

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
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Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 19/6/87

APPLICATION NO 1435/86(T) /86()

W.P. NO 5270/85

Applicant

Shri T. Rama

V/s The Director, Telecommunication
Mangalore & 2 Ors

To

1. Shri T. Rama
Ward 1, Door No. 234
Vasanth Nilaya
Gangoli Ferry Road
Kundapura - 576 201
South Kanara District

2. Dr M.S. Nagaraja
Advocate
No. 35 (Above Hotel Swagath)
1st Main Road, Gandhinagar
Bangalore - 560 009

3. The Director
Telecommunication
Mangalore Area
Mangalore - 575 001

4. The Divisional Engineer
Telegraphs
Karwar

5. The Sub-Divisional Officer
Telegraphs
Kundapur

Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER ~~STAY~~

~~INTERIM ORDER~~ passed by this Tribunal in the above said

application on 16-6-87.

Encl : as above

6. Shri D.V. Shailendra Kumar
Central Govt. Stng Counsel
High Court Buildings
Bangalore - 560 001

SECTION OFFICER
(JUDICIAL)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH BANGALORE

DATED THIS THE 16th JUNE OF 1987

Present : Hon'ble Sri Ch. Ramakrishna Rao - Member (J)

Hon'ble Sri L.H.A. Rego - Member (A)

APPLICATION No. 1436/1986(T)

T. Rama
Ward 1, Door No. 234,
Vasantha Nilaya
Gangoli Ferry Road,
Kundapura 576201

- Applicant

(Dr. M.S. Nagaraja, Advocate)

and

1. The Director, Telecommunication
Mangalore Area
Mangalore 575 001
 2. Divisional Engineer, Telegraphs,
Karwar
 3. Sub-Divisional Officer, Telegraphs,
Kundapur
- Respondents

(Sri D.V. Shailendra Kumar, Advocate)

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

ORDER

This application was initially filed as a writ
petition in the High Court of Karnataka and subsequently
transferred to this Tribunal. The facts giving rise to
the application are, briefly, as follows: The applicant
submitted his application for voluntary retirement to the
Director of Telecommunications, Mangalore (R1) on 27.2.1984
(Annexure 'C') wherein he also sought relaxation of the

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relaxation, regarding the period of notice of three months and requested R1 to ^{LL}wave the requirement of ^{LL}the notice, so that ~~he~~ ~~as~~ his voluntary retirement could become effective immediately on acceptance. The applicant was informed by S.D.O.T., Kundapura on 30.3.1984, that his application for voluntary retirement ('VR') was not addressed to the competent authority. In compliance with this communication the applicant sent his application for VR to the Divisional Engineer, Telegraphs, Karwar (R2) on 5.4.1984. No reply was received in the matter of relaxation of the period of three months' notice as requested by the applicant. On the presumption that the request was refused, the applicant proceeded on the basis that his application for VR was accepted after the expiry of three months on 4.7.1984 and requested in and by his letter dated 9.4.1984 (Annexure E) to relieve him of his post and arrange for payment of his terminal benefits. He, however, received a communication dated 23.11.1984 from the Divisional Engineer, Telegraphs, Karwar, informing him, that his request seeking VR cannot be accepted. Aggrieved by this communication, the applicant has filed this application.

2. Dr. M.S. Nagaraja, learned counsel for the applicant, vehemently contends, that ^{LL}the application seeking VR made by his client under ^{LL}Rule 48-A (1) & (2) of the Central Civil Services Pension Rules, 1972 ('Rules', for short) ^{LL}carry with it a proviso, that where the appointing authority



does not refuse to grant the permission for VR before the expiry of the period of three months, the retirement shall become effective from the date of expiry of the notice. According to Dr. Nagaraja, no reply was received within the period of three months in the manner envisaged by the Rules and his client ^{he} ~~it~~ should, therefore, be deemed to have retired on the expiry of the period of three months.

3. Sri D.V. Shailendra Kumar, learned counsel for the respondents, submits, that the applicant had not given clear notice of three months as prescribed in the Rules and had only sought waiver of the same; that the same not having been waived, a fresh notice given was non est in the eye of law and a fresh notice was, therefore, necessary; that the Department came to know of certain illegalities and irregularities on the part of the applicant; and he was, therefore, called upon, to produce relevant documents in connection therewith; that the respondents having taken a lenient view of the aforesaid irregularities, the applicant chose to resign from the post held by him to avoid the necessity of facing departmental proceedings; that the resignation letter was not obtained under compulsion and in the circumstances the respondents were justified in refusing to accept the application for VR.

4. We have given careful thought to the rival contentions. In our view, the applicant was bound to give three months' notice as provided in the Rules. But from the letter seeking VR ~~the applicant~~ it is seen, that he has stated



as follows :

"Please send the necessary pension papers at an early date. Kindly relax the notice period and permit me to take voluntary retirement from 1-5-1984 as I will not claim commutation of a part of my pension before the expiry of period of notice of three months. Period of 3 months notice may be kindly waived as a special case in view of circumstances explained above."

It is clear from the language and tenor of the letter extracted above, that the intention of the applicant was that the period of three months should be waived and if not so done, it should be treated as a notice, because he has explicitly stated that his claim for commutation of pension would be effective only after the expiry of three months. If, however, the respondents were not prepared to treat the letter seeking VR as containing the requisite notice, it was incumbent on them to have informed the applicant accordingly, so that he could have submitted another application. We, therefore, hold that the silence on the part of the respondents is clear indication, that they have treated the letter of VR as containing the requisite notice.

5. What seems to have happened in the present case is, that the respondents woke up late to the fact that the applicant was involved in certain irregularities and the same not having been taken note of, within the period of three months, from the letter of VR, an attempt was made to obtain from the applicant the letter of resignation. Paragraph 12 of the reply filed on behalf of the respondents states as follows :

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"Disciplinary proceedings were also contemplated against the official as he had applied for the IOC agency without prior sanction of the Department violating Rule 15 of the CCS (Conduct) Rules. Hence, the notice for voluntary retirement was not accepted as per GMT Bg letter No. Vig/Misc/DWR dt: 13.11.1984. The official has also tendered resignation to the post of Telephone Supervisor vide his application dated 28.11.1984, which has been accepted by the competent authority vide D.T. MR No. MR/STA/14-1 dt:x219.12.84."

If the statement contained in the reply extracted above be true, it was open to the respondents to have initiated disciplinary proceedings against him before expiry of ^{the} three months, from the letter of VR or at least inform the applicant suitably, so as to leave the impression that the notice for VR was still under consideration and the permission could not be deemed to have been granted.

6. In this connection, it will be useful to refer to the decision of the Supreme Court in B.J. Shelat v. the State of Gujarat 1978 SCC (L&S) 208 in which the Supreme Court had occasion to consider the scope of the proviso under Rule 161 (2)(ii) of the Bombay Civil Services Rules and the Fundamental Rules ^{LA} R-56 (k) proviso (b).^{LA}

The following observations are apposite :

"In the present case no departmental proceedings were pending; but it could be said that a proceeding was under contemplation. However, on a reading of the Rule and the proviso it is incumbent on the Government to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso. The proviso contemplates a positive action by the appointing authority. The words 'it shall be open to the appointing authority to withhold the permission' indicate that the appointing authority has got an option to withhold permission and that could be exercised by communicating its ~~maxima~~ intention to withhold permission to the government servant."



This observation apply^{ies} to the present case with equal force, because Rule 48(a)(2) of the Rules envisages ^{LA} ~~the~~ positive action on the part of the appointing authority, in the form of acceptance of the letter seeking VR, which has not been done. In our view, the span of three months has been evolved, so that it would a reasonable period within which the request of the applicant could be examined and cannot spill over that period. In the letter dated 23.11.1984 of the Divisional Engineer Telegraphs (R2) it is stated that:***

"The General Manager desires to accept his resignation, if he submits a resignation letter, after observing usual departmental formalities. In case, he fails to submit the resignation letter within a reasonable time, you may initiate disciplinary action against him for violating departments rules."

From the letter extracted above, the inference is irresistible^{LA} that the idea of calling upon the applicant to submit his resignation letter, dawned after the expiry of the period of three months and was done with a view to covering up the lapse on the part of the officers in not initiating disciplinary proceedings before the expiry of three months. We do not, however, consider it necessary to pursue this aspect in view of the pronouncement of the Supreme Court in the decision cited supra.

7. We, therefore, direct the respondents to treat the applicant as having voluntarily retired from service from 5.7. 1984 and give him all terminal benefits admissible under the Rules.

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



SECTION OFFICER
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE

(Ch. Ramakrishna Rao)
Member (J)

(L.H.A. Rego)
Member (A)

bsg/-

-True copy-