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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 787 OF 1994.

Cuttack, this the 08th day of January, 2001.

Prafulla Kumar Parida,

....

Applicant.

Vrs.

Union of India & Others,


.....

Respondents.

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not? Ys.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?


(SOMNATH SOM)
VICE-CHAIRMAN

 8-1-2001
(G. NARASIMHAM)
MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 787 OF 1994.
Cuttack, this the 08th day of January, 2001.

C O R A M:

THE HONOURABLE MR. SOMNATH SOM, VICE-CHAIRMAN
A N D
THE HONOURABLE MR. G. NARASIMHAM, MEMBER (JUDL.).

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PRAFULLA KUMAR PARIDA,
S/o. Banamber Parida,
Aged about 53 years,
At-Bhattatira,
PO: Ichhapur,
via: Bhadrak,
DIST: Balasore.

...

...

APPLICANT.

By legal practitioner; M/s. Ganeswar Rath, S.N. Mishra,
Advocates.

-VERSUS-

1. Union of India represented by its
Secretary, Department of posts,
Ministry of Communication, DakBhawan,
New Delhi.
2. Chief Postmaster General, Orissa Circle,
Bhubaneswar.
3. Superintendent of post Offices,
Keonjhar Division, Keonjhar. RESPONDENTS.

By legal practitioner: Mr. J. K. Nayak, AEC (Central).

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O R D E R

MR. G. NARASIMHAM, MEMBER (JUDICIAL):

In this Original Application for quashing the order of voluntary retirement dated 9-9-1991 (Annexure-4) retiring the applicant with effect from the Afternoon of 30-9-1991, applicant who was initially appointed as a Boy Messenger under the Postal Department w.e.f. 6-3-1963 was promoted to the Gr. 'D' cadre w.e.f. 6-5-1965, thereafter he was promoted to the clerical cadre on

18-8-1970.

2. The case of the applicant is that while he was working as Postal Assistant in the Office of the Postmaster, Keonjhar Division, he submitted an application to the Superintendent of Post Offices, Keonjhar Division on 14-6-1991 (Annexure-1) seeking suitable instruction for voluntary retirement as early as possible. The Superintendent of Post Offices in turn in his letter dated 17-6-1991 (Annexure-2) sought instruction as to whether the applicant's application dated 14-6-1991 can be treated as a notice under Rule-48A of CCS (Pension) Rules, 1972. In response to Annexure-2, he replied in letter dated 20-6-1991 (Annexure-3) that he only sought suitable instruction for voluntary retirement and that he had not given any notice for voluntary retirement. Still by order dated 9-9-1991 (Annexure-4), the Superintendent of Post Offices ordered the applicant for retiring voluntarily w.e.f. 30-9-1991. In response to this, on 29-9-1991, the applicant represented to the Superintendent of Post Offices (Annexure-5) that he had never sought voluntary retirement and his representation dated 14-6-1991 should not be treated as a notice for voluntary retirement, yet the applicant was retired voluntarily. He then preferred representation on 3-12-1991 (Annexure-6) for restoration of his service. This was followed by representations dated 23-2-1993 and 2-7-1993 (Annexures-7&8) but without any response. Hence this application for quashing the order of voluntary retirement with consequential service benefits.

3. Respondents in their counter state that the service of the applicant has not at all been satisfactory. In para-2 of the counter, they elaborately mentioned that on various occasions he has been proceeded departmentally and on one occasion in a

case of mis-appropriation of SB deposits and withdrawal, the applicant was also arrested by the Police in a Crl. Case against him. It is not necessary to mention these relevant facts mentioned in the counter in detail as the applicant had not denied the same through any rejoinder. The specific case of the Department is that the applicant in view of his past misconduct entertained an apprehension that he may lose ~~all~~ his service at any time wanted to avail the benefit of voluntary retirement on completion of 20 years of service and as such he submitted an application dated 14-6-1991 under Annexure-R/9 to avail the benefit of voluntary retirement with a request for early action. Annexure-1 of the application dated 14-6-1991 is not complete in all respect inasmuch as the material words "voluntary retirement" in para-1 and "to get retirement benefits as soon as possible" in para -2 which finds mentioned in his application dated 14.6.1991 in Annexure-R/9 are conspicuously absent. Respondents have further denied to have received any reply from the applicant under Annexure-3 in response to their query under Annexure-2. The applicant having rendered 24 years 4 months and 22 days , infact, is entitled to weightage of five years more service as provided under Rule 48-B of the Rules, 1972, when the applicant had applied for commuted leave for a period of 30 days from 24-6-1991 he was informed in letter dated 24-6-1991 that since he had already applied for voluntary retirement in his application dated 14.6.1991 (Annexure-R/9) sanction of commuted leave would not be admissible. He did not respond to this letter under Annexure-R/D1. Thereafter, the impugned order dated 9-9-1991 was issued. This order was received by him on 10.9.1991, as per the acknowledgement card (Annexure-R/12). He even was informed

that a set of pension papers was supplied to the SDI(P), Keonjhar for collection of pension papers vide letter dated 3-7-1991 (Annexure-R/13). All these pension papers were duly signed by him and received through SDI(P), Keonjhar vide his letter dated 10-7-1991 (Annexure-R/14). On his retirement w.e.f. 30.9.1991 all admissible pensionary benefits were paid to him. He was sanctioned provisional pension at the rate of Rs.648/- per month vide order dated 10.10.1991, provisional DCRG for Rs.20830/- in order dated 4.10.1991. Subsequently final pension at the rate of Rs.648/- and DCRG for Rs.21830/- were sanctioned by order dated 20.12.1991. Respondents have also specifically denied the receipt of any representation from the applicant against the order of retirement. On these averments the Respondents vehemently opposed the prayers made in this Original Application.

4. Applicant had not filed any rejoinder.

5. We have heard Mr. Ganeswar Rath, learned counsel for the applicant and Mr. J.K. Nayak, learned Additional Standing Counsel for the Respondents and have also perused the records.

6. There is no dispute that the applicant having completed 20 years of service sought for voluntary retirement under CCS (Pension) Rules. The main point for consideration is whether application as under Annexure-1 or application as under ~~Annexure-R/9~~ has been submitted by the applicant on 14.6.1991. Application under Annexure-1 is a typed copy. In fact there is no certificate that it is the true copy of the original. What is certified is that it is the true copy of Annexure-1 which ~~speaks~~ ^{carries} no meaning at all. If Annexure-1 is

is read as a whole it would imply that the applicant only wanted instruction by which he would be able to retire voluntarily but Annexure-R/9 which is the xerox copy of the application dated 14.6.1991 in the hand of the applicant reveals that the applicant wanted suitable instruction by which he would be able to get retirement benefits as soon as possible as in that application he submits his willingness to avail the benefits of voluntary retirement because he dislikes to continue further in the postal service. The truth of the contents of Annexure-R/9 had not been denied by the applicant through any rejoinder. As earlier stated the contents under Annexure-A/1 of the application are open to doubt for want of proper attestation. It can not but ^{be} true that Annexure-R/9 is the actual application dated 14.6.1991 of the applicant. The contents under Annexure-R/9 would clearly reveal that the applicant expressed his willingness to avail the benefit of voluntary retirement as he dislikes to continue further in postal service and wanted suitable instruction by which he would be able to get retirement benefits as early as possible. This means this application is a notice of voluntary retirement under Rule-48-A of CCS (Pension) Rules, 1972. Yet for abundant caution, the Supdt. of Post Offices, sought a clarification in letter dated 17.6.1991 (Annexure-2) as to whether the letter under Annexure-R/9 has to be treated a notice for voluntary retirement under rules. Though the version of the applicant is that he had replied to this letter under Annexure-2 through Annexure-3 dated 20.8.1991 stating that this is not a notice for voluntary retirement, receipt of any such letter from the applicant has been specifically denied by the

Department. This specific denial has not been countered by the applicant through any rejoinder. If indeed he had replied so under Annexure-3, dated 20.8.1991, fact of sending such reply under normal circumstances would find place in his subsequent alleged representation dated 28.9.1991 under Annexure-5. Because this Annexure-5 also refers to the clarification sought by the Department in letter dated 17.6.1991 (Annexure-2). Of course even receipt of such a representation under Annexure-5 has been specifically denied by the Department. Moreover, it has been specifically averred in the counter that in response to the applicant's application dated 24.6.1991 for commuted leave for a period of 30 days w.e.f. 24.6.1991 he was informed on the very same day (Annexure-R/11) that in view of his voluntary retirement notice under Annexure-R/9, commuted leave can not be granted and he was advised to apply for other kinds of leave and the applicant remained silent. This specific averment in the counter has not been disputed or denied through any rejoinder. This apart there is another specific averment in the counter that pension papers were sent to the applicant in letter dated 3.7.1991 (Annexure-R/13) and all these pension papers were duly signed by him and received through SDI (P), Keonjhar in letter dated 10.7.1991 (Annexure-R/14). This averment has also not been denied through any rejoinder. If indeed, Annexure-R/9, according to the applicant was not a notice for voluntary retirement, he would not have remained silent after refusal of his prayer for commuted leave in letter dated 24.6.1991 and he would not have signed the pension papers in July, 1991. We are, therefore, not inclined to believe the version of the applicant that he in fact replied to the query made under

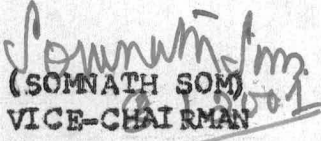
Annexure-2 by Annexure-3, dated 20.8.1991.

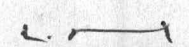
7. In view of our discussion above, we have no hesitation to accept the case of Respondents that Annexure-R/9 is a notice of voluntary retirement and in response to such notice and in response to his acceptance of pension papers in July, 1991, the applicant was rightly retired voluntarily w.e.f. 30.9.1991 under Annexure-4.

8. There is yet another legal difficulty in allowing the prayer of the applicant. The cause of action arose on 30.9.1991. This OA was filed on 3.6.1994 i.e. more than one and half years after the expiry of the period of one year limitation prescribed under section 21 of the Administrative Tribunals Act, 1985 and that too without filing any application for condonation of delay supported by an affidavit as required under rule 8(4) of CAT(Procedure) Rules, 1987. Annexures-7 and 8 which according to the applicant are representations made against the voluntary retirement infact are not so. A careful reading of these two annexures would reveal that they are not in any way connected with the notice or order of voluntary retirement under Annexure-4. Then remains Annexure-6 dated 3.12.1991 which is a representation against the order dated 9.9.1991 under Annexure-4 which of course as stated by the Department has not been received by them. Even if it is received by them it will not save the period of limitation prescribed under the AT Act, 1985 because of the ruling of the constitutional Bench of the Apex Court in S.S. Rathor's case reported in AIR 1990 SC 10. This application is, ^{thus} hopelessly also barred by the time it was filed on 3.6.1994. There is no explanation for condonation of delay supported by any affidavit

as required under Rule 8(4) of CAT(Procedure) Rules, 1987. In Ramesh Ch. Sharma vrs. Udham Singh reported in 1999 SC 3837 the Apex Court strongly deprecated the practice of the Tribunal in admitting time barred application without condoning the delay. Thus, on the ground of limitation also this Original Application fails.

9. In the result, we do not see any merit in this Original Application which is accordingly dismissed. No costs.


(SOMNATH SOM)
VICE-CHAIRMAN

 S. I. 2 or 1.
(G. NARASIMHAM)
MEMBER (JUDICIAL)

KNM/CM.