

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

CA-439/97.

Dated: 31.7.2001

<u>Shri S.H.Nadgauda</u>	<u>Applicants.</u>
<u>Shri P.A.Prabhakaran</u>	<u>Advocate for</u>
Versus	
<u>Union of India & Ors. (Income Tax)</u>	<u>Respondent(s)</u>
<u>Shri M.I.Sethna</u>	<u>Advocate for</u> <u>Respondent(s)</u>

CORAM :

Hon'ble Smt. Shanta Shastry, Member(A)

Hon'ble

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

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(SMT. SHANTA SHAstry)
MEMBER(A)

abp.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO.439/1997
DATED THE 31st DAY OF AUGUST, 2001
July

CORAM:HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

Shri S.H.Nadgauda,
Retired from the office of:
Commissioner of Income Tax, Central-I,
10th Floor, Old C.G.O. Annexe,
M.K.Road, Mumbai - 400 020.
as Supervisor Gr-II on
reversion as UDC, etc. Applicant

By Advocate Shri P.A.Prabhakaran.

V/s.

1. Director General of Income-Tax,
Mumbai, representing the Union of India,
4th Floor, Ayakar Bhavan, M.K.Road,
Mumbai - 400 020.
2. Chief Commissioner of Income-Tax,
Mumbai Ayakar Bhavan, 3rd Floor,
M.K.Road, Mumbai - 400 020
3. Commissioner of Income-Tax, Central-I,
10th Floor, Old C.G.O.Building,
M.K.Road, Mumbai- 400 010.
4. The Zonal Accounts Officer, CBDT,
2nd Floor, Aayakar Bhavan, M.K.Road,
Mumbai - 400 020.

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

(ORDER)

Per Smt.Shanta Shastry, Member(A)

In this application, the applicant had initially prayed to direct the respondents to allow him to occupy the quarter up to a period of 90 days from the date of disbursement of his dues, to charge him only normal licence fee during the aforesaid period and to refrain the respondents from enforcing payments or otherwise recovering or appropriating the market rate of damage rent as demanded in the impugned order at Rs.35,550 or any other

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sum other than the normal licence fee. Later on the OA was amended and further prayers were added by way of para 8(d),(e), (f), (g) and (h). By these prayers, the applicant sought to declare that he be deemed to have retired w.e.f. 24/12/93 on invalid pension as admissible under the rules, to declare that the lapse on the part of respondent no.2 shall not visit the applicant with any adverse consequences whatsoever, to declare that the order under Rule 15(4) dated 19/7/94 shall be invalid as a consequence of the applicant's deemed retirement as on 24/12/93 and to award costs.

2. The brief facts of the case are that the applicant was working as Supervisor Grade-II in the Office of the Commissioner of Income-Tax, Central-I, Mumbai. He remained absent from 23/10/91 without prior intimation/proper sanction. He also failed to report for duty inspite of memo dated 11/12/91 served on him directing him to do so. A subsequent memo dated 9/1/92 sent to him by Registered AD was returned by not claiming it and also was refused to be accepted from the Inspector who went to his residence for service of the said memo. Thus, the applicant displayed lack of devotion to duty and also an act unbecoming of a Government servant. Therefore disciplinary proceedings were initiated against him under Rule 14 of the CCS(CCA) Rules, 1965 by issuing a charge sheet dated 11/2/92. An Enquiry officer was appointed. Meanwhile, on 14/9/93, the applicant wanted to resume duty by producing a medical fitness certificate from a private doctor. However, he was referred to the GT Hospital for medical examination and confirmation as to whether he was fit to resume

his duties. The GT Hospital vide their certificate dated 23/12/93 declared him unfit being permanently and completely incapacitated for further service. The applicant neither accepted nor challenged the certificate though a fitness certificate from a private doctor had been filed by him. He remained absent. Since there were contradictory views of two medical authorities and since the disciplinary proceedings against the applicant were in progress, no further action was taken on the medical certificates of the GT Hospital.

3. The Enquiry officer concluded the enquiry proceedings and submitted his report on 12/1/94 holding the applicant guilty of the charges. The disciplinary authority on the basis of the enquiry report passed an order on 11/7/94 ^{and} imposed a major penalty by reverting the applicant from the post of Grade-II supervisor to the post of UDC and his pay was also ordered to be fixed at Rs.1560/- in the timescale of Rs.1200 -- 2040. The order was served on the applicant on 28/7/94. No appeal was preferred against this order.

4. The applicant, thereafter made a fresh application on 4/10/95 seeking premature retirement on medical grounds with a medical certificate again from a private doctor certifying him to be unfit for duty. The matter was ~~against~~ referred to Superintendent of GT Hospital for medical examination on 12/10/95. The Superintendent of GT Hospital however advised on 11/12/95 that the applicant had already been examined by them on 23/12/93 and ^{they} had declared him unfit. There was therefore no question of further fresh medical examination.

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5. The matter was further examined in consultation with the Commissioner of Income Tax Head Quarters personally for advise as to from which date the applicant was to be retired on medical grounds, whether it should be from 23/12/93 or later date. Finally, it was advised to retire the applicant w.e.f. 31/1/96 on medical grounds and the Zonal Accounts Officer was advised to finalise the pensionary benefits of the applicant accordingly.

6. The Zonal Accounts Officer however insisted that since the applicant had been declared unfit as on 23/12/93 to continue in service, his date of retirement should be considered as 24/12/93. There was a different stand taken by the Respondents 1 to 3 and the Zonal Accounts Officer regarding the date of retirement of the applicant. At the initial stage of hearing, the Tribunal had directed them to settle the matter regarding the date of retirement of the applicant and submit an affidavit to that effect. Finally, the matter has been settled and the respondents including respondent no.4 agreed that the applicant's date of retirement should be 31/1/96.

7. The applicant's initial prayer in the OA regarding retention of Government accommodation and recovery of damage rent, etc no longer survives. The applicant vacated the quarters on 23/3/1998. Therefore, the relief that needs to be considered now is regarding the date of retirement of the applicant. Pending this the Tribunal had directed to pay to the applicant Rs.50,000/- towards his retiral dues.

8. It is the contention of the applicant that he should have been retired from the date he was declared medically unfit by the

GT Hospital on 23/12/93 on invalid pension. The applicant has cited FR-10 under which no medically unfit person can be allowed to be in service. According to GIMHA OM dated 10/9/58, there is no discretion to ignore certificate declaring one unfit and cases where it becomes absolutely necessary to retain the services of such personnel on a temporary basis due to certain administrative reasons, should be referred to the Ministries of Home Affairs, Health and Finance. The respondents are ignoring the medical certificate of the GT Hospital dated 23/12/93 and have acted beyond their powers. The respondent no.4 had been right and the view held therefore ^{that} the date of retirement should be from the next date on which the certificate is issued. ^{is correct.} The learned counsel for the applicant has cited a judgement in the case of Shri Prakash Sanmukh1al V/s. Union of India & Ors in OA No.621/98 decided on 30/7/98 reported in 1999(2)(CAT)551 wherein the Tribunal has set aside the removal of the applicant with liberty to take further action after reinstating. The Railways had held further enquiry and had enforced a penalty on the applicant therein. The Tribunal also directed that the applicant had to be treated as on deemed suspension from the date of original order and should be paid subsistence allowance under FR-53.

9. The applicant has also contended that whenever an enquiry is to be carried forward beyond the date of retirement, the period beyond the period of retirement should be treated as suspension period. He is relying on the judgement of the Hon'ble Supreme Court in State of Punjab V/s. Khemi Ram AIR 1970-SC-214. In this judgement in para-11, it was held that there can be no

doubt that if disciplinary action is sought to be taken against the Government servant, it must be done before he retires as provided by the said rule. If the disciplinary enquiry cannot be concluded before the date of such retirement, the course open to the Government is to pass an order of suspension and to refuse to permit the concerned government servant to retire and to retain him in service till such enquiry is completed and a final order is passed therein. According to the applicant, the same procedure should have been adopted in his case also if at all the respondents wanted to complete the disciplinary proceedings instead of extending the retirement beyond the date on which he was declared medically unfit. Therefore, the action of the respondents in not retiring him on 24/12/93 is not correct.

10. The respondents submit that, disciplinary proceedings had already been initiated against the applicant in 1992, i.e. before the applicant was declared medically unfit. The disciplinary proceeding was against the unauthorised absence ^{from} of duty of the applicant without information/sanction since 23/10/91. As per the CCS (Conduct) Rules, no official can retire and/or may be allowed to retire during the continuance of the disciplinary proceedings. The applicant was not attending the office, no salary was due to him/or paid as the leave was treated as unauthorised and the applicant was subject to the verdict of the disciplinary proceedings which were continuing by the time he was declared medically unfit. The learned counsel submits that prima facie, the action of the respondents in retiring the applicant w.e.f. 31/3/96 is in order in the light of the judgement

delivered by a Full Bench of this Tribunal in the case of Amarjit Singh V/s Union of India (ATR 1988(2)CAT 637) wherein it has been held that disciplinary proceedings initiated against the official can continue even after his retirement and pension of the pensioner can be with-held or withdrawn in whole or in part after following the prescribed procedure for an act of misconduct/negligence committed by official while in service. Since the enquiry proceedings were completed only on 19/7/94, he was not allowed to retire prior to that. Further the applicant ^{had} _A shown his willingness to retire as UDC vide an application made by him on 6/7/95. The applicant also confirmed the date of his retirement as 31/1/96. As per the direction of the Tribunal, Rs.50,000/- was paid immediately to the applicant on 6/8/97.

11. We have heard the learned counsel for the applicant as well as the respondents. We find that the applicant was retired w.e.f. 31/1/96 after completion of the disciplinary proceedings against him and after the applicant was declared unfit medically in 1993. The respondents are within their right not to have retired him before the completion of the disciplinary proceedings. The applicant also has only contended that the respondents could have suspended him in terms of the judgements referred to by him.

12. I have also perused the judgements referred to by the applicant as well as by the respondents. The judgement in the case of Shri Prakash Sanmukhlal (supra), the matter was regarding the treatment of the period from the date of the original order

of removal of the applicant till the date of reinstatement and since further enquiry was to be held, the applicant was treated as under deemed suspension. In the other case of Khemi Ram (supra), the case was with reference to the date of inaction of the order of suspension passed against the applicant and in passing the Court had observed "that if a disciplinary enquiry cannot be concluded before the date of retirement, the course open to Government is to pass an order of suspension and refuse to permit the public servant to retire and retain him in service till such enquiry is completed and final order passed therein.

The circumstances were different in these two cases.

13. In my considered view, since the applicant was already on unauthorised absence from 25/10/91 and the period of absence was treated as EOL not to be counted for purposes of pension, whether he was suspended or whether he remained on EOL would not have made much difference. If a person is declared medically unfit, it means that the person is not in a position to perform any duty. Even though the applicant's date of retirement was prolonged beyond the date of certificate of unfitness, he was not required to perform any duties during that period, as he was on leave in any case and therefore it would not have ^{made} _{any} difference. It is also seen that the applicant himself has accepted his retirement from 31/1/96 and therefore the respondents' action cannot be faulted in this case. The application thus being devoid of merit, fails. The OA is accordingly dismissed. No costs.

Shanta Shastray
(SMT. SHANTA SHAstry)
MEMBER(A)