

51

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 29
T.A. No.

1985

DATE OF DECISION 29th April, 1986.

Shri Keshav Ram Joshi, **Petitioner**

Shri S.K.Bisaria, **Advocate for the Petitioner(s)**

Versus

Secretary, Ministry of Health **Respondent s.**
and others;

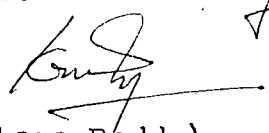
Shri M.L.Verma, **Advocate for the Respondent(s)**

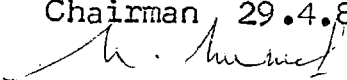
CORAM :

The Hon'ble Mr. Justice K.Madhava Reddy, Chairman.

The Hon'ble Mr. Kaushal Kumar, Member.

1. **Whether Reporters of local papers may be allowed to see the Judgement ?** *Yes*
2. **To be referred to the Reporter or not ?** *Yes*
3. **Whether their Lordships wish to see the fair copy of the Judgement ?** *no*
4. **Whether to be circulated to all Benches?** *Yes*


(K.Madhava Reddy)
Chairman 29.4.86.


(Kaushal Kumar)
Member 29.4.86.

-6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
DELHI.

REGN. NO.OA 29/1985.

Dated the 29th April,1986.

Shri Keshav Ram Joshi ... Petitioner.

Versus

Secretary, Ministry of Health
and others ... Respondents.

CORAM:

Shri Justice K.Madhava Reddy, Chairman.

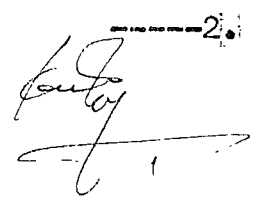
Shri Kaushal Kumar, Member.

For petitioner ... Shri S.K.Bisaria, Advocate.

For respondents ... Shri M.L.Verma, counsel.

(Judgment of the Bench delivered by
Shri Justice K.Madhava Reddy, Chairman).

The few facts necessary to appreciate the contention raised in this petition may be briefly noticed. The petitioner joined as Lab. Technician in the Ministry of Health on 19.8.1952. He was promoted as Research Assistant in March,1961. In February,1965, he was promoted as Research Officer on an ad-hoc basis and in December,1965, he was reverted to the post of Research Assistant. He was again promoted in 1970 but this time as an Assistant Research Officer. In June,1971, he was once again promoted as Research Officer on an ad-hoc basis. While so working, petitioner was selected for foreign assignment in Zambia. He left the country in August,1971, while he was working as a Research Officer on an ad-hoc basis. He returned from Zambia in December,1976. When he wanted to join duty, he was not allowed to join as Research Officer. His grievance was that while his junior Shri M.C. Joshi who was working as Research Officer on ad-hoc

-----2.


basis was allowed to continue, he was not allowed to join as Research Officer. In protest the petitioner submitted his resignation on 17.5.1977 and addressed a letter as under:-

"To

The Director, NICD,
22, Sham Nath Marg, Delhi.

Sir,

Respectfully I beg to say that I do not want to continue in service. This may please be treated as my resignation and I may be relieved at the earliest.

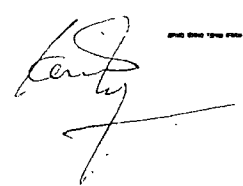
Thanking you,

Yours faithfully,
Sd/- (Keshav Ram) (RA)
Biochemistry Sn.
17th May, 1977 "

That was forwarded on 17.5.1977 with a recommendation for acceptance.

2. The petitioner changed his mind and on 27.7.1977 wrote a letter to the Director, National Institute of Communicable Diseases, 22, Shammath Marg, Delhi-110054 requesting "that the same 'letter of resignation' may please be treated as notice period for my voluntary retirement in terms of Government of India's decision that government employees with twenty years of service can opt for voluntary retirement with five years extra benefit." In that letter he also requested that the period of deputation may be counted for the pensionary benefits and the contribution towards pension for this period may be adjusted/recovered from his GPF Account and the balance be paid to him.

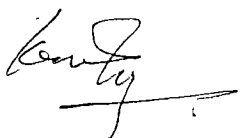
3. The petitioner was issued a Memorandum No.11-45/80- stating Estt dated 16th November, 1981, that his resignation from service has become effective from due date. The

 -----3.

petitioner made repeated representation and finally through letter No.T.14018/11/84--PR/PH(CDL) dated 15.12.1984 issued by the Dy.Director Administration (PH) he was intimated "that your request for conversion of your resignation into voluntary retirement has been considered carefully in consultation with the Ministry of Health and Family Welfare and the Department of Personnel and Administrative Reforms, New Delhi. It is regretted that the same cannot be acceded to".

4. The petitioner prays that letter dated 17.5.1977 should have been treated as a letter for voluntary retirement and he should be awarded all retirement benefits treating the letter of resignation as voluntary retirement. He further prays he should be deemed to have retired in the cadre of Research Officer and he should be allowed to deposit the pension contribution amount for the period of service rendered at Zambia on foreign assignment and the period between August, 1971 to December, 1976 be counted for pension benefits.

5. We have, therefore, to consider (1) whether the petitioner's resignation became effective and, if so, when? (2) whether the letter of resignation could be treated as one for voluntary retirement and the petitioner deemed to have retired and if so, when? (3) whether the petitioner could be deemed to have retired as Research Officer for the purpose of retirement benefits? (4) whether the service rendered by the petitioner on foreign assignment between August, 1971 to December, 1976 could be counted as qualifying service for purpose of pensionary benefits and the petitioner allowed to contribute the amount for that period for




pensionary benefits?

6. From the above narration of facts, it is clear that the petitioner's letter dated 17.5.1977 was not accepted until 27.7.1977 when he wrote another letter requesting the authorities that his letter of resignation may please be treated as notice period for voluntary retirement. It is true that in his letter dated 27.7.1977, the petitioner did not specifically state that he is withdrawing his resignation; but has categorically referred to the fact that his resignation has not been finalised as yet and specifically requested that that letter may be treated as notice period for his voluntary retirement.

7. Thus before his resignation was accepted, he requested that he may be allowed to voluntarily retire. It is now well settled that no public servant can retire unilaterally and the so-called resignation from service cannot take effect unless it is accepted by the employer.

8. In Raj Kumar versus Union of India (1), the Supreme Court held that "the service stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and it is not open to the public servant to withdraw his resignation after it is accepted". That was a case where the resignation was sought to be withdrawn by an IAS Officer after it was accepted by the appropriate authority and the contention was that unless pursuant to the acceptance of resignation, the officer was relieved of his duties, he continues to be in service and, therefore, he could withdraw the resignation. While rejecting that contention the Supreme Court enunciated the principle that resignation

-----5



takes effect from the date of acceptance by the appropriate authority.

9. In Raj Narain versus Smt. Indira Nehru Gandhi (2) the question as to when the service of a government servant stands terminated squarely came up for consideration and the Court referring to Raj Kumar Versus Union of India (1968), 3 SCR 857 =(AIR 1969 SC 180) reiterated that:

"When a public servant has invited by his letter of resignation the determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority (emphasis supplied) and, in the absence of any law or statutory rule governing the conditions of his service, to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted (emphasis supplied) by the appropriate authority".

10. The Supreme Court in Union of India versus Gopal Chandra Misra and others (3) had occasion to consider if a resignation can be withdrawn before it became effective. Once again the Supreme Court declared that if the resignation of a public servant depended upon its acceptance, it could always be withdrawn before it was accepted and where the resignation is prospective, it could be withdrawn before that date arrived. That was a case where the resignation of a Judge of the High Court of Allahabad came up for consideration. The letter of resignation addressed by the Hon'ble Judge expressly stated that he wished to resign and his resignation shall be effective on 1st of August, 1977. Much before that date on 15.7.1977 the learned Judge addressed another letter to the

-----6.

2. 1972 AIR (SC) 1302

3. 1978 (1) SLR 521 (SC).



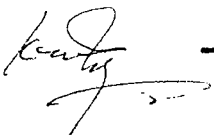
President of India:

"I beg to revoke and cancel the intention expressed by me to resign on 1st of August, 1977 in my letter dated 7th May, 1977. That communication may very kindly be treated as null and void.."

Although the Supreme Court there was required to consider the terms of Art. 217(1) which lays down that the High Court Judge remains in office till he attains the age of 62 years and states the four contingencies when the tenure of office may terminate before he attains the age of 62 years, one of these contingencies is resigning his office in the manner laid down in its clause (a) to Art. 217(1).

The Supreme Court held:

"that in the absence of a legal, constitutional bar a 'prospective, resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant / or functionary who cannot, under the conditions of his service/ or office, by his own unilateral act of tendering resignation, given up his service/ or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. (emphasis supplied) In the case of a Judge of a High Court who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns in presenti, the resignation terminates his office-tenure forthwith, and cannot, therefore, be withdrawn or revoked thereafter. But, if he

 -----7.

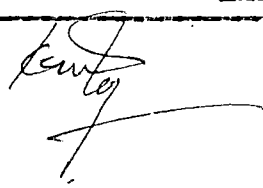
by such writing chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal".

The principles deducible from the above pronouncements are, unless the Service Rules provide otherwise the resignation of a Government servant does not take effect until it is accepted by the appropriate authority. The Government servant is not a constitutional functionary. If he does not specify the date from which the resignation shall take effect, he continues to be in service until it is accepted. It follows that before the resignation is accepted, he is entitled to withdraw unless there is a rule to the contrary. If he so withdraws the resignation, the Govt. servant continues in service.

11. In the light of the above, if we examine the case of the petitioner, it is crystal clear that though the petitioner had tendered his resignation on 17.5.1977 expressing his intention to resign from his service in presenti, neither the acceptance of resignation/^{was} recorded nor communicated to the petitioner. Before he received any communication, he addressed a letter to the Director General on 27.7.1977 requesting that the letter of resignation may be treated as notice period for voluntary retirement. The respondents did not choose to inform the petitioner what action they had taken on these letters till 15.11.1981.

12. The Supreme Court also observed in Raj Kumar versus Union of India (1):

"Undue delay in intimating to the Public



servant concerned the action taken on the letter of resignation may justify an inference that resignation has not been accepted".

It would be pertinent to note that while the petitioner intimated the authorities concerned within 2½ months after submitting his resignation informing that his resignation has not been finalised and requested that the letter of resignation be treated as one for voluntary retirement, the respondents did not choose to take any action thereon, much less did they inform the petitioner about the action taken on his letter of resignation until 15.11.1981. Only on 16.11.1981 he was intimated that his resignation was accepted. That was long after the petitioner requested that his resignation may be treated as request for voluntary retirement. It is not the case of respondents that the resignation was accepted at any time before 27.7.1977. With effect from that date there was no letter of resignation which could be accepted. The communication of the respondents dated 16.11.1981 that his resignation from service has become effective from due date is invalid in law and has no legal effect. The petitioner's service did not stand terminated by resignation.

13. The next question would be as to whether the petitioner should be deemed to have been retired from service and, if so, when? Under his letter dated 27.7.1977 the petitioner categorically requested that he should be allowed to voluntarily retire. He also stated that the period spent in Zambia on foreign assignment should also be counted for the pensionary benefits and the contribution towards pension for this period may be adjusted/recovered from his GPF. For this purpose it is necessary to consider when a Govt. servant may voluntarily retire from service and also

get pension. Provision is made in this behalf in Rules 48 and 48-A of the Central Civil Services (Pension) Rules. Rule 48 which entitles a Government servant to retire on completion of 30 years of qualifying service or on attaining age of superannuation is not applicable on the facts of the petitioner's case. Rule 48-A of the Central Civil Services (Pension) Rules, 1972, which was introduced by Notification No. 7(2)-E.V(A)/73 dated 28th November, 1978 of Govt. of India, Ministry of Finance, so far it is relevant for our present purpose, it reads as follows:-

"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.

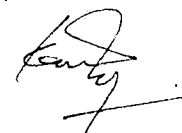
(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

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) Deleted.

(3A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority 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 a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and death-cum-retirement gratuity of the Government servant retiring under this rule shall be based on the emoluments as defined under Rules 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity...."

Qualifying service is defined in Rule 3(q) as follows:-

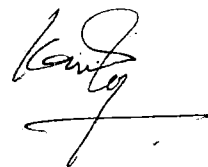
" 'qualifying service' means service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under these rules;"

Rule 3(g) of the Central Civil Services (Pension)

Rules, 1972, defines 'Foreign Service' as follows:-

" 'Foreign Service' means service in which a Government servant receives his pay with the sanction of the Government from any source other than the Consolidated Fund of India or (the Consolidated Fund of a State or the Consolidated Fund of a Union Territory)".

14. The petitioner having been appointed to the service on 19.8.1952 had not completed 20 years' qualifying service



even if period of his foreign assignment is counted as service (it falls short by nearly 20 days) for purposes of Rule 48-A. That apart when he was given foreign assignment it was specifically stated in the letter offering him foreign assignment:

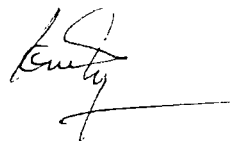
"The period of service with the Government of Zambia will not count for purposes of calculation of pension under the Govt. of India".

The contention of the petitioner that he was not informed about the terms and conditions of foreign service before he left for Zambia cannot be accepted in view of the undertaking given by him that he would abide by the terms and conditions which might be granted to him for his foreign assignment. This is clear from the copy of the letter dated 19.8.1977 addressed by the Admn. Officer, National Institute of Communicable Diseases to the Director General, Health Services, a copy of which was endorsed to the petitioner. Since the petitioner had given an undertaking that he would abide by the terms and conditions of the foreign assignment as might be granted to him and he proceeded to Zambia without waiting to receive the terms and conditions of that assignment and these were communicated to him, it is not now open to him to plead that he was not intimated about the terms and conditions. In the circumstances the period of foreign service rendered by him cannot be counted towards qualifying service for purposes of Rule 48-A which covers voluntary retirement.

15. The petitioner appears to have submitted the letter for voluntary retirement, pursuant to the Press publication of recommendation No.59 of ^{the} report on Personal Administration of the Department of Personnel and Administrative Reforms, New Delhi suggesting acceptance of voluntary retirement of Government servants on proportionate pension



and gratuity after 15 years (10 years for superseded officers) Govt. of India and that the Govt. of India have decided to permit the voluntary retirement after 20 years of service in respect of all Govt. servants with 5 years extra benefit in qualifying service subject to the maximum of 30 years. The fact remains that the petitioner had not completed 20 years of qualifying service by July, 1977 so as to entitle him to take voluntary retirement on that date and also secure the retirement benefits. However, his request for voluntary retirement was not considered and disposed off. It was kept pending all along. We have earlier held that his resignation had not taken effect and since no decision was taken on his notice of voluntary retirement, he must be deemed to have continued in service. In the meanwhile Rule 48-A having come into force on 28th November, 1978, this pending request of the petitioner could be considered by the appropriate authority. Assuming that his request for voluntary retirement could not be considered on the date it was made for the reason that he had not completed 20 years of service still inasmuch as it was not withdrawn by the Petitioner or rejected by the Government remained to be disposed off either by an order of the appropriate authority or by operation of law. Before any order was made on the request for voluntary retirement, Rule 48-A came into force. Under that Rule a government servant who has completed 20 years' qualifying service is given the right to take voluntary retirement from service by giving notice of not less than three months in writing to the appointing authority. Proviso to Sub-rule (2) of Rule 48-A expressly lays down 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 day of expiry of the said period.

16. The petitioner not having withdrawn his letter of resignation and the respondents not having intimated the petitioner that his notice of voluntary retirement was rejected, the proviso to sub-rule (2) of Rule 48-A is attracted and on completion of 20 years' service and 3 months service of the notice period envisaged by sub-Rule (1) of Rule 48-A, the petitioner's pending notice of voluntary retirement became effective. By the operation of Rule 48-A, the petitioner stood retired voluntarily w.e.f. that date.

17. The next question is whether the petitioner had a right to be posted as Research Officer on his return from Zambia and deemed to have retired as a Research Officer. The petitioner was no doubt holding the post of Research Officer when he was given foreign assignment. But that was on an ad-hoc basis, it was not a regular promotion. By the time he returned, his juniors were already holding that post. He was, therefore, allowed to join as Research Assistant.

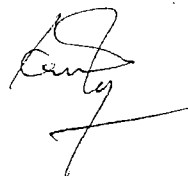
18. Petitioner returned from Zambia on completion of his foreign assignment in December, 1976, and proceeded on E.L. immediately. The contention of the respondents is that the petitioner was not superseded by his juniors in promoting Shri M.C. Joshi as Research Officer. When the petitioner was on foreign assignment, the post of Research Officer had been filled by ad-hoc promotion of Shri M.C. Joshi. Shri M.C. Joshi though junior to the petitioner had been allowed to continue as Research Officer on ad-hoc basis till the post of Research Officer was filled on

regular basis through UPSC. The petitioner was holding the post of Research Officer only on an ad-hoc basis, he did not have a legal right to be posted as a Research Officer on his return from foreign assignment. He had a lien against the post of Research Assistant (earlier called Malaria Assistant in which he was confirmed with effect from 18.4.1962). The continuance of the existing arrangements, which had been made during the petitioner's foreign assignment, even after his return as a purely ad-hoc measure till the post was filled in by UPSC selection cannot be considered as discriminatory or amounting to supersession of the petitioner, a senior to Shri M.C.Joshi a junior in service. The grievance of the petitioner that he should have been appointed as Research Officer on his return from foreign assignment is, therefore, untenable. His claim that he should have been promoted as Research Officer on his return from foreign assignment is, therefore, rejected. He has been given the post on which he held a lien and that alone will be taken into account in computing his pension.

19. The petitioner also claims that the period which he spent on foreign assignment should be counted for pensionary benefits and that he should be allowed to make contributions towards his pensionary benefit. In view of the terms and conditions of foreign assignment which categorically stated that that period would not count for pension (to which we have referred above) and the undertaking given by the petitioner himself that he would abide by those terms, this request of the petitioner must be rejected. In the result the petition is allowed in part.

(1) It is declared that the petitioner cannot be deemed to have resigned from service.

(2) It is declared that by virtue of the letter



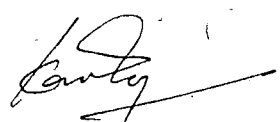
given by the petitioner on 27th July, 1977, his original letter of resignation ceased to be operative as such and it became a request for voluntary retirement from service.

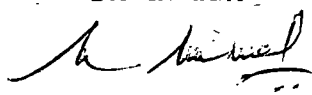
- (3) That his voluntary retirement became effective upon petitioner completing 20 years and 3 months of "qualifying service".

The period of service upto the date when the petitioner's voluntary retirement became effective shall be regularised accordingly by treating it as on duty or leave to which he is entitled.

- (4) That the period of his foreign assignment cannot be counted towards his "qualifying service" for the purpose of calculation of his pension. The petitioner would be entitled to all consequential benefits of salary and pension as per rules.

In the circumstances we make no order as to costs.


(K. Madhava Reddy)
Chairman 29.4.86.


(Kaushal Kumar)
Member 29.4.86.