

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

O.A.No. 335/93

Date of Order: 5.5.1993

BETWEEN :

Y.Narasimha

.. Applicant.

A N D

The Commandant,
Mukhyalaya,
Topkhana Kendra,
Headquarters:
Artillery Gentre,
Hyderabad - 500 031.

.. Respondent.

Counsel for the Applicant

.. Mr.V.Venkateswara Rao
for

Mr. T.SuryakaranReddy

Counsel for the Respondent

.. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI JUSTICE. V.NEELADRI RAO : VICE-CHAIRMAN

HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (ADMN.)

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Order of the Division Bench delivered by
Hon'ble Shri Justice. V.Neeladri Rao, Vice-Chairman.

The applicant was born on 1.2.1945 and joined service as Cook on 20.2.1963 in the Artillery Centre, Hyderabad. He completed completed 30 years of qualifying service on 1.2.1993. ^{by} The impugned order dated 22.2.1993 the applicant was informed that his service would be terminated after the expiry of the 3 months from the date of the receipt of the impugned order ~~that it was issued in~~ ^{of} exercise of powers conferred by Clause 'E' of CCS Pension Rules (1972). The same is assailed in this O.A.

2. Before advertizing to the contentions of both the parties it is convenient to refer to regulation 48 of CCS Pension Rules and it reads as under:-

"(1) At any time after a Government servant has completed thirty years qualifying service-

- (a) he may retire from service, or
- (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension."

3. For consideration of this O.A. there is no need to refer to Proviso therein. Appendix-10 Para II Sub para (5) is also refer to that and it v-

"The rules relating to premature retirement should not be used:-

- (a) to retire a Government servant on grounds of specific acts of misconduct, as a short-cut to initiating formal disciplinary proceeding."

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4. One of the contentions that was urged for the applicant that he had not completed 30 years of qualifying service by the date the impugned order was issued. But when on the basis of the record that was brought to the Court, Sri N.R.Devrak, Standing Counsel for the respondent, stated that the applicant joined service on 1.2.1963 and by then he completed 18 years of service, the same is not challenged for the applicant. Hence the said argument falls to the ground.

5. The records produced by the respondent discloses that when there was frequent absence of the applicant due to ill-health, the case of the applicant for directed Col.M.K.Govindan observed on 27.8.1992 that the case of the applicant ~~may~~ also be referred to for consideration for premature retirement under Regulation 48. Then the case of the applicant ~~was~~ considered by the committee headed by Lt.Gen. Ramesh Khosla and that committee recommended premature retirement of the applicant, ~~on~~ the ground of frequent absence from duty and poor performance.

6. On receipt of the said recommendation ~~from the~~ committee, the impugned order dated 22.2.1993 was issued. The applicant submitted representation dated 10.3.1993 requesting him for reconsideration and to allow him to continue in service till he attains the age of superannuation. Then it was sent to Petition Committee headed by Major-S.K.Paliwal and that committee opined that there are no grounds for reconsideration and accordingly the applicant was informed by proceedings dated 31.3.1993.

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7. Sri V.Venkateswara Rao, learned counsel for the applicant submitted that there is an ~~infinity~~ in referring the representation to the Petition Committee ~~and~~ as there is no provision for referring it to a committee. But the said contention is not tenable as para III Sub para (2) of Appendix 10 of CCS Pension Rules lays down that

"After such representation is sorted out by the office the same had to be placed before the appropriate committee for consideration."

8. It was the next urged for the applicant that ^{when} it is a case of retirement on the ground of sickness, the ^{has} case ~~had~~ to be referred to a medical board and the power under Regulation 48 cannot be exercised in such a case. ^{accuse} we do not ~~satisfied~~ to the said contention also. It is evident from the Regulation 48 that ^{after} one completed ^{after} 30 years of qualifying service or ^{one completed} 50 years of age for Class I and 55 years of age for ^{he} others, is free to retire voluntarily after giving 3 months notice, or ^{for} any public interest such an employee ~~had to~~ may be retired after the ~~receipt of~~ 3 months notice.

9. Para II of the Appendix-10 of the Pension Rules refers to the criteria, procedural and guidelines. Sub-para (3) (b) which reads as under:-

"Government employees, who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he is holding."

When an employee is found to be absent frequently because of illness it cannot be stated that he cannot be prematurely retired on the basis of the criteria laid down in para II Sub-Para (3) (b) of the Appendix-10 of CCS Pension Rules.

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10. If it is a case^{of} retirement due to medical unfitness, the only consideration is as to whether the employee is not fit medically to discharge his duties and in such a case such an employee has to be retired on medical grounds even if he had not completed 30 years of qualifying service or he had not attained the age of 50 years/55 years. But when one of the criteria clearly states that the basic consideration in identifying an employee for premature retirement should be the fitness/competence of the employee to continue in the post which he is holding and when it is established that the applicant was frequently absent because of the sickness and when the employee is a cook the contention that the applicant should not have been retired prematurely by exercising the power under Regulation 48 and the recourse should be had only ~~for~~ on the ground of ^{which is devoid of any} medical fitness cannot be come into force. When power can be exercised under more than one rule, it can be exercised under one of them, if there is no specific bar in exercise of such power. Even an employee who is sick, can invoke Regulation 48.

11. Sri N.R.Devraj, Standing Counsel for the respondents produced the document bearing the signature of the applicant which is to the effect that the applicant himself requested that he may not be asked to continue in service after he completes 30 years, as he is sick. Sri V.Venkateswara Rao, Learned counsel for the applicant had not disputed the genuineness of the said document. But it is merely stated that the applicant submitted it seeking voluntary retirement from service under Regulation 48(I)(a), and later he had withdrawn that. But it supports the case of the respondents that the applicant was sick.

and hence the recommendation of Col. Govindan for consideration of the case of the applicant under Regulation 48 cannot be held as not in public interest. Learned Counsel for the applicant had not stated that any mala-fides are attributed to any of the Officers in recommending the case of the applicant under Regulation 48. The mere fact that the applicant had withdrawn his application seeking voluntary retirement does not preclude the respondents from having recourse to Regulation 48 (1) (b).

12. The learned counsel for the applicant had also drawn our attention to Section 22 Sub-section (2) of the Administrative Tribunals Act and it reads as under:-

" A Tribunal shall decide every application made to it as expeditiously as possible and ordinarily every application shall be decided on a perusal of documents and written representations and after hearing such oral arguments as may be advanced. "

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By relying upon it was argued that unless the written representation is filed for the respondents it is not open to the Tribunal to dispose of the proceedings.

13. Sri N.R.Devraj, Standing Counsel for the respondents submitted that the entire record is being produced on notice from Tribunal and if any affidavit had to be filed by any officer on behalf of the respondents the same can be only by perusing the record now produced *on the basis of* and not his personal knowledge. When the words, "written representation" are referred to in Section 22 of Sub-section (2) of Administrative Tribunals Act, it ~~is~~ only means that if written representation is filed for the respondents, the same also had to be considered, and thereby it cannot be stated that unless a written representation is filed

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To

1. The Commandant,
Mukhyalaya, Topkhana Kendra,
Headquarters, Artillery Centre,
Hyderabad-031.
2. One copy to Mr.T.Suryakaran Reddy, Advocate
16-11-741/D/57, Moosarambagh, Hyderabad.
3. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
4. One copy to Library CAT.Hyd.
5. One spare copy.

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for the respondents the OA cannot be disposed of. If that contention is going to be accepted, the respondents may be going on taking adjournment on one ground or other for filing written representation. It has to be further noted that if the respondent is absent, the proceeding can be disposed of ex-parte. If the contention for the applicant is accepted, the proceeding cannot be disposed of in a case where the respondent is absent. But at the same time we have to make it clear that whenever the Tribunal feels that the respondent or any particular officer had to be directed to file a written representation or reply or counter affidavit, then they are bound to file the same, failing which they have to face the necessary consequences.

14. When the entire relevant record is produced before the Court and when we perused it, and when an opportunity was also given to the learned counsel for the applicant to peruse it, it is not a case where the Tribunal had to direct the respondents or any of the officers to file a written representation/counter affidavit for consideration of this case. No other argument was advanced for the applicant.

15. In the circumstances of the case, O.A. is dismissed with no order as to costs.

P.J.Thiru

(P.T.THIRUVENGADAM)
Member (Admn.)

V.NEELADRI RAO
Vice-Chairman

Dated: 5th May, 1993

(Dictated in Open Court)

14/5/93
Deputy Registrar (J)

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