

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

8

OA-2683 of 1992

New Delhi, this the ^{1st} day of February, 1998.

Hon'ble Dr. Jose P. Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member(A)

Jagdish C Jassal
S/o Sh. Harichand Jassal
R/o 6035 Vista Drive
Falls Church
VA 22041 USA

...Applicant

(By Advocate : Sh.D.C.Vohra)

Versus

Union of India : through

1. The Foreign Secretary
Govt. of India
Ministry of External Affairs
South Block
New Delhi - 110 011
2. Embassy of India
in the United States
Washington D.C.
through Diplomatic Bag
of the Ministry of
External Affairs
South Block,
New Delhi - 110 011

...Respondents

(By Advocate : None)

ORDER

By Sh. N. Sahu, Member(A) -

This OA is directed against the order dated 08.05.1984 issued by Respondent No.2 dismissing the applicant from service even when he had claimed to have voluntarily retired since 24.03.1980. The applicant served the respondents as a Personal Assistant during the periods from 1954 to 1979. He was posted under Respondent No.2 from 1975 to 22.06.1979. On that date he was relieved of his duties in the Embassy of India, Washington to join a

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new posting at Male. He applied for leave and was granted Ex-India Leave for two months for the education of his son. This leave expired on 31.08.1979. His request for further extension was rejected and he was directed to proceed to Male. The applicant requested for a posting to one of the nearby Missions in the South America as he wanted to leave his children at Washington for further studies. His request was turned down on 27.12.1979. His next request for cancellation of posting to Male on health grounds was also not acceded to. The Govt. took the view that he was unauthorisedly absent from 31.07.1979 and, put him on notice that he exposed himself to disciplinary proceedings. A charge-sheet was issued to him on 06.05.1980. After inquiry the articles of charge stood proved against him. Thereafter, his case was referred to UPSC on 23.11.1983 proposing dismissal from Govt.service. The UPSC concurred with the proposal. The President, after consideration of the records, dismissed him from service by an order dated 08.05.1984.

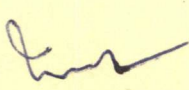
2. The applicant's contention is that he sought voluntary retirement through his representation dated 23.12.1979. It was obligatory on the part of Respondent No.1 to accept the same. The respondents contend that the applicant's representation was for a posting in a nearby Mission. The last para of that representation reads as under:



"In case it is not possible to meet my request for a posting to a nearby Mission, I may kindly be allowed to retire prematurely from the service."

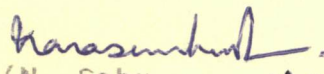
3. By a letter dated 22.05.1980 the respondents informed the applicant that it was a conditional request for voluntary retirement and, therefore, did not constitute a valid notice. He approached the Supreme Court with a Writ Petition for quashing his dismissal order. His Writ Petition was dismissed. The applicant again approached the Delhi High Court for quashing his dismissal order. The Delhi High Court ~~was~~ by a judgment dated 09.04.1985 held that his letter dated 23.12.1979 was not an unconditional letter of voluntary retirement. The High Court did not find any merit in the petition for interference with the dismissal order.

4. In the conspectus of the above facts the relief No.1 prayed for for quashing the dismissal order cannot be considered. In view of the judgment of the Delhi High Court, relief No.2 for a declaration that the applicant had stood retired voluntarily by operation of law in terms of proviso to Rule 48(a) also cannot be acceded to. A notice of voluntary retirement is normally accepted except in cases where disciplinary proceedings are pending or contemplated against the Govt. servant for the imposition of a major penalty and the disciplinary authority is of the view

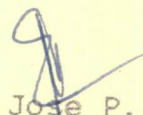


that the imposition of penalty of dismissal from service would be warranted in the case. In view of this condition even if we assume that the applicant's letter dated 23.12.1979 is a notice for voluntary retirement, the respondents are entitled not to accept the same. After 31.08.1979, the applicant's conduct was one of disobedience to orders on his failure to join at Male. His leave having been refused he was treated as unauthorisedly absent. Relief No.3 relates to payment of terminal dues like pension, gratuity, leave encashment etc. Retirement benefits such as pension is not payable to a dismissed employee and as the applicant has not retired voluntarily the question of payment of retirement dues does not arise. The applicant's GPF dues was directed to be paid by an order of this court dated 16.10.1992 with 12% interest per annum from the due date till it is actually paid. It is assumed that provident fund dues were already paid. Arguments were not addressed on this point at the time of hearing.

5. OA is dismissed. No costs.


(N. Sahu
Member (A))

6/2/98


(Dr. Jose P. Verghese)
Vice Chairman(J)

/Kant/