

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

....

July 4, 1989

Registration O.A. No. 68 of 89(L)

O.P. Arora ... Applicant

Vs.

Union of India & ors ... Respondents

Hon' Mr. Justice K. Nath, V.C.

Hon' Mr. K.J. Raman, A.M.

(Hon' Mr. Justice Kamleshwar Nath, V.C.)

This is an application under section 19 of the Administrative Tribunals Act, 1985, for direction to quash an order dated 7-3-88 contained in Annexure-II, removing the applicant from the employment of the National Botanical Research Institute, Lucknow, after holding a disciplinary inquiry.

2. According to the applicant, he was working as Scientist 'A' in the Institute, when he proceeded on leave with effect from 4-2-1982 for the medical treatment of his wife in United States of America. This leave was extended from time to time till 2-2-83; thereafter his leave was not extended.

3. The allegation is that on 12-10-83, the applicant filed an application for voluntary retirement w.e.f. 30-11-82, the date on which, according to him his H.P.L. expired. It is next alleged that instead of disposing of his application for voluntary retirement, charge was framed against him under the rules of

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disciplinary proceedings for unauthorised absence from 3-2-83 constituting violation of Rule 3 of the CCS (Conduct) Rule 1964, as applicable to the employees of the Institute. The applicant filed a reply to the show cause notice. The inquiry was conducted and concluded. The Inquiry Officer submitted report dated 12-11-87, Annexure-I holding ~~to~~^u the charge/ as proved. Accepting the inquiry report, the Director of the Institute (O.P.No. 2) passed the impugned order, Annexure-II to the petition, directing removal of the applicant from service with the remark that the removal would not be a disqualification for his future employment under ~~the~~ private or the government.

4. The main point urged in this petition is that the disciplinary proceeding has been instituted only after the applicant's motion for his voluntary retirement. The charge sheet according to the Inquiry Report was of 29th Oct.85/ 6th Dec. 1985 and the Inquiry Report was ~~of~~^u dated 12-11-87.

5. The applicant has not filed his application for voluntary retirement. We had directed the applicant by our order dated 21-3-89 to submit a statement of history of his service, in order to enable this Tribunal to examine what the justice in this case requires. He was also re^{quired}~~quired~~ to indicate, whether, he was making any earning in U.S.A. and if so, during what period.

6. The learned counsel for the applicant has filed an affidavit purporting to have been made by

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the applicant in U.S.A. on 26-5-89. This affidavit simply mentions that the applicant had been residing in U.S.A. since September, 1979 and that during the period of residency, he has "not sought any employment". No other fact is set out in this affidavit.

7. In the absence of the copy of the application for voluntary retirement, it cannot be said that he had any case or legal right to seek voluntary retirement. In the absence of his history of service, it is not possible to hold that he has acquired right of voluntary retirement. In the eye of law, a bare application for voluntary retirement does not prevent the institution of disciplinary proceedings, if the mis-conduct relates to a certain period before the institution of inquiry. The applicant had been ^{have} granted till 2-2-83; the default in presence, i.e. unauthorised absence, relates to a period, within three years before framing of the charge sheet. We do not find, therefore, that the bare making of the alleged application for voluntary retirement ^{could} prevent the Opposite Parties from instituting a disciplinary inquiry and from recording the applicants' guilt, if found established.

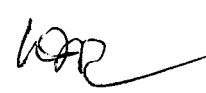
8. Moreover, the order of removal at the conclusion of disciplinary proceedings, is ordinarily open to departmental appeal. The applicant has not indicated that he did file any appeal. Para 9 of the application bears a vague statement that the applicant had availed ^{of} all the remedies available to him under the relevant service

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rules. The applicant was expected to plead the details of the remedies which had been exhausted by him.

9. On a consideration of all the matters, we find that the applicant's case is not fit for admission. The application is dismissed in ^{limine} ~~limine~~. However, the applicant shall ^{be} ~~be~~ at liberty to file a departmental appeal, if any, available under the rules within a period of one month from the date of this order, to the competent authority and the authority will not raise plea of limitation ^{only} ~~only~~ for disposal of such an appeal.


ADMINISTRATIVE MEMBER


VICE CHAIRMAN

(sns)

JULY 4, 1989

LUCKNOW.