

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 13th NOVEMBER 1986

Present : Hon'ble Shri Ch. Ramakrishna Rao - Member (J)
Hon'ble Shri L.H.A. Rego - Member (A)

APPLICATION No.693 of 1986

B.Gopala Rao
Assistant Engineer
Micro-wave Project
Bangalore 560 018

- Applicant

(Shri M.R. Achar).

and

1. Union of India represented by
Secretary to the Government,
Ministry of Communications,
New Delhi
2. Director General of Posts & Telegraphs
New Delhi
3. General Manager
Tele communications
Southern Zone, Madras
4. Director,
Micro-wave Project, Bangalore 560018 - Respondents
(Shri M.S.Padmarajaiah, Senior C.G.S.C.)

This application came up for hearing before
this tribunal and Hon'ble Member (J) Shri Ch.
Ramakrishna Rao to-day made the following order

O R D E R

This is an application initially filed as
a writ petition in the High Court of Karnataka and
subsequently transferred to this tribunal.

...2. The facts

2. The facts giving rise to the application are briefly as follows.

3. The applicant was appointed as a Postal Clerk in the Post and Telegraphs Department in 1958.

Subsequently he was appointed as a Junior Engineer and further he was promoted as Assistant Engineer.

On completion of minimum required qualifying service of 20 years, the applicant gave notice to the competent authority (2nd respondent) on 22-7-1981 to permit him

to proceed on voluntary retirement with effect from 22-10-81 under Rule 48A of the Central Pension Rules ('Rules') of 1972.

On 19.9.1981, i.e. before the expiry of three months from the date of the said notice, the applicant received a communication dated 19-9-1981 from the 4th respondent stating that his request for voluntary retirement has not been acceded to by the 2nd respondent. Aggrieved by this memo, the applicant has filed this application.

4. Shri M.R. Achar, learned counsel for the applicant invites our attention to Rule 48-A of the Rules, which reads as under :

"(1) At any time after a Government Servant has completed twenty years of qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

"(2) The notice of voluntary retirement given under Sub-Rule(1) shall require acceptance by the appointing authority; 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."

...and

and contends that the Rule envisages acceptance of notice of voluntary retirement by the appointing authority. According to Shri Achar, if the appointing authority is not prepared to accept the notice or if the consideration thereof is likely to extend beyond three months an interim reply should be given to the applicant under the directions of the appointing authority. In other words, counsel maintains that it is not open to any authority subordinate to the appointing authority to issue an interim reply. In the absence of consideration of the notice by the appointing authority or an interim reply under his direction within the prescribed period of three months, it shall be presumed that the notice has become effective. Shri M.S.Padmarajaiah, senior C.G.S.C. for the respondents submits that the appointing authority in the case of the applicant is the second respondent; that certain irregularities were committed by the applicant for which disciplinary proceedings were under contemplation; and that pending examination of the same the reply given by R4 is in order.

5. We have considered the matter carefully. We have also perused the relevant files. In the D.O. letter addressed by the Director (ST), New Delhi to the General Manager, Projects, it is stated:

.....".....In

"..... In this connection it may be pointed out that for processing the case of voluntary retirement, vigilance clearance has to be obtained from Vigilance Branch for which DDG(Vigilance) is the competent authority to decide. Since his vigilance clearance was withheld by DDG(Vigilance) his case was not required to be processed further as he did not satisfy the condition of vigilance clearance."

The assumption made that it was not necessary to process the case of the applicant since Vigilance clearance was withheld by the DDG(Vigilance) appears to us to be wrong since the competent authority to accept the notice of voluntary retirement is the appointing authority and, as such, the processing should have been done upto his level so as to keep him informed of the notice and interim reply sent under his directions pending further scrutiny by the Vigilance.

6. Turning to the Vigilance file, it is seen therefrom that a comprehensive note was put up by SO(Vig I) to the Director (VT)/DDG(V). The latter noted that the case may be referred to the CVC. After the file was returned by CVC with advice to initiate major proceedings of penalty it was put up to DG, who accepted the advice of CVC on 20.4.82.

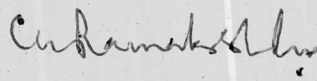
7. From the foregoing it is apparent that the notice of voluntary retirement was given by the applicant on 8.7.1981 and the competent authority instead of accepting the same directed initiation of disciplinary proceedings on 20.4.82. Meanwhile, the period of 3 months expired

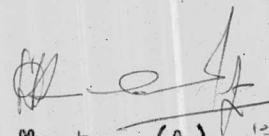
....and

and in accordance with Rule 48A of the Rules, the notice took effect on the expiry of the 3 months period. As already stated, we have no doubt that the reply of R-4 which was issued without obtaining the directions of the appointing authority has no existence in the eye of law.

7. The applicant is, therefore, entitled to be treated as having voluntarily retired with effect from 22-10-1981 after the expiry of three months notice.

8. In the result the application is allowed. No order as to costs.


Member (J)


Member (A) 12.11.1981