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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 656/93 &
C.P. NO. 66/94 in
O.A. NO. 656/93

New Delhi this the 8th day of March, 1994

CORAM :

THE HON'BLE MR. JUSTICE V. S. MALIMATH, CHAIRMAN,
THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Amarjit Singh Dhanjal
S/O S. Kartar Singh,
R/O Plot No. 322,
Chand Nagar, New Delhi.

... Applicant

By Advocate Shri R. K. Kamal

Versus

1. Union of India through
Secretary to Govt. of India,
Ministry of Defence,
South Block, New Delhi.

2. Engineer-in-Chief,
Coord. & Per. Directorate,
(EID), E-in-C's Branch,
Army Hq., DHQ, New Delhi.

3. Chief Engineer,
Western Command,
Chandimandir, Chandigarh.

4. Garrison Engineer,
Red Fort, Lucknow Road,
New Delhi. ...

Respondents

By Advocate Mrs. Rajkumar i Chopra

O R D E R (ORAL)

Hon'ble Mr. Justice V. S. Malimath —

This is an unfortunate case in which the petitioner while he was in service suffered a serious motor vehicle accident resulting in 50% disability as certified by the medical authorities. The problems of the petitioner started when he could not function as before after he met with the

accident. We have adverted to this fact mainly for the reason that after hearing the counsel appearing for both the parties, we feel that we should deal with this matter in a just and equitable manner without being unduly disturbed by the pleadings or the attitude taken by either of the parties. We shall, however, narrate a few facts necessary for exercising our discretionary and equitable jurisdiction.

2. When the petitioner was transferred to Bhisiana on 21.9.1989, he challenged the said order in O.A. No. 1686/90 and the Tribunal dismissed the same on 15.2.1991. Consequently, the petitioner was required to obey the order of transfer. It appears that the authorities did realise the handicap from which the petitioner is suffering and that he would not be in a position to function as effectively as he was doing before. He was, therefore, asked either to report to duty and seek orders of posting or to seek voluntary retirement. The petitioner chose to opt in favour of voluntary retirement invoking Rule 48-A of the C.C.S. (Pension) Rules. He made a request to that effect on 27.3.1992, copy of which is produced as Annexure-C. He stated therein that his notice of three months would commence from 1.4.1992 and end on 30.6.1992. This obviously meets the requirement of three months' notice contemplated by Rule 48-A. There is material placed before us furnished by the authorities themselves that he had to his credit on the relevant date more than the minimum qualifying service of twenty years required for seeking voluntary retirement. We are, therefore, satisfied on the materials before us that the petitioner

was duly qualified to seek voluntary retirement under Rule 48-A and that he also exercised his option in favour of retirement under Rule 48-A by filing his application Annexure-C dated 27.3.1992. What followed thereafter is quite interesting. There is no denial in the reply or the affidavits filed by the respondents of the petitioner having applied for voluntary retirement on 27.3.1992. It is not stated by the respondents that that request of the petitioner was turned down. No order rejecting his request for voluntary retirement has been produced. Provisions of sub-rule (2) of Rule 48-A provide that where the appointing authority does not refuse to grant the 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 said period. It is, therefore, possible to draw the inference that the respondents not having rejected the request of the petitioner for voluntary retirement on 27.3.1992, he must be deemed to have retired with effect from the date of expiry of the period of notice. This is quite logical and consistent with the statutory provisions. But when we look at the further course of action taken by the parties, it tells us a slightly different story. The petitioner was asked to take charge from one Bharat Bhushan by order dated 28.1.1993. The petitioner did commence to take charge on 9.2.1993, but by an order dated 10.2.1993 served on the petitioner on 13.2.1993, ✓ he was informed that the order directing him to take

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charge from Bharat Bhushan had been cancelled and that he should report to the concerned authorities on the basis that his name had been struck off the administration meaning thereby he would be required to go on a transfer. It is in this background that the petitioner has filed the present application on 15.3.1993. The prayers sought in the application are also not happily worded. He has prayed for quashing of the movement order dated 28.1.1993 and for a direction to settle all pending cases of the petitioner so that he may seek voluntary retirement. During the pendency of this application, an interim order was made to the effect that if the order dated 28.1.1993 has not already been given effect to, there shall be a stay order in favour of the petitioner. The respondents have taken the stand that that order had been given effect to before the interim order came to be served on the respondents and that, therefore, the interim order did not confer any advantage or benefit on the petitioner. It is, however, not disputed that the petitioner has not actually served the administration after he approached the Tribunal with the present application.

3. As already noted, the petitioner served upto 13.2.1993 and according to him, he fell sick immediately thereafter and went on medical leave. It is not disputed that after 13.2.1993 till this date the petitioner has not actually worked in the ✓ department. The counsel for the respondents invited

our attention to one of the communications of the petitioner wherein he has ~~stated~~ in December, 1992 stated that he had sought voluntary retirement out of frustration. Our attention was also drawn to another request of the petitioner seeking voluntary retirement under Rule 48-A made on 16.8.1993. This, according to the counsel for the respondents, shows that the petitioner himself was not serious in pressing his earlier representation dated 27.3.1992. It is necessary to point out that the statement of the petitioner and the second application for voluntary retirement were all made long after the deemed retirement took effect, the respondents not having rejected the request of the petitioner for voluntary retirement by his representation dated 27.3.1992, w.e.f. 30.6.1992. But at the same time, it is necessary to note that the petitioner has in fact served the administration after 30.6.1992 and the respondents have also received service from him right upto 13.2.1993.

4. When we asked the counsel for the petitioner whether the petitioner would like to voluntarily retire from service and if so whether he is agreeable to retire from service with effect from a date which we consider just and reasonable fixed having regard to the totality of the facts and circumstances in this case, on instructions from the petitioner who was present in the court, learned counsel for the petitioner submitted that he would be grateful if

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the Tribunal allows him to voluntarily retire from service from a date which the Tribunal feels just and convenience to fix. As already stated, technically one could say that the petitioner must be deemed to have retired from service on the expiry of notice period on 30.6.1992. But the conduct of the parties shows that the petitioner actually continued to serve the administration right upto 13.2.1993. Having regard to these circumstances, we consider it just and proper to direct that the petitioner shall be deemed to have retired from service w.e.f. 14.2.1993. We consider it just to fix that date also for the reason that from 14.2.1993 till this date the petitioner has not rendered any service to the administration. It would, therefore, not be just and proper to ~~sadden~~ the administration ~~by~~ direct^{ing} them to pay full emoluments to the petitioner for the period 14.2.1993 onwards.

5. Our attention was also drawn to the fact that for certain period of absence prior to 13.2.1993 orders regularising the leave have been passed. All orders made in this behalf prior to 13.2.1993 shall be respected and given effect to.

6. It was also urged that the claim of the petitioner for compensation is still pending. That is an independent proceeding and we are informed that his case under the Workmen's Compensation Act is still pending. All that we need express is that it would be just and proper that those proceedings are expedited.

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7. Having regard to the facts and circumstances and equities in this case, we dispose of this case with the following directions :-

- (1) The petitioner shall be deemed to have voluntarily retired from service w.e.f. 14.2.1993.
- (2) All orders regularising the absence by appropriate orders made prior to 13.2.1993 shall be respected and given effect to.
- (3) The pension and all retirement benefits to which the petitioner has become entitled to on the basis of his deemed retirement w.e.f. 14.2.1993, shall be computed and the arrears paid to the petitioner within a period of four months from the date of receipt of a copy of this judgment.
- (4) The aforesaid directions shall be carried out by the Garrison Engineer, Red Fort, Delhi.
- (5) The petitioner shall be deemed to have retired ~~as he was serving~~ in Delhi.
- (6) No costs.

8. In view of the final disposal of the original application, learned counsel for the applicant seeks to withdraw C.P. No. 66/94. The C.P. is dismissed as withdrawn.

Adige
(S. R. Adige)
Member (A)

Malimath
(V. S. Malimath)
Chairman

/as/