

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 677/97

Date of Decision: 24.11.1997

B.N.Dhunder

.. Applicant

Shri G.K.Masand along with
Shri A.I.Bhatkar.

.. Advocate for
Applicant

~~-versus-~~

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

(1) To be referred to the Reporter or not ? *yes*

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? *no*


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI,

ORIGINAL APPLICATION NO. 677/1997.

Monday, this the 24th day of November, 1997.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

B.N.Dhundar,
171, Deovul Wadi,
At & Post Uran,
Dist. Raigad-400 702.

... Applicant.

(By Advocate Shri G.K.Masand
along with Shri A.I.Bhatkar).

V/s.

1. The Union of India through
the Flag Officer
Commanding-in-Chief,
Headquarters, Western Naval
Command, Shahid Bhagat Singh
Road, Fort,
Mumbai - 400 001.
2. The Admiral Superintendent,
Naval Dockyard, Lion Gate,
Mumbai - 400 023.
3. The Manager (MER),
Centre No.70, Naval Dockyard,
Lion Gate,
Mumbai - 400 023.

... Respondents.

(By Advocate Shri V.S.Masurkar)

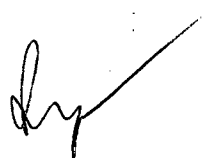
O R D E R

¶ Per Shri Justice R.G.Vaidyanatha, Vice-Chairman ¶

This is an application filed by the applicant challenging the order dt. 7.9.1996 and the issuance of charge sheet dt. 19.5.1997. The respondents have filed reply opposing the application. Since the point involved is short, we have heard both the counsel on merits of the application.

2. The applicant's grievance is that though he had given a notice of voluntary retirement it has not been considered by the respondents, but the applicant was told that the application is not according to rules and cannot be considered.

...2.

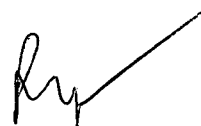


C. Now in the reply the respondents have stated that the application is not addressed to the competent authority.

After hearing both the sides we do not find any merit in rejection of the applicant's letter for voluntary retirement. There is no mention in the order dt. 7.9.96 that the notice for voluntary retirement is rejected on the ground that it is not addressed to the competent authority. Normally, a government servant will have to give the application to his immediate superior who will have to forward it to the competent authority. If the administration had returned the application on the ground that it is not addressed to the competent authority then the applicant would have ~~to give~~^{is not correct and the letter} a fresh application by addressing the same to the competent authority. But the application has not been considered on the sole ground that the application has been seeking voluntary retirement retrospectively from April, 1996 without giving three months notice from a prospective date. On the face of it, this reasoning ^{is not correct and the letter} does not say that the applicant wants retirement retrospectively from 1.4.1996. On the other hand, it gives complete three months notice w.e.f. 1.9.1996 which expires on 30.11.1996. Therefore, the application has been given by giving more than three months notice from the date of the letter which is well within the guidelines mentioned in the concerned rule.

3. Now there is no order passed by the competent authority on this voluntary retirement notice except an endorsement by the office Manager that the application is not given as per rules. This reasoning cannot be accepted since the application has been given with three

...3.



months notice. In a case where no order is passed on the voluntary retirement notice by accepting or rejecting the same, ^{then} under Rule 48A of CCS(Pension) Rules, 1972 is attracted; that rule provides that if no such order is passed by the competent authority ^{or} as a refusal or granting permission of voluntary retirement, ^{it} then in ^{it} will ^{be a case} the case of deemed retirement from the date of expiry of the said period.

In the circumstances of the case, we are constrained to hold that since no order is passed by the competent authority either by rejecting or accepting the voluntary retirement notice, it must be deemed to have come into force on the expiry of 30.11.1996

4. The other grievance of the applicant is about issuance of charge sheet for unauthorised absence for three periods mentioned in the charge sheet.

5. Now as far as the issue of charge is concerned, if the applicant is deemed to have retired on 1.12.1996, the present charge sheet in May, 1997 under CCS(CCA) Rules is not sustainable in law. However, this will not come in the way of the respondents in taking any action, if they deem fit under the Pension Rules according to law.

6. Now remains the question about the applicant's alleged unauthorised absence for certain period for which the charge sheet was issued. There is nothing to show that leave was granted for that period. Therefore, we are leaving the question open whether the applicant is entitled to any salary for the period when he was absent or leave the matter to the administration to grant or refuse leave for that period according to law.

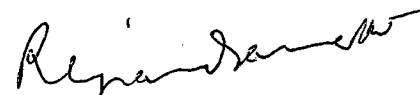
7. In the result, the O.A. is allowed with the following directions.

- (1) The charge sheet dt. 19.5.1997 issued alleging unauthorised absence against the applicant is hereby quashed. However, it is without prejudice to the right of the respondents to take any action under the Pension Rules or to pass any order regarding the leave applications submitted by the applicant for the absent period.
- (2) The applicant is deemed to have retired from service w.e.f. 1.12.1996 and is entitled to pension and all retiral benefits with effect from that date according to law.

In the circumstances of the case, there will be no order as to costs.



(P.P. SRIVASTAVA)
MEMBER (A)



(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.