

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.:

296/2001

Dated this Friday, the 28th day of Sept., 2001.

Dr. Haresh D. Ramaiya Applicant.

Shri S. R. Atre

Advocate for the
Applicant.

VERSUS

U.O.I. & ors

Respondents.

Shri R.K. Shetty

Advocate for the
Respondents.

CORAM :

Hon'ble Mr. B.N. Bahadur - M(A)

- (i) To be referred to the Reporter or not ? Yes.
- (ii) Whether it needs to be circulated to other No Benches of the Tribunal ?
- (iii) Library. No

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(B.N. Bahadur)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

Original Application No. 296/2001.

Friday, this the 28th day September, 2001.

Hon'ble Shri B.N.Bahadur, Member (A).

Dr. Haresh D.Ramaiya,
C/o. S.R.Atre,
Advocate,
15, Pahlejrai Building,
Lohar Lane,
Chinderi,
Thane West - 400 601.
(By Advocate Shri S.R.Atre)

...Applicant.

v.

1. The Union of India,
Through the Administrator,
Administration of Union of Territory of
Daman & Diu, Secretariat,
Moti Daman,
Daman - 396 220.
2. The Development Commissioner,
Administration of Union Territory of
Daman and Diu, Secretariat,
Moti Daman,
Daman - 396 220.
3. The Finance Secretary,
Administration of Union Territory of
Daman & Diu, Secretariat,
Moti Daman,
Daman - 396 220.
4. The Collector,
Collectorate,
Diu - 362 520.

(By Advocate Shri R.R.Shetty for
Shri R.K.Shetty)

...Respondents.

: ORDER (ORAL) :

1 Shri B.N.Bahadur, Member (A).

This is an application made by Dr. H.D.Ramaiya, who had been working as Public Health Dentist with the Administration of Union Territory of Daman & Diu seeking the relief from this Tribunal as follows :

"A) The Hon'ble Tribunal be pleased to call for the records and proceedings of the present case and after examining the legality and propriety thereof quash and set

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aside the orders at Annexure 'A-1' and Annexure 'A-2' and further direct the respondents to pay the applicant the arrears of salary for the period from 1.3.2000 till 14.7.2000 and accordingly also fix the applicant's pension on the basis of the last drawn salary along with all consequential benefits.

B) This Hon'ble Tribunal be pleased to hold and declare that the action on the part of the respondents in not disbursing to the applicant the salary benefits for the period from 1.3.2000 till 14.7.2000 is illegal and bad in law and accordingly direct the respondents to pay to the applicant the salary for the period from 1.3.2000 till 14.7.2000 as Public Health Dentist including interest @ 18% p.a. till realisation of the amount of salary for the above referred period.

C) Pass any such order and/or orders as this Hon'ble Tribunal deems fit and proper in the facts and circumstances of the present case".

2. The facts of the case, as presented by the applicant are in brief as follows. The applicant made a request seeking voluntary retirement on 1.7.1999 through an application in which he had sought voluntary retirement w.e.f. 1.3.2000. By a communication dt. 3.4.2000 (admittedly served on the applicant on 8.4.2000) Respondent No.1 had accepted the notice of voluntary retirement w.e.f. 1.3.2000. The applicant, however, was not relieved from government service and continued to work on his post.

3. A few days later on 10.4.2000, he made another application saying that he should now be allowed to retire only from 1.8.2000. This application was being considered by the Administration at the higher level and applicant was meanwhile not relieved and had even enjoyed leave in the interim period. Ultimately, vide order dt. 14.7.2000 (Annexure - A-1) the applicant was relieved w.e.f. 14.7.2000, however, still effective from 1.3.2000.

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4. The applicant challenges these orders on the grounds made out in para 5 and also on grounds argued by his Learned Counsel.

5. The Respondents have filed a written statement of reply stating that under Rule 48A of the CCS (Pension) Rules, unless the application for voluntary retirement is specifically rejected, it is deemed to be accepted from the date on which the period of notice expires. Respondents state that the order dt. 14.7.2000 is only a formal order and even if it were not passed, the applicant would have been deemed to retire w.e.f. 1.3.2000.

6. The Respondents deny that there is an valid claim for applicant for payment of salary beyond 1.3.2000, since the applicant automatically stood retired from those date. Further in the written statement, the Respondents have attempted to meet the averments made in the OA, parawise.

7. While the case was adjourned part-heard yesterday, the Tribunal did point out to the Learned Counsel on both sides that there was perhaps some case-laws of the highest Courts on the issues involved. They have come up with one Judgment of the Supreme Court made in the matter of Radha Kishun Vs. UOI & Ors. (1997 SCC (L&S) 1185). The Learned Counsel on both sides have argued the case before me today also.

8. Learned Counsel for the applicant took me over the facts of the case reiterating the points taken in para 5 of the OA emphasising that relieving of the applicant with retrospective effect was an illegal act, specially when the applicant had worked in his post upto 14.7.2000. Learned Counsel also went over the Judgment in the aforesaid case of Radha Kishun since important issues have been discussed therein and argued that the present OA

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can be distinguished on facts. On this count, his main argument was that in the case of Radha Kishun, the person concerned had actually reached the age of superannuation and had thereafter continued to work on his post and as such the Hon'ble Supreme Court held that such a person was not entitled to claim that the date of relinquishment of office should be the date of retirement. This indeed, was the centre point of argument by Learned Counsel. He emphasised the fact that the applicant's case was one of voluntary retirement and that on the aforesaid date of 1.3.2000 his age was still around 56 and that he had clear time left. In fact, even on the date of 14.7.2000 he had clear time left even to reach the age of 58 years. It was argued by Shri Atre, Learned Counsel for Applicant that in the Judgment made by the Hon'ble Supreme Court, the reference is to the continuation of the applicant therein in service after date of retirement and this has been held to be improper for the claim of salary and other benefits. Now, the point to be seen is whether there is any difference in this context between voluntary retirement and retirement on superannuation.

9. I have carefully gone through the Judgment of the Hon'ble Supreme Court. The ratio of the case and the Judgments drawn upon clearly show that there would be no difference in the matter indeed on the point as to the retirement was on superannuation or by way of voluntary retirement. The fact was that voluntary retirement was sought and granted (we shall come to the dates ahead insofar as the service of the order made on 8.4.2000). We must recall here the dates that are important. The application seeking voluntary retirement was made on 1.7.1999 seeking

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retirement from 1.3.2000, the order accepting it is dt. 3.4.2000 served on applicant on 8.4.2000. It is on 10.4.2000 that the applicant changed his mind and makes an application to the administration requesting that he should be relieved on or after 1.8.2000. Although the Learned Counsel for the Applicant made strenuous efforts to make the point that this was only an extension for relief sought for, I have no hesitation in concluding that in fact it was a request for deferment in the date of effect of his retirement.

10. To revert to the importance of the date 10.4.2000, it must be stated that had the application been made before 1.3.2000 for such postponement or extension etc. this action / request could have been very well covered by the law settled in this regard by the Hon'ble Supreme Court in the matter of Balram Gupta v/s Union of India and another {1998 SCC (L & S) 126}. The Administration would then have been duty-bound to grant him his wish since even on 1.8.2000 he would well and truly be below the age of 58 years. But, even after the date of service of order of acceptance of retirement, the request creates no rights of the applicant. In fact it must be stated here that the Learned Counsel for Respondents had argued strenuously that the master servant relationship had come to an end with the acceptance of his notice for voluntary retirement. This argument made by the Learned Counsel for Respondents, does hold water. In fact, he had argued that the letter dt. 10.4.2000 becomes irrelevant and even assuming that the applicant had worked on the post and even



assuming that Senior Officers were aware of a representation made, this cannot be a ground for the applicant to have any rights in the matter.

11. Learned Counsel for the applicant had stated that even the applicant had sought the relief for re-calculation of pensionary benefits, this was not being pressed. He, however, asked rhetorically as to how an employer can refuse to pay of a government official for a period during which he had actually worked. It is on this issue, however, that the Hon'ble Supreme Court has made its observation very clear and has settled the ratio which certainly goes against the Applicant. It has been held very clearly that continuation in service beyond the date of retirement, without being re-employed in public interest does not entitle a person to claim salary nor is the person so continuing in service entitled to claim pensionary benefits. As concluded above, there is no difference in retirement in superannuation or retirement through voluntary notice. The ratio of Radha Kishun's case will certainly apply to the present case. There is thus no force in the argument made on behalf of the Applicant that this matter can be distinguished vis-a-vis Radha Kishun's Judgment.

12. My attention was drawn by Learned Counsel for Applicant to a Judgment of the Supreme Court in the matter of Ramswaroop Maswan Vs. Municipal Council and Another (1998 SCC (L&S) 1491), where the Applicant in that case did allow the period of service beyond date of retirement to be treated as re-employment. It is clear from that Judgment that this was held on the particular facts of the case. During the period in which applicant in that case unauthorisedly continued to work beyond retirement date,



the age of retirement came to be enhanced from 53 to 58. Thus, it is seen that this is a Judgment made on the facts of the case. The ratio applicable, therefore in the present case is very clear the one settled in the matter of Radha Kishun.

13. I now come to the fact that the order accepting the request for voluntary retirement which is dt. 3.4.2000 was admittedly served on the applicant on 8.4.2000. The point that needs to be considered is whether the Applicant has right to salary for the limited period between 1.3.2000 and 8.4.2000. In this regard, I have to be guided by sub-rule (2) of Rule 48A of the CCS (Pension) Rules. Although, apparently there is some contradiction with main clause and proviso we have to go with the proviso since the proviso states as follows :

"Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

In view thereof, I am unable to determine that applicant will be entitled to pay and allowances even for the period between 1.3.2000 and 8.4.2000.

14. Before parting with this case, it must be noted that it is indeed unfortunate that the Union Territory Administration has dealt with this matter in such a casual manner. Three months time available as notice period should enable any Administration to deal with such issues within the stipulated period. Here, regrettably the Administration has even served the first notice some five weeks later. Unfortunately, I am unable to provide

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benefit of this period, but I hope the Administration will take note of this observation to ensue that such things are avoided in future, since they are admittedly not conducive to good staff morale.

15. Under the circumstances, no interference is called for in this case. The OA, is therefore, dismissed with no orders as to costs.

B. Bahadur

(B.N. BAHADUR)
MEMBER (A*)

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