

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 661/93.

Date of Decision: 7.10.97

Smt. Urmila Anant Mukadam, Applicant.

Shri B. Ranganathan, Advocate for
Applicant.

Versus

Union Of India & Others, Respondent(s)

Shri R. K. Shetty, Advocate for Respondent Nos. 1 & 2.


Shri V. S. Masurkar for Respondent No. 3.

CORAM:

Hon'ble Shri. B. S. Hegde, Member (J).

Hon'ble Shri. M. R. Kolhatkar, Member (A).

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ✓


(B. S. HEGDE)
MEMBER (J).

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO.: 661/93.

Dated this 7th, the Friday day of October, 1997.

CORAM : HON'BLE SHRI B.S. HEGDE, MEMBER (J).
HON'BLE SHRI M. R. KOLHATKAR, MEMBER (A).

Smt. Urmila Anant Mukadam,
C.G.S. Quarters,
Sector-VI, 195/2142,
Kane Nagar,
Bombay - 400 037.

... Applicant

(By Advocate Shri B. Ranganathan)

VERSUS

1. Union Of India through the
Director General Of Supplies
& Disposals,
Department of Supply,
Government Of India,
New Delhi.
2. The Director of Supplies (T.Ex)
5th floor, New CGO Buildings,
New Marine Lines,
Bombay - 400 020.
3. The Estate Manager,
O/o. the Estate Manager,
Govt. Of India,
Bombay - 400 020.

... Respondents.

(By Advocate Shri R. K. Shetty
for Respondent No. 1 & 2)

(By Advocate Shri V. S. Masurkar
for Respondent No. 3).

: ORDER :

¶ PER.: SHRI B.S. HEGDE, MEMBER (J) ¶

By this application, the applicant has
challenged the impugned orders passed by the respondents
vide dated 09.06.1993 and 21.12.1992 respectively. The

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first order was passed by the Respondent No. 2 i.e. the Director Of Supplies (T.Ex), retiring the applicant with effect from 24.02.1991 in terms of Rule 48 (A) of the CCS (Pension) Rules, 1972, though the order was passed on 09.06.1993. The second order was passed by the Respondent No. 3 i.e. the Estate Manager, treating the applicant having been retired from Government Service w.e.f. 31.03.1991 and accordingly cancelled the quarter allotted in favour of the applicant w.e.f. 31.07.1991 and directed her to vacate the quarter and pay the damage rent, etc.

2. The brief facts of the case are - that the applicant joined the respondents department as L.D.C. with effect from 07.07.1959 and was promoted to the post of U.D.C. with effect from 01.08.1975 initially on adhoc basis and thereafter on regular basis w.e.f. 10.10.1976. In the normal circumstances, the applicant would retire from service w.e.f. 31.01.1999 but due to her illness she sought for voluntary retirement.

3. It is submitted that since the applicant's daughter had migrated to U.K., ^{therefore,} she requested the respondents-department to permit her to leave the country to visit her daughter at London in January 1991. With due permission of the competent authorities, the applicant went abroad to meet her daughter, however, during her stay at London, she suffered a stroke and was required to be admitted in the Intensive Care Unit. The applicant submitted a certificate issued by the EALING Hospital, Middlesex, U.K. stating therein that the applicant had suffered a

massive Cerebrovascular accident and accordingly was required to be under proper medical care. The applicant therefore, could not return to India within time and sought for extension of leave. The respondents vide their letter dated 18.07.1991 rejected her request and directed her to resume duties forthwith. Though she had sent the requisite medical certificate for undergoing treatment at London, she returned to India sometime in January, 1992. The respondents referred the applicant to Cama and Albless Hospital, Bombay, for getting the medical certificate for her to join duty. The Dean of the hospital issued a certificate dated 17.02.1992 stating that the applicant was fit to resume duty w.e.f. 17.02.1992. The applicant reported for duty on 17.02.1992 but she was not allowed to join duty. The Respondent No. 2 referred the applicant's case to J.J. Medical Board, who in turn advised the applicant to take six weeks leave for treatment from the Hospital. The Medical Board examined the applicant and advised two months leave. On 29.05.1992 Dr. S.M.Katrak examined the applicant's case and certified that the applicant's long leave was justified and she may avail voluntary retirement with full benefits if desired, which has been further confirmed by the Standing Medical Board, J.J. Hospital, Bombay vide dated 31.03.1992.

4. The Learned Counsel for the applicant further submits that the applicant thereafter preferred an application to Respondent No. 2 on 13.07.1992

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stating therein that in view of her illness, she desires to retire from service from that date and she may be paid the retiral benefits admissible as per rules. The respondents vide their letter dated 23.07.1992 stated that since no intimation/medical opinion is received from the Medical Board, her request for voluntary retirement cannot be considered at this stage. Her request for voluntary retirement can be considered only on receipt of medical fitness certificate issued by the Medical Board or otherwise, she will be retired on invalid pension if she is declared incapacitated by the Medical Board. However, to her surprise, the respondents vide their letter dated 08.09.1992 retired her from Government service with retrospective effect i.e with effect from 31.03.1991 in terms of Rule 48 (A) of the C.C.S. Pension Rules, 1972.

5. Against the order of the respondents retiring the applicant from a retrospective date, the applicant made a representation vide dated 23.09.1992 stating that she cannot be deemed to have retired with a retrospective effect i.e, with effect from 31.03.1991, therefore, the action of the respondents is illegal and per se invalid and requested the authority to look into the matter. Again, the respondents vide their letter dated 29.10.1992 reiterated that the earlier decision dated 08.09.1992 stating that she has been retired from service w.e.f. 31.03.1992 was final and irrevocable and no further correspondence will be entertained in the subject matter. The Medical Board of the J.J. Group of

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Hospitals, vide their certificate dated 15.12.1992 stated that the applicant is a patient of hypertension, etc. The applicant further wrote a letter to the respondents on 05.01.1993 stating that she was accepting her retirement date as 31.03.1991 under protest. Thereafter, the respondents sanctioned her leave with effect from 28.01.1991 to 23.02.1991 vide their letter dated 26.05.1993.

6. The respondents in their reply have not met any of the contentions raised in the O.A. On the other hand attributed ill motives on the contention of the applicant, so as to evade the payment or recovery of market rate of rent for the quarter occupied by her, etc. Further, it is contended that the medical certificates produced by the applicant were not acceptable to the respondents. The certificates created serious doubts in the minds of the respondents about the genuineness of sickness of the applicant and accordingly retired the applicant from Government Service w.e.f. 31.03.1991 and directed her to surrender the quarter which was allotted to her as an employee of the respondents. In this connection, the respondents relied upon the G.C.S. Pension Rules, 1972, Rule 48 (A), which reads as below :

"48-A Retirement on completion of 20 years Qualifying Service

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

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- (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, etc..."

7. In the light of the above, the question to be considered here is, whether the action of the respondents in retiring the applicant with retrospective effect i.e. 24.02.1991 though the order was issued on 09.06.1993, after a lapse of 16 months is in accordance with the rules and whether the said order is sustainable in law.

8. Heard Shri B. Ranganathan, Counsel for the applicant and Shri R. K. Shetty on behalf of the respondents and perused the pleadings. On perusal of the pleadings, we find that the respondents were not able to cite any relevant rules in support of their action nor any case laws in this respect. It is an admitted fact that the applicant had gone to U.K. to see her daughter and her initial leave was sanctioned by the Competent Authority after her return from U.K. vide their letter dated 26.05.1993. So far as her further absence due to her stay at U.K. is concerned, she has submitted a medical certificate from the medical authorities of U.K. If the respondents had any bonafide doubt about the genuineness of the certificate, it was open to them to refer the same to the Medical

Authorities at U.K. at the relevant time, which they did not do so. Even assuming that the medical certificate is not acceptable, having returned to India, the respondents directed her to J.J. Hospital/Medical Board so as to enable her to resume duty thereafter. Having referred the matter to J.J. Medical Board, it is for the Competent Authority to get the certificate from the J.J. Medical Board and they cannot blame the applicant for that purpose and they do not have competency to reject the medical certificate issued by the Medical Authorities either from abroad or within the country. This only shows the non-application of mind on the part of the respondents - firstly, in not accepting the medical certificates issued by the competent authorities and secondly, without noticing the relevant rules and in the absence of any application from the applicant, giving retrospective retirement, which is unheard ^{of} so far and not covered by any rules. Rule 48-A of the C.C.S. Pension Rules only envisages that either party can give three months notice after putting in 20 years qualifying service. As a matter of fact, the applicant had given an application for voluntary retirement only on 13.07.1992 stating that she may be permitted to retire voluntarily from service with immediate effect and may be paid the retirement benefits admissible as per rules. She also annexed a copy of the report dated 29.05.1992 from J.J. Hospital, in which the recommendation of her long leave was also enclosed. There is nothing to show on record that the applicant had submitted any earlier application for

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voluntary retirement, therefore, the action of the respondents retiring the applicant from a retrospective date is not only illegal and per se bad in law but under the circumstances, it is a high handedness on the part of the respondents to treat her retirement with a retrospective effect without any basis. The Apex Court in Union Of India V/s. Syed Muzaffir Mir [1994] held -"where the Government Servant seeks premature retirement, the same does not require any acceptance and comes into effect on the completion of the notice period. The Tribunal has rightly come to the conclusion that the order of removal was nonest in the eyes of law."

9. In view of the aforesaid ratio of the Apex Court, we are of the opinion, that the retrospective retirement order issued by the respondents is per se illegal and nonest in the eyes of law. Even assuming that the applicant's absence from duty was unauthorised, it is open to them to take appropriate disciplinary proceedings against her on her return from U.K. and till the disciplinary proceedings are completed, it is upto the department to decide not to accept the Voluntary Retirement notice given by the applicant. No such steps have been taken by the respondents in this behalf. It appears as though the respondents have pre-determined the issue that the applicant should be retired from a particular date without resorting to the



relevant service rules nor the facts in this case. Therefore, in our view, the voluntary retirement order giving retrospective effect by the Respondent No. 2 is illegal and bad in law and accordingly, we hereby quash and set aside the voluntary retirement order passed by the respondents vide dated 09.06.1993

10. Similarly, the cancellation of the quarter by the Estate Manager vide order dated 21.12.1992 also requires to be quashed treating the applicant's retirement w.e.f. 31.03.1991 and seeking penal rent for continuation in the quarter thereafter. It is not clear whether the respondents have complied with the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, before cancellation of the quarter. In the cancellation letter it is only stated that the applicant is retired from service w.e.f. 31.03.1991, as such, she is required to pay damage rent w.e.f. 31.07.1991. The said order appears to be per se illegal and bad in law.

11. The respondents vide their letter dated 23.07.1992 addressed to the Superintendent, J.J. Group Of Hospitals, Bombay, had sought for the medical certificate of the applicant for their perusal and stated therein that the request of the applicant for voluntary retirement cannot be considered till the medical certificate is received by them. Having stated so, the respondents do not have any locus-standi to pass the retirement order with retrospective effect. Therefore, in our view



the retrospective retirement order as well as the recovery of penal rent issued by the respondents, both are expressly illegal and passed without application of mind. This action of the respondents perforced the applicant to approach the Tribunal, which could have been avoided by the department.

12. In the facts and circumstances of the case, we hereby quash and set aside the impugned orders dated 09.06.1993 passed by the Respondent No. 2 and order dated 21.12.1992 passed by the Respondent No. 3. Accordingly, the respondents are hereby directed to pass appropriate order regarding voluntary retirement of the applicant as per Rule 48-A with reference to her letter dated 13.07.1992 and pay the retiral benefits within a period of two months from the date of receipt of this order.

13. We express our displeasure the way in which the matter has been dealt with by the Respondent No. 2 in passing the retrospective Voluntary Retirement order in terms of Rule 48-A of the C.C.S(C.C.A) Pension Rules. The reading of Rule 48-A of the C.C.S.(C.C.A) Pension Rules, clearly envisages that the order of Voluntary retirement cannot be passed with ~~a~~ retrospective effect. Admittedly, the applicant has given an application for voluntary retirement on 13.07.1992, therefore, the competent authority cannot pass the voluntary retirement order prior to that date. However, in the instant case,

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the respondents have passed the impugned order dated 09.06.1993 giving effect to the voluntary retirement w.e.f. 24.02.1991, which is not only contrary to rules but also without application of mind. Whether the application filed by the applicant for voluntary retirement should be accepted or not, is entirely a different matter for the administration to consider, but it is not open to the competent authority to decide the date of voluntary retirement su-motto without there being any application on behalf of the applicant. Therefore, in our opinion, passing the voluntary retirement order with retrospective effect is nothing but non-application of mind on the part of Respondent No. 2 and the same is ex-facie illegal order, which only shows that the order passed by the Respondent No. 2 is pre-determined and prejudicial to the applicant.

14. As stated earlier, the retiral benefit should be paid to the applicant within a period of two months from the date of receipt of a copy of this order.

15. With the above observations, the O.A. is disposed of with no order as to costs.

M. R. Kolhatkar
~~(M.R. KOLHATKAR)~~
MEMBER (A).

B. S. Hegde
(B. S. HEGDE)
MEMBER (J).