

(26)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA.175/93

date of decision : March 16, 93

Between

S.K. Jain

: Applicant

and

Union of India, rep by
The Secretary
Ministry of Defence
South Block
DHQ PO
New Delhi 110011

2. Engineer-in-Chief
Kashmir House
Rajaji Marg
DHQ PO
New Delhi 110011

3. Chief Engineer (Project) R&D
Picket
Secunderabad 500003

: Respondents

Counsel for the Applicant

Mr. S.K. Jain
: Party-in-person

Counsel for the Respondents

: M. Keshava Rao, Standing
Counsel for Central Govt.

CORAM :

HON. MR. JUSTICE V. NEELADRI RAO, VICE CHAIRMAN

HON. MR. R. BALASUBRAMANIAN, MEMBER (ADMINISTRATION)

Judgement

(As per Hon. Mr. Justice V. Neeladri Rao, Vice Chairman)

While the applicant was working as an Executive Engineer in the office of the Chief Engineer (Project) R&D, Picket, Secunderabad, he submitted a letter dated 16-11-1992 stating that he may be permitted to retire voluntarily from service with effect from 20-2-1993. That letter was addressed to the

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President of India, ~~Ministry of Defence, New Delhi~~

The Administrative Officer informed E-4 Section that the applicant's voluntary retirement has not yet been accepted by the competent authority and hence the concerned section was directed to ensure that the applicant is not relieved from duties till decision of the competent authority is issued. A copy of the same was marked to the applicant. The same is challenged in this OA.

2. The indisputed facts ^{in regard} which are relevant to this OA are that the applicant joined service on 19-2-1968 and had put in about 24 years of service and he ~~attained~~ the age of 50 years on 14-12-1992. A disciplinary enquiry as against the applicant is pending; but he was not kept under suspension.

3. Though the specific provision under which the applicant seeks voluntary retirement was not referred to in his letter dated 16-11-1992, the applicant relied upon FR 56(K) during the course of arguments and urged that he is entitled to seek voluntary retirement by giving three months notice as he had put in more than 20 years of service and as he joined after 23-7-1966 and he completed 50 years of age even before the expiry of the period of three months' notice.

4. ~~FR-56(K), which is relevant reads as under:~~

"Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years :

Provided that -

(a) nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Government service on or before 23rd July, 1966;

(b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry

of External Affairs and other aid programmes, (ii) is posted abroad in a foreign based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and

((c) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause.

(1-A)(a) A Government referred to in sub-clause (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefor;

(b) On receipt of a request under sub-clause (1-A)(a) the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority.

Provided that the request for withdrawal shall be within the intended date of his retirement.

5. According to the proviso, the applicant is entitled to seek voluntary retirement by giving three months notice as he satisfied the conditions adumbrated in FR 56(K) and his case does not come under any of the provisos referred to therein. The question of acceptance by the ~~concerned~~ ^{concerned authority} ~~employee~~ does not arise except when ~~he~~ ^{the} is under suspension. As already observed, the applicant was not placed under suspension and hence proviso ~~1(c) to FR 56(K)~~ is not attracted.

6. The learned counsel for the respondent relied upon Section 48-A of CCS Pension Rules. Rule 48-A of CCS Pension

Rules, is as under :-

48-A. Retirement on completion of 20 year's 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.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) Posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(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.

(3) Deleted;

(3-A)(a) A Government servant referred to in sub-rule(1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under clause(a), the appointing authority subject to the provisions of sub-rule(2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

X (4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and (retirement gratuity) of the Government servant retiring under this rule shall be based on the ~~emoluments~~ as defined under Rule 33 and 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.

(6) This rule shall not apply to a Government servant who -

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

7. It is evident from the above provision that it is applicable only in cases where voluntary retirement is sought by the employees who had not satisfied the condition referred to in FR 56(K) or Pension Rules 48. But as, admittedly, the case of the applicant arises under FR 56(K), 48-A of Pension Rules is not applicable.

8. The learned counsel for the respondent submitted that the proceedings dated 4-2-1993 were issued under the impression that the applicant sought voluntary retirement under Rule 48-A of CCS Pension Rules. Be that as it may, it is clear from the material on record that the case of the applicant comes within the ambit of Rule FR 56(K). The said voluntary retirement of the applicant comes into effect from 20-2-1993, the date referred to in the application dated 16-11-1992 of the applicant, for it is after the expiry of three months from the date of issue of the letter by the applicant. The purpose of stipulating three months notice is to enable the concerned authority to make alternative arrangements for retirement comes into effect on expiry of the three months or the date referred to in the letter seeking voluntary retirement and it is not for the purpose of allowing the concerned authority to accept or not to accept the voluntary retirement.

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
1. Secretary, Ministry of Defence, Union of India, South Block, DHQ PO, New Delhi-011.
2. Engineer-in-Chief, Kashmir House, Rajaji Marg, DHQ PO, New Delhi-011.
3. Chief Engineer(Project) R&D Picket, Secunderabad-003.
4. One copy to Sri. S.K.Jain, (Party-in-Person)C/o Office of the Chief Engineer (Project) R&D, Picket, Secunderabad-003.
5. One copy to Sri. M.Keshava Rao, SC for Central Govt, CAT,Hyd.
6. One copy to Deputy Registrar(Judl.), CAT, Hyd.
7. Copy to Reporters as per standard list of CAT, Hyd.
8. One spare copy.

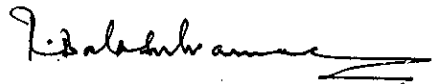
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9. In view of the letter dated 16-11-1992 of the applicant and the operation of FR 56(K), the voluntary retirement of the applicant would have come into effect even on 20-2-1993. But it is stated for the applicant that by virtue of the impugned letter dated 4-2-1993 he was not relieved and hence he is continuing on duty. It is stated for the respondents that time may be granted till the end of this month so as to enable them to make necessary arrangements for relieving the applicant. Hence, in the special circumstances, it has to be stated that the applicant's voluntary retirement will take effect on the afternoon of 31-3-1993. It has to be made clear that the postponement of date of voluntary retirement had arisen as the applicant is not relieved and as we extended the time only to enable the respondents to make alternative arrangements. Hence, the concerned authority should not take any steps for placing the applicant under suspension.

10. This order does not debar the concerned authority to proceed with the pending inquiry in accordance with rules, if rules permit such continuation.


11. The OA is ordered accordingly at the admission stage. No costs.


(V. Neeladri Rao)
Vice-Chairman


(R. Balasubramanian)
Member (Admn)

Dated : March 16, 1993
Dictated in the Open Court

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By Registrar (P. U.)

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