

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 967/97

Date of Decision: 19/6/98

Ashwini Kumar Kesarwani

.. Applicant

Shri Utpal Rudra.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri P.M.Pradhan

.. Advocate for
Respondent(s)

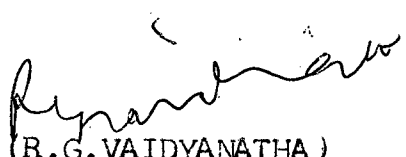
CORAM:

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

The Hon'ble Shri D.S.Baweja, 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

The applicant did not join the post in the place where he had been transferred. He had submitted representation to the department asking for cancellation of the order of ^{transfer} ~~approval~~ or treat the said letter as a notice for voluntary retirement. The applicant did not receive any reply within three months. Hence he has now amended the O.A. asking for a relief of declaration that the applicant should be deemed to have voluntarily retired on the expiry of three months from 22.11.1997 and entitled to all retirement benefits.

3. The respondents in their reply have joined the issue ^{with} ~~of~~ the applicant on the question of deemed voluntary retirement. It is stated that the notice of voluntary retirement dt. 22.11.1997 is conditional and cannot be accepted. Further the notice is defective since it does not mention intended date of retirement.

4. The applicant has also made a prayer about certain payment for the period he had worked prior to the date he was relieved in pursuance to the order of transfer. As far as this point is concerned an interim order has been passed by this Tribunal on 2.4.98 directing the respondents to make payment for the period for which the applicant had worked till he was relieved on 23.11.1997. It is now stated by the learned counsel for the applicant that in pursuance of this order the applicant has received the salary for the said period.

5. At the time of admission, the learned counsel for the applicant pressed only one point viz. that in pursuance of his letter dt. 22.11.1997 the applicant has given proper notice of voluntary retirement and must be

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deemed to have retired after the expiry of three months from the date of notice since there is no rejection of the request by the respondents within three months period as per law. But the learned counsel for the respondents submitted that the notice is defective since it does not mention period of not less than three months for voluntary retirement and further no date of intended retirement is given in the notice. He therefore argued that the question of deemed retirement does not arise in the absence of mandatory requirement of not less than three months as per rules.

6. It is not disputed that the question of voluntary retirement pertaining to this case falls under 48-A of the CCS (Pension) Rules, 1972. According to this rule, a government servant has to give not less than three months notice in writing seeking retirement from service, but the notice requires acceptance by the appointing authority, before it can be given effect to. However, there is a proviso to Rule 48-A (2) which says that if the 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.

Therefore, the requirement of law on the plain reading of Rule 48-A is that the Government official must give not less than three months notice and if there is no refusal within the period mentioned in the notice then the official is deemed to have retired from service.

7. The applicant has produced a copy of his notice/ letter dt. 22.11.1997 where he has mentioned some of his difficulties to justify his continuation in the present

post and the prayer portion in the letter dt.22.11.1997 reads as follows :

"It is therefore requested that the undersigned may please be retained at Ordnance Factory Ambazhari or otherwise this application may be treated as notice for voluntary retirement".

The question is whether this letter can be treated as notice for voluntary retirement as required by Rule 48-A of the Pension Rules. The requirement of law is that the official should give notice of not less than three months. In this notice there is no mention about any period much less three months period. The official should have told the government that he is intending to retire from a prospective date which ^{should} could not be less than three months. There is no mention of intended date of retirement nor mention of period of not less than three months in the notice. In our view, the notice is very vague and cryptic so far as the requirement of Rule 48-A is concerned. At no stretch of imagination the above prayer can be brought within the meaning of notice of voluntary retirement with not less than three months notice within the meaning of Rule 48-A of the Pension Rules. It is not a case of a Government official walking away by just issuing a notice of retirement. Here, in a case of voluntary retirement under Rule 48-A the acceptance of the notice by the Competent Authority is a must. Therefore, the applicant cannot retire unless he is permitted by the Competent Authority, but however by fiction deemed acceptance is provided in case no rejection is intimated by the Competent Authority within the period mentioned in the notice. Here no period is mentioned in the notice and therefore applying the deemed permission under the proviso to Rule 48-A (2) does not arise at all.

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8. Some decisions were cited by the counsels for both sides and we have also examined some decisions bearing on the points ^{under} ~~for~~ consideration. The learned counsel for the applicant has produced xerox copy of Swamysnews for November, 1996. In the first decision which is at item No.198 of page 929 of Swamysnews 1996 which is a case decided by a Bench of this Tribunal at Bangalore in the case of Pralay Sankar Dhar V/s. Union of India & Ors. After referring to a decision of the Supreme Court at page 930 the Bench has observed as follows :

"For the following reasons, we are of the view that in the normal circumstances, the retirement could have come into effect on the expiry of the notice period stipulated by the applicant." (underlining is ours).

Therefore, mentioning any particular intended date of retirement or a period of not less than three months in the notice is a mandatory requirement of Rule 48-A to attract the fiction of deemed permission provided with the rule. There is one more decision at item No.100 at page 480 of Swamysnews for June, 1995, where it is observed that if no order of refusal is passed then the voluntary retirement becomes effective or operative automatically "on the expiry of the period mentioned in the notice". This decision also supports our view that mentioning the period of not less than three months in the notice is a requirement of law.

Then the learned counsel for the applicant relied on item 11 of Swamysnews for January, 1994 at page 53. It pertains to the case of P.N.M.Elayadam V/s. Union of India & Ors. which is a case decided by the Ernakulam Bench of this Tribunal. The said

case has been duly reported in [(1994) 26 ATC 442].

On a perusal of the facts of the case it is not possible to say whether in the notice any period has been mentioned or not. The Judgment simply refers to some Annexures as notices issued by the applicant but the contents of the Annexures are not reproduced in the reported Judgment. Any how, the question whether notice itself should mention the period of not less than 3 months or not and if ~~he~~^{it} does not mention, whether the notice is defective ~~is~~^{was} neither raised nor decided by the Tribunal.

The learned counsel for the applicant also relied on [1986 ATC 194] in the case of Keshav Ram Joshi V/s. Secretary, Ministry of Health & Ors. That was a case where the question was whether an earlier letter of resignation can be converted as a notice for voluntary retirement by a subsequent letter. The question as to what ^{is} the effect of a notice which does not contain the period of not less than 3 months and whether the notice is valid or not was neither raised nor decided by the Tribunal.

In AIR 1995 SC 176 (Union of India V/s. Sayed Muzaffar Mir) (the question was about deemed retirement). No doubt in that case the applicant had given three months notice and since there was no refusal within three months it was held that he must be deemed to have retired and therefore his subsequent disciplinary proceedings and ! awarding of punishment was not sustainable in law. The Supreme Court in para 5 referred to its own earlier decision and observed that where the government servant seeks pre-mature retirement, the same does not require any

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acceptance and comes into effect on the completion of the notice period. That was a case of voluntary retirement after completing 30 years under Article 1802 of the Indian Railways Establishment Code for which no permission from the Competent Authority is necessary. But the Supreme Court has clearly observed that deemed permission comes into effect "on the completion of the notice period". But in cases where the government official has completed only 20 years of service then permission of the Competent Authority is necessary as per Rule 48-A of the Pension Rules.

We have come across a Judgment of a Division Bench of Bangalore Bench of this Tribunal in the case of T.Rama V/s. Director, Telecommunication ((1987) 5 ATC 376). In para 2 it is observed as follows :

"In our view, the applicant was bound to give three months notice as provided in the rules."

But, after referring to letters of the applicant, the Tribunal found that he had given the notice of voluntary retirement, but only sought curtailment of the three months period by giving a shorter date and since it was not acceded by the department it was held that the retirement comes into effect from the date of expiry of the three months period. That means in that case the applicant was conscious of the fact that he has to give notice of three months in the letter, but sought a curtailment of the period as provided in the rules. This decision also fortifies our view that mentioning the period of intended date of retirement which should be not less than three months is a requirement of law.

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While interpreting Rule 161 of the Bombay Civil Services Rules, the Supreme Court in the case of B.J.Shelat V/s. State of Gujarat & Anr. (1978(2) SLR 88) observed at para 7 page 91 as follows :

"There is no dispute that the Rule applicable is Rule 161(2)(ii) and the appellant is entitled to retire by giving a notice of not less than 3 months after he has attained the age of 55 years."

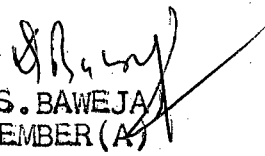
It is therefore clear that while interpreting an identical provision of law, the Supreme Court has observed that giving a notice of not less than 3 months is necessary to invoke the doctrine of deemed permission.

In the present case, admittedly the applicant has not given three months notice or for that matter no period in the notice of voluntary retirement which we have extracted above. It is a very bald and cryptic letter stating that if the order of transfer cannot be cancelled then this letter may be treated as a notice for voluntary retirement. It does not speak of the intended date of retirement or period of not less than three months or at least a request to dispense with the period or curtailment of the period which is also provided in Rule 48-A (3-A) of the Rules. In view of the fact that there is no period mentioned in the notice and there is no intended date of retirement we cannot invoke ~~the~~ deemed permission to retire within the meaning of the proviso to Rule 48-A(2) of the Pension Rules. Therefore, in our view, the applicant is not entitled to a declaration that he ^{must be} ~~was~~ deemed to ^{have} ~~retire~~d after the expiry of three months from the date of his notice.

No other contentions ^{were urged} ~~are alleged~~ before us.

[Signature]

9. In the result, the application is dismissed. However, this order is without prejudice to the right of the applicant to give a proper notice of voluntary retirement as required by Rule 48-A of the Pension Rules. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)

 19.6.98
(R.G. VAIDYANATHA)
VICE-CHAIRMAN

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