue of the amendment, as such he was entitled for seeking retirement while abroad. He had given three months' notice on 30.5.1979 and this period of three months was over on 31.8.79. By this date he had not been informed that his voluntary retirement had not been accepted as per proviso 2 in Rule 48(a), therefore, the retirement had come into effect on expiry of notice period. The applicant was therefore not on un-authorised absence.

11. The Tribunal in OA No. 1539/89 decided on 4th January 1995 directed the respondents as under:

“ There can be no getting away from the fact that the inquiry against the applicant has been pending for long last 16 years. Whatever be the reason, it is high time that the inquiry should be completed as expeditiously as possible even if the applicant has not cooperated in the inquiry. As already indicated, the applicant has now become entitled to the payment of provisional pension and the same shall be paid to him as admissible under the law within a period of four months from the date of presentation of a certified copy of this order by the applicant before the relevant authority.”

12. As per these directions the respondents were required to pay provisional pension in terms of Rule 69, whereby should have been equal to the maximum pension permissible on qualifying service upto the date of retirement. However, respondents have not paid him at the

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maximum but at the minimum and that too for only two years. The applicant also relied upon the case of *Thakur Ajit Singh Vs Union of India and Ors* (2004 (1) ATJ 440) and pleaded that if no orders were passed for voluntary retirement during period of three months notice voluntary retirement becomes effected after expiry of the three months notice period and disciplinary proceedings are not likely to be continued. The applicant also relied upon the case of *Amrik Singh Vs Union of India & Anr.* (1991 (2) ATJ 599 in OA 35/2001 in which it was held that as the amendment to Rule 48(a) had come into force from 20.7.95 and as it did not have retrospective effect, there were no restrictions on Government servant posted abroad from seeking voluntary retirement, if they had completed 20 years qualifying service.

13. Respondents contested the claim of the applicant stating that the applicant was bound by internal rules of the Ministry and that their office letter dated 20.9.87 placed as R-14 lays the policy for persons seeking retirement from Indian Mission abroad. It has been laid down that no India based Officer should retire while abroad. On receipt of a request from the applicant for voluntary retirement the Ministry issued the order transferring him to India. He did not comply with this order as such he is liable to be proceeded against departmentally.

14. Further, the Respondents contended that the initial notice dated 30.5.79 was not an unconditional notice seeking voluntary retirement and the applicant was informed accordingly. He gave his unconditional notice seeking voluntary retirement only on 9.8.79. This was received by the competent authority through Diplomatic Bag on 30.8.79 and accordingly three months notice started from this date. During the pendency of this notice the transfer order was issued,

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which he failed to comply with and stopped attending office w.e.f. 4th September 1979. He was therefore unauthorisedly absent.

15. As per rules for voluntary retirement, India based officer posted in Mission abroad will be eligible for retirement under rule 48(a) only after they are transferred back to India and served for a period of not less than one year. The applicant failed to comply, hence he was proceeded departmentally. The delay in enquiry is attributable to the applicant as the applicant had raised false and unsubstantiated allegations against the Inquiry/Presenting Officers.

16. We have heard the counsel for the parties and gone through the documents placed before us. Two questions before the Tribunal are:

- i) What is the crucial date of commencement of 3 months notice period seeking voluntary retirement by the applicant ; and
- ii) Whether the disciplinary enquiry suffers from any infirmity requiring interference by the Tribunal ;

17. The applicant made a representation dated 30.5.79 asking for employment of his wife and if this was not possible then to consider the representation as his notice seeking voluntary retirement with the notice period commencing from 1.6.79. The Embassy of India issued a Memorandum on 12.6.79, reproduced below:

“With reference to his representation dated the 30th May, 1979, Shri B R Sikka, Assistant, is informed that his premature transfer to Headquarters on the grounds indicated therein, cannot be considered by the Ministry. In case he wishes to retire voluntarily and fulfils the necessary conditions, he should give firm notice to this effect which will be forwarded to the Ministry for consideration”.

18. After receipt of this Memorandum the applicant informed the respondents that his earlier notice dated 30.5.1979 for voluntarily retirement may be taken as a firm notice for voluntary retirement. This was forwarded to the Ministry by the Embassy of India and it was received by the Ministry

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on 20.8.79. On 27.8.79 Embassy of India Washington issued the following memorandum:

“With reference to his letter dated the 8th August, 1979, addressed to the Joint Secretary (II), Ministry of External Affairs, New Delhi, Shri B R Sikka, Assistant in the Embassy is informed that his voluntary retirement from Government service cannot be accepted by the Ministry from abroad. His request for retirement will be met by the Ministry after he reaches Headquarters.

19. However, the applicant informed the respondents on 4.9.79 that he considered the notice period to have expired on 31.8.79 and considered himself deemed to have retired from service w.e.f. 31.8.79.

20. The applicant pleaded that he was informed only on 14.4.80 that the notice of 30.5.79 was not unconditional as it contained certain conditions like cost of return passage, surrendering of accommodation, transfer grant etc. thus it could not be accepted by the competent authority. We are not impressed by this argument because the respondents had earlier informed the applicant that his representation of 30.5.79 was not considered as unconditional. In response, the applicant had clarified through his letter dated 8.8.79 that the representation of 30.5.79 should be taken as firm. Moreover, a perusal of respondents Memo. Of 14.4.80 shows that it is the reply to applicant's letter of 12.3.80. It is also clear from respondents' letters dated 12.7.79 and 27.8.79 that the Ministry did not accept the request of the applicant ~~for~~ voluntary retirement. He was ordered to complete all the formalities in connection with his transfer to Headquarters.

21. In view of the above the crucial date for commencement of the notice period of three months cannot be 1.6.79 as the respondents did not consider the representation dated 31.5.79 of the applicant as unconditional. At best the notice period can be considered to have commenced from 8.8.79. Therefore, the presumption of the applicant

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that the notice period expired on 31.8.79 is incorrect. The applicant has accepted that he received respondents letters dated 27.8.79 on 5.9.79 rejecting his request for voluntary retirement while posted abroad. The applicant did not comply with the directions of the Ministry and was hence issued a charge sheet. This non compliance would tantamount to will-full disobedience of orders.

22. Applicant has relied upon the cases of **Amrik Singh Vs UOI (supra)** and **Thakur Ajit Singh Vs UOI**, but these do not come to his assistance because they are distinguishable. In the case of Thakur Ajit Singh the notice for voluntary retirement was tendered and no order was passed within the period of three months, hence it was held that he had voluntary retired. Such is not the case of the applicant because the order of not accepting his request for voluntary retirement was issued within the period of three months. Similarly, the case of Amrik Singh is distinguishable as it deals with the applicability of rules for voluntary retirement. Voluntary retirement was sought under fundamental rules whereas it should have been sought under pension rules. It was held that a notice mentioning fundamental rules rather than pension rules does not make the request invalid when provision under rules for voluntary retirement exist.

23. With regard to the enquiry proceedings the applicant had taken the plea that they need to be quashed as there has been a delay by 23 to 24 years. However, this issue was taken up by the applicant in OA 359/89, which was decided by the Principal Bench of the Tribunal on 4.1.95. We would have to see whether delay has been prejudicial to the applicant. In *State Bank of Patiala & Ors. Vs. S K Sharma (1996 (3) SC 722)* it has been held that justice means justice between both the parties. The interest of justice equally demand that the guilty should be punished and that technicalities and irregularities which do

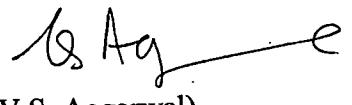
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not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise. In the present case the issue is simply that of unauthorized absence and merely calls for the applicant to show reasons for not joining duty at headquarters. It can not be said that delay by itself would make it difficult for the applicant to put forward these reasons and hence would be prejudicial to his right of defence. In view of the foregoing delay in itself would not be fatal to the disciplinary proceedings.

24. The applicant has pleaded that he has served for more than 25 years and therefore he had a right for pension which can not be taken away because pension is an entitlement and not a bounty. We do not agree with this argument because it has been held in the case of **Union of India Vs Shri B Dev (1991(1) AILJ(3) 196** that unauthorized absence constitutes grave misconduct and accordingly withholding of full pension permanently under Rule 9 of the CCS (Pension Rules) cannot be faulted with.

26. In view of the foregoing, we find this OA to be without merit and is accordingly dismissed. No costs.


(S.A. Singh)
Member (A)


(V.S. Aggarwal)
Chairman

Patwal/