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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.195/2004

New Delhi, this the 11th day of June, 2004

Hon'ble Shri S.K.Naik, Member (A)

Gyan Prakash Dubey  
Carpenter, AHQ Camp, Rao Tula Ram Marg  
New Delhi .. Applicant

(Shri V.S.R.Krishna, Advocate)

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Union of India, through

1. Secretary  
Ministry of Defence  
South Bhawan, New Delhi
2. The Commandant  
Army Headquarters Camp  
Delhi Cantt., Delhi-10 .. Respondents

(Shri D.S. Mehandru, Advocate)

O R D E R

Applicant joined service as Carpenter on 13.12.1975 and after having two stints, one at Jabalpur from 1977-1979 and the other at Agra from 1980-1995, he was finally posted to Army Hqrs. Camp, New Delhi in May, 1995. Respondents vide order dated 27.5.2003 communicated to the applicant that he had become surplus as per the revised PE No.IV/306/1946/7 of Army HQ Camp, New Delhi and transferred him to Air Force Station (AFS) but the vacancy was not confirmed by AFS. By another order dated 22.10.2003 his posting was changed to Ambala Cantt. and vide order dated 4.11.2003 he was directed to proceed on transfer to Ambala Cantt. However, applicant submitted a request on 10.11.2003 for voluntary retirement in terms of DoPT guide-lines dated 28.2.2002. Since no decision was taken on his request for voluntary retirement, applicant preferred OA 3056/2003 praying for quashing of transfer order dated 4.11.2003 and directing

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the respondents to consider his request for voluntary retirement. The said OA was disposed of by order dated 5.1.2004 with a direction to the respondents not to implement the transfer order dated 4.11.2003 till his request for voluntary retirement was decided by the respondents. Applicant informed his office orally about the decision dated 5.1.2004 in OA 3056/2003. But before he could supply a copy of the judgement to the respondents, the latter have issued order dated 9.1.2004 rejecting applicant's request for voluntary retirement and also inter alia stating therein that "you stand automatically discharged from service with immediate effect as per para 13 of AO 22/2001". Aggrieved by this, applicant is before this Tribunal through the present OA praying for quashing of order dated 9.1.2004 and to direct the respondents to continue him in service with all consequential benefits.

2. Counsel for applicant has contended that in the peculiar background of the case when the Tribunal had issued a direction to the respondents not to implement the order of transfer until the request of the applicant for voluntary retirement was decided, the action on part of the respondents to discharge the applicant from service is highly illegal, specially when the direction of the Tribunal had been brought to the knowledge of the respondents, albeit orally. Besides the applicant had expressly requested the respondents to hold in abeyance action in their letter dated 4.11.2003 as the same was connected with his request for voluntary retirement. The counsel further contends that the delay in accepting the

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alternative appointment on which much is being made out by the respondents was partly due to their own action in first transferring the applicant to New Delhi where there was no vacancy and further the decision to post the applicant to Ambala having been taken only by the end of October, 2003 and the transfer order issued on 4.11.2003. The applicant in this background was well within his rights to submit his request for voluntary retirement within a period of three months from this date, i.e., 4.11.2003. The counsel has forcefully argued that the various actions and orders issued by the respondents from time to time had the effect of postponing the date from which the period of three months was available to the applicant under the scheme. He was, therefore, legally entitled to give his option within a period of three months from the last such order passed by the respondents which in the case in hand is 4.11.2003. The respondents, at this stage, cannot go back to the date when the post held by the applicant was declared surplus and count a period of three months whereas they themselves had repeatedly transferred and offered him various posts thereafter. The rejection of his request for voluntary retirement, therefore, is totally illegal, arbitrary and smacks of an attitude of vengeance for having approached the Tribunal in the matter. The counsel presses for the acceptance <sup>of</sup> ~~of~~ voluntary retirement and not continuation under the peculiar background of this case.

3. The respondents, needless to state, have contested the case. In their reply, it has been stated that the post of Carpenter was abolished vide order dated 22.2.2002 and after being declared surplus, the applicant was asked to submit his willingness to accept an equivalent/lower post in Army Headquarters in the same

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Unit vide letter dated 27.5.2003. The applicant vide his letter dated 3.6.2003, however, conveyed his willingness to accept an equivalent post and that too in Delhi only. The need to transfer him to Ambala arose because no post was available in Delhi but the applicant, rather than submitting his clearance and proceeding to join the post at Ambala vide his letter dated 10.11.2003, requested for voluntary retirement. By another letter of the same date, the applicant further requested to defer his posting to Ambala by a month. His request was duly considered and the applicant was not transferred till the decision on his voluntary retirement was taken which culminated in the issuance of the impugned order. The counsel for the respondents contends that the decision to reject his request for voluntary retirement is fully justified as the applicant had not given his option within three months period prescribed under the scheme which commences from the date of declaration of his being declared surplus. Since the request was made only on 10.11.2003, much belatedly, the same had to be rejected and he was discharged in accordance with para 13 of Army Headquarters order dated 22.8.2003 and Rule 29 read with Rule 36 of the Pension Rules.

4. I have heard the counsel for both the parties at length and perused the records.

5. The main controversy in this OA, as is evident from the facts stated earlier, revolves around whether the period of three months as prescribed in para 6 of the

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special VRS for surplus Central Govt. employees issued by the Govt. of India vide OM dated 28.2.2002, which reads as under:-

"6. The permanent employees declared surplus will have to exercise option for special VRS within three months from the date he or she has been declared surplus in any Ministry/Department. Surplus employees presently on the Rolls of the Surplus Cell (Redesignated as the Division of Retraining and Redeployment) of the Department of Personnel & Training as on the date of this OM can also opt for special VRS within three months from this date."

is to commence from the date the applicant was declared surplus, i.e., from 27.5.2003 (Annexure R-II) or whether the said period will commence from a date subsequent thereto in view of the action on part of the respondents to post the applicant initially against an equivalent post in AFS Delhi where no vacancy existed and subsequently posting him at Ambala about which the applicant had not been able to make up his mind and had in between made representations for deferment of the said transfer order and also seeking voluntary retirement in the meantime. While the respondents' view is that the period of three months will commence from the date the applicant was informed about his being declared surplus, i.e., 27.5.2003, the applicant contests the same on the basis of various transfer orders issued by the respondents subsequent to 27.5.2003 which would have the effect of postponing the crucial date. firstly to Delhi and then to Ambala. The applicant having requested for voluntary retirement within three months from the date of his transfer to Ambala was fully entitled to receive the benefit under the scheme. On a perusal of the record, I

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find that the applicant was informed that he has become surplus vide order dated 27.5.2003 issued by the respondents. The said order does not either state or advise the applicant to exercise his option within a period of three months from that date. On the contrary, I find that vide the said order, the applicant has been offered equivalent/lower post in Army Headquarters. Further the applicant had been asked to indicate three stations of his choice. While the applicant had given his preference for three different Units in Delhi itself, the respondents offered him an alternate appointment at Ambala Cantt. vide their letter dated 22.10.2003. It was only then that the applicant made up his mind not to proceed to Ambala but sought voluntary retirement because of his domestic compulsions. From the brief of representations made by the applicant and the orders/replies issued by the respondents at no stage indicate that the applicant would be discharged from service if he does not make up his mind in one way or the other within a period of three months from the issue of the first reference, i.e., 22.5.2003. The action of the respondents all along had been to accommodate the applicant in some alternate job but the sudden decision to discharge him has come about only when he filed an original application before the Tribunal and the same appears to have been issued in a great hurry. In fact, the explanation offered at the time of argument that the order of the Tribunal was received after the issuance of the ~~transfer~~ <sup>discharge to</sup> order would not help the respondents since from their own conduct, it is evident that after having taken a decision to adjust the applicant in some other post, they should not have gone back from their own

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decision. In fact, on the date of the issuance of the order there was no categorical refusal by the applicant to accept the post offered to him at Ambala. What he had requested was only ~~for~~ a deferment of a posting order until the decision on his request for voluntary retirement. Thus, the action of the respondents in issuing an order discharging the applicant is wrong. From the peculiar facts of the case, I have no doubt that the period of three months would commence from 10.11.2003 when the applicant submitted his request for voluntary retirement for Central Govt. employees after the respondents transferred him to Ambala Cantt. vide their letter dated 4.11.2003. The respondents having not advised the applicant vide their original reference declaring the applicant as surplus that failure on his part to opt for the voluntary retirement would entail a automatic discharge and further transferring him to various Units now cannot take the plea of the said three months commencing from the first reference and take shelter behind the Army order, which only lays down the procedure to be followed pursuant to the scheme enunciated by the Govt. of India. I, therefore, hold that the respondents' order to discharge the applicant thereby denying him the benefit of special VRS meant for surplus Central Govt. employees is not sustainable.

6. Under the circumstances, the OA is allowed. The impugned order is set aside and the respondents are directed to extend to the applicant the benefit of special VRS. No costs.

S.K. Naik  
( S.K. Naik )  
Member (A)

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