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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 74/87

198

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- 2 -

DATE OF DECISION 14.5.1990

K.M. John Petitioner

Mr. Dongre Advocate for the Petitioner(s)

Versus

Union of India & another Respondent

Mr. R.C. Kotiankar for Mr. M.I. Sethna Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. G. Sreedharan Nair, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? ✓
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordships wish to see the fair copy of the Judgement ? ✓
4. Whether it needs to be circulated to other Benches of the Tribunal ? ✓

24/5/90

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.74/87

K.M. John,
Flat No.B/7,
Brighthaven,
Near Bank of Baroda,
Diamond Garden,
Chembur,
Bombay - 400 071.

.. Applicant.

vs.

1. The Union of India
through
The Secretary to the
Govt. of India,
Department of Atomic Energy,
CSM Marg,
Bombay - 400 039.

2. The Director,
Bhabha Atomic Research Centre,
Trombay,
Bombay - 400 085.

.. Respondents.

Coram: Hon'ble Vice-Chairman G.Sreedharan Nair
Hon'ble Member(A) M.Y.Priolkar

Appearances:

1. Mr.Dongre,
Advocate for the
Applicant.
2. Mr.R.C.Kotiankar
for Mr.M.I.Sethna
Advocate for
Respondents.

JUDGMENT

(Per M.Y.Priolkar, Member(A)) Date: 14.2.1990

The prayer of the applicant in this case, who was an officiating Group A, Scientific Officer of the Bhabha Atomic Research Centre(BARC) of the Department of Atomic Energy, is for quashing and setting aside the order dated 5.2.1986 by which he was dismissed from service and for a declaration that the applicant stood retired in terms of his notice dated 31.12.1979 with pensionary and other consequential benefits.

2. The facts may be briefly narrated. The applicant joined BARC on 28.9.1957 as Junior Scientific Assistant. At the time of his confirmation on 29.1.1968, he had an option to join the pension scheme under the Central Civil Services(Pension)Rules but he opted to

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continue under the Contributory Provident Fund (CPF) Rules. Under the then existing rules, an employee governed by CPF Rules was not entitled to voluntary retirement, though this was available to those who had opted for the Central Civil Services (Pension) Rules. Further, at that time, the category of staff to which the applicant belonged, had no legal right to exercise a second option between CPF and Pension Rules, which right was available only to confirmed Group 'A' Scientific officers. The applicant was promoted as a Scientific Officer (Group A) on temporary basis from 1.2.1968 but was never confirmed in that post.

3. By an order dated 9.8.1979, employees who had originally opted for CPF Rules were once again allowed the further option to come over to the Pension Rules. The applicant opted for the Pension Rules by his letter dated 29.8.1979. Earlier, however, by his letter dated 28.7.1978 addressed to Controller, BARC, he had requested for permission to voluntarily retire from service, after remaining unauthorisedly absent from 9.6.1978 to 20.11.1978. The applicant joined duty from 21.11.1978 to 27.11.1978 but once again absented himself without any permission from 28.11.1978. By this letter dated 29.11.1978 the applicant represented to BARC that after his letter dated 28.7.1978, the notice period was over and he should be permitted voluntary retirement with immediate effect. On 14.2.1979, BARC rejected the applicant's representation dated 29.11.1978 since the applicant was governed by CPF Rules and the voluntary retirement scheme did not apply to him. His further representation dated 31.12.1979 addressed to Secretary, Department of Atomic Energy was also rejected on 1.5.1980.

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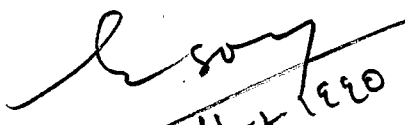
4. Meanwhile on 25.4.1980, a charge sheet was issued to the applicant for unauthorised absence. A fresh charge sheet was issued on 9.9.1982 in supersession of the earlier one, adding the charge of obtaining a personal passport by suppressing material information and furnishing false statements. After concluding the enquiry, which was held ex-parte as the applicant did not participate in it, the applicant was dismissed from service with immediate effect by order dated 5.2.1986.

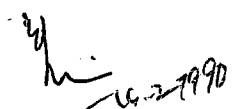
5. The reliefs prayed for by the applicant have to be considered in the context of the above facts. Admittedly, when the applicant had first made the request for voluntary retirement on 28.7.1978, he was governed by the CPF Rules and the voluntary retirement scheme did not apply to him. In any case, since he had joined duty four months thereafter from 21.11.1978 to 27.11.1978, it has to be held that his earlier request did not subsist or at least was not pressed by the applicant at that time. His subsequent representation, even if it is treated as a fresh notice, dated 31.12.1979 was rejected by the Department of Atomic Energy on 1.5.1980. The issue of charge sheets should not have come in the way of his seeking redress in the proper Court for enforcing voluntary retirement, if he so desired. He has approached the Tribunal for this purpose only on 21.1.1987, that is, long after the expiry of limitation period permissible under Section 21 of the Administrative Tribunals Act, 1985. The applicant's prayer for a declaration that he stood retired in terms of his notice dated 31.12.1979 is, accordingly, rejected as barred by limitation.

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6. The applicant has not advanced any convincing grounds in support of the second relief prayed for by him, namely, quashing and setting aside of the dismissal order. He merely alleges that the charge sheet is malafide as it is issued ~~first~~ ^{just} to deny ^{that} pensionary benefits to the applicant and it is also illegal since he should be deemed to have retired after the ~~(2)~~ expiry of three months from 31st December, 1979, when he submitted his notice of voluntary retirement. We have already rejected as time barred the applicant's claim that he stood retired in terms of his notice dated 31.12.1979. For this reason and also, since we see no evidence of any malafides or of any illegalities or procedural deficiencies in the disciplinary proceedings, we reject the applicant's prayer for quashing and setting aside of the dismissal order dated 5.2.1986.

7. In the result, the application is dismissed with no order as to costs.


(G. SREEDHARAN NAIR)
Vice-Chairman


(M. Y. PRIOLKAR)
Member(A)