

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1192/96

Date of Decision: 7.6.1999

Shri T.D. Chandna Applicant.

Shri K.B. Talreja Advocate for
Applicant.

Versus

Union of India and others. Respondent(s)

Shri S.C. Dhawan. Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri. D.S. Baweja, Member(A)

(1) To be referred to the Reporter or not? *no*

(2) Whether it needs to be circulated to
other Benches of the Tribunal? *no*

R.G. Vaidyanatha
(R.G. Vaidyanatha)
Vice Chairman

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 1192/96

Monday the 7th day of June 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

T.D.Chandna
R/o Railway Quarter
F/239 Near Central
Railway School
Kalyan.

... Applicant.

By Advocate Shri K.B. Talreja.

V/s.

The Union of India
Through the General
Manager, Central Railway
Mumbai CST, Mumbai,

The Chief Electrical
Engineer, Central Railway,
Mumbai CST, Mumbai.

... Respondents.

By Advocate Shri S.C.Dhawan.

O R D E R (ORAL)

¶ Per Shri Justice R.G.Vaidyanatha, Vice Chairman ¶

This is an application filed by the applicant praying for a declaration that he may be deemed to have been retired with effect from 11.6.1996. The respondents have filed reply opposing the application. We have heard the counsel for both sides.

2. No doubt the applicant had given an application for voluntary retirement. The respondents have given the reply stating that the request have been processed and he cannot be permitted to be retired till the Competant Authority passes final order.

3. The respondents case is that they have rejected the claim of the applicant for voluntary retirement in view of the pending vigilence case against him.

4. The learned counsel for the applicant relied on the Rule 48(A) of the CCS Pension Rules, which provides that the Government Servant can retire by not less than three months notice. But Rule 2 clearly provides that this notice may be accepted by the appointing authority.

Admittedly there is no order by the respondents in accepting the applicant's request for voluntary retirement. The learned counsel for the applicant relies on the proviso to Sub-Rule 2 of Rule 48(A) that if no refusal is communicated within the period mentioned in the notice it may be taken as deemed permission. The applicant's argument is that he was not communicated the refusal of the notice and therefore the applicant may be deemed to have retired from 12.7.1996.

No doubt this is an arguable point. After perusal of the record we find that the argument cannot be accepted.

5. The respondents have produced exhibit R-1 dated 5.7.1997 which clearly states that the applicant's request has been rejected. The notice sent to the applicant received back with a remark that 'not claimed' which means refusal.

The fact that the applicant could be put on notice of this refusal ^{order,} since even after 11.7.1996 the applicant has continued in service. The applicant should not have attended the office after 11.7.1996.

It is admitted that the applicant had applied for sick leave and subsequently he reported for duty. He has been kept under suspension and then on the same day he has been retired on superannuation. What is more, the applicant himself had filed previous O.A. 1189/96, where the Tribunal had rejected the contention of the applicant about voluntary retirement from 12.7.1996, but recorded the finding that the applicant had retired from service on attaining superannuation on 31.10.1996. Therefore the applicant cannot now contend that he must be deemed to have retired on 12.7.1996.

6. In the facts and circumstances of the case we are satisfied with the opinion that the applicant must be deemed to have retired cannot be accepted and it has no merits. If once that conclusion is reached the applicant is not entitled to any relief.

7. In the result the O.A. is rejected at the admission stage. M.P. 100/98 does not survive for consideration and accordingly disposed of.


(D.S. Baweja)
Member (A)


(R.G. Vaidyanatha)
Vice Chairman