

CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.No.: 1351/95.

Date of Decision MARCH 19, 1996.

Shri Y. K. Bansal, Petitioner

Shri S. Natrajan, Advocate for the Petitioner.

versus

Union Of India & Others, Respondents

Shri Suresh Kumar for

Shri M.I. Sethna, Advocate for the Respondents.

Coram:

The Hon'ble Mr. V. RAMAKRISHNAN, MEMBER (A).

~~Other Bench~~

1. To be referred to the Reporter or not? ~
2. Whether it needs to be circulated to other Benches of the Tribunal? ~


(V. RAMAKRISHNAN)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
GULESTAN BLDG. NO. 6, 3RD/4TH FLOOR
PRESOT ROAD, FORT, BOMBAY - 400001.

ORIGINAL APPLICATION NO.: 1351/95.

Dated, this Tuesday, the 19th of March, 1996.

CORAM : SHRI V. RAMAKRISHNAN, MEMBER (A).

Shri Y. K. Bansal Applicant
(Advocate by Shri S. Natrajan)

Versus

Union Of India & Others ... Respondents.
(Shri Suresh Kumar for Shri M.I.
Sethna, Advocate).

: ORDER :

[PER.: SHRI V. RAMAKRISHNAN, MEMBER (A)]

The applicant is an employee of Department of Atomic Energy who was prematurely retired in terms of Rule 56 (J) of the Fundamental Rules by an order of the Government dated 07.01.1987 and alongwith that order he was given three months pay in lieu of notice. Aggrieved by this order, he approached the Tribunal in O.A. No. 550/87 and the Tribunal by its order dated 03.07.1990 held that the impugned order under F.R. 56-J was bad in law and had to be strucked down and accordingly did so. However, the Tribunal also noticed that the applicant had also made a request for voluntary retirement just a few days before the order under F.R. 56-J was issued and directed the department to consider his request for voluntary retirement in accordance with the rules and if the department decided that the applicant was not entitled for such voluntary retirement, the applicant shall be reinstated

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in service and shall be treated as having been in continuous service till such reinstatement. The Tribunal however directed that he will not be entitled to pay and allowances during the said period. The applicant approached the Tribunal again by a Review Petition No. 12 of 1991 which was disposed of by the Tribunal on 05.07.1991 as at exhibit A-4. Para 3 of the order on review petition is relevant and is reproduced below :-

"3. The aforesaid direction that is assailed was made in the final order in the conspectus of the facts and circumstances of the case and also having regard to the fact that pursuant to the order of compulsory retirement the petitioner was drawing pension and other retirement benefits. As such, we are not satisfied that there is any sufficient ground for review so as to modify the above direction."

The department having considered the request for voluntary retirement, decided not to accept the request for voluntary retirement and in compliance with the Tribunal's direction proceeded to reinstate the applicant in service from October, 1990. However, the pay in lieu of three months notice which was given to him was sought to be recovered amounting to Rs. 15,750.00 in instalments of Rs. 1,579.00 per month from the salary of the applicant starting from salary for the month of June 1995. The applicant is still in service but I am told that the recovery in terms of the order dated 16th June, 1995 (Annexure A-1) has not been effected by the respondents. The applicant has challenged this order as at annexure A-1 on the ground that he is entitled to retain this amount and the same is not liable to be recovered from him.

2. I have heard Shri S.Natralan for the applicant and Shri Suresh Kumar for Shri M.I. Sethna, Counsel for the respondents.

3. Shri Natrajan submits that the Tribunal having found that the order under Fundamental Rules 56-J was bad in law, in their normal course, could have directed payment of full pay and allowance for the period from 01/1987 upto the date of reinstatement. However, as is clear from the directions of the Tribunal in the Review Petition as at Annexure A-4 and para 3 of which has already ^{been} extracted supra, the Tribunal did not order payment of full pay and allowance in view of the fact that the applicant was drawing pension and other retiral benefits. According to Shri Natrajan, the amount which the applicant received in lieu of three months notice, is in the nature of retirement benefits, as the order under F.R. 56-J is an order which retires the applicant from service. He also brings out that the applicant starts drawing pension from the next date and no adjustment is made from the pension on account of lumpsum amount which the applicant received in lieu of three months notice. Shri Natrajan therefore contends that this sum should be taken as part of the retirement benefits and in the context of Tribunal's observation in its order dated 03.07.1990 in O.A. No. 550/87. The Tribunal in para 10 of the judgement had taken notice of the fact that the applicant had been given a cheque representing the pay and allowance in lieu of requisite notice. It is, therefore, argued that the Tribunal's intention was that the applicant should be allowed to retain pension and also the amount representing salary for three months while denying him full pay and allowance for the period. Shri Natrajan ~~forcefully~~ submits that this sum is clearly in the nature of retirement benefits in terms of the order of the Tribunal in Review Petition. The applicant is entitled to retain this sum and the action of the department to recover this amount goes against the direction of the Tribunal. It is also

argued that while the Tribunal had denied any fresh inflow in terms of pay and allowance, it had not intended any outflow from the applicant in respect of any amount paid to him including this sum:

4. Shri Suresh Kumar opposes the application. He does not agree that this amount is in the nature of retiral benefits. He brings out that the sum paid ^{for} in lieu of three months notice when the department took action under Fundamental Rules 56-J. Once the order under F.R. 56-J has been struck down, the question of applicant's entitlement for three months notice does not survive, as there is no notice at all to the applicant to retire from service and the order has become nonest. In view of this, Shri Suresh Kumar submits that the action of the department in issuing the impugned order is justified and the application should be dismissed.

5. I have carefully gone into the submissions of both sides. The contention that three months pay is in the nature of retirement benefit is some what ~~forfeited~~. The department in terms of relevant rules, has the right to retire a person by giving him three months notice, in which period he would be in service and retires at the end of the period and/or it has the option to retire the government official forthwith by giving him salary in lieu of three months notice. Once the order under F.R. 56-J has been quashed, grant of lumpsum prerepresenting the salary in lieu of three months notice also gets quashed, as the same forms an integral part of that order. The applicant has therefore no legal right to contend that he is entitled to retain this amount when the order under F.R. 56-J has been quashed and he has been reinstated in service.

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However, I notice that despite the clear finding of the Tribunal in O.A. No. 550/87 that the impugned order was bad in law and it was accordingly quashed, the Tribunal had specifically directed that the applicant shall not be entitled to pay and allowance during the period from 6.01.1987 upto the date of reinstatement. In its order on the Review Petition, it had observed that this was done having regard to the fact that pursuant to the order of compulsory retirement, the petition was drawing pension and other retiral benefits. The contention of the applicant that he should be allowed to retain the pay and allowance paid to him in lieu of three months notice and should also be allowed to draw pension for the same period is not tenable when he has been reinstated in service. In the facts and circumstances of the case, I direct the applicant to refund the pension amount alongwith the dearness relief which he has drawn during the initial period of three months from the date of compulsory retirement i.e. from 07.01.1987 to 06.04.1987 but ^{he is not liable to refund the entire sum} of Rs. 15,750.00. In order to facilitate the implementation of this direction, I quash the impugned order dated 16.06.1995 with liberty to the department to issue a fresh order for recovery of the pension as referred to above. I am told that the applicant is retiring at the end of this month. If such is the position, the amount in respect of pension which is to be recovered from the applicant shall be adjusted against his retirement dues.

6. The application is finally disposed of with the above directions. No costs.


(V. RAMAKRISHNAN)
MEMBER (A).