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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.409/93.

Date of Judgement : 12-09-94

V.S.Chalapathi

...Applicant

Vs.

1. Union of India, Rep. by
The Secretary,
Min. of Communications,
(Dept. of Telecom.),
Sanchar Bhawan,
New Delhi-110001.
2. The Chief General Manager,
Telecommunications, A.P.,
Hyderabad-500001.
3. The Telecom. Dist. Manager,
O/o GMT, Vijaywada-520010..Respondents

Counsel for the Applicant : Shri C.Suryanarayana

Counsel for the Respondents : Shri N.V.Raghava Reddy,
Addl. CGSC

C O R A M

Hon'ble Shri A.B.Gorthi : Member (A).

J u d g e m e n t

The Applicant, who is presently a Member of the Andhra Pradesh Legislative Assembly, was working as a Telephone Supervisor, Operative (T.S.O. for short) under the Divisional Engineer, Telecom. (D.E.T. for short) Machilipatnam during 1988. On 10.3.88, one Shri Devineni Murali was murdered. The Applicant was arrested on 18.5.88 as one of the accused involved in the murder. He was deemed to have been suspended from the date of his arrest by the order of the D.E.T. Machilipatnam. While so, the Applicant sought voluntary retirement w.e.f. 1.6.89 under the C.C.S.(Pension) Rules, 1972 (referred to as Pension Rules, hereinafter) vide his application dt.27.2.89.

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addressed to the Telecom. Dist. Manager (T.D.M. for short) Vijaywada, who was his "appointing authority". His request was, however, turned down by the Chief General Manager Telecom. A.P. (C.G.M.T. for short) Hyderabad vide order dt. 20.4.89 on the ground that the Applicant was facing trial for a very serious crime. Aggrieved by the same, the Applicant represented to the Secretary, Ministry of Communications, New Delhi (Respondent No.1) stating, inter alia, that he was being falsely involved in a criminal case on account of political rivalry, that his alleged involvement in the case had no bearing on his service in the Department and that the C.G.M.T. Hyderabad had no authority to reject his request for voluntary retirement. Thereupon the case was re-examined and order dt. 27.10.89 was issued by the Asst. Director General (MPT), Ministry of Communications, conveying the Government's decision to permit the Applicant to proceed on voluntary retirement subject to the condition that no terminal benefits/pension would be granted to him till the finalisation of the criminal case. Acting on the authority of the said Government's decision, the T.D.M. Vijaywada issued two separate orders, both dt. 27.10.89. Firstly, the order of suspension in respect of the Applicant was revoked "subject to the proviso that a separate order as to how the period of suspension is to be treated shall be issued by the competent authority at the appropriate time after settlement of the criminal case". Secondly, the request of the Applicant for voluntary retirement was accepted w.e.f. 27.10.89 (f/n) subject to the following conditions:-

- "1. No pension and terminal benefits will be granted until criminal case pending against Shri V.S.Chalapathi is settled.
2. The quantum of pension and terminal benefits payable if any as per (1) above will be decided in keeping with the prescribed rules, at the appropriate time."

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2. The Applicant accordingly proceeded on voluntary retirement, but represented to Respondent No.1 against the denial of retiral benefits to him. He requested that his unblemished record of service of over 27 years be kept in view and that he be granted "provisional pension" from the date of voluntary retirement i.e. 27.10.66. In response to his representation, he has come up with the present O.A., praying that the orders of the Respondents denying him terminal benefits/pension, be set aside as illegal, that the period of suspension be treated as on duty and that he be paid his full entitlement of ~~provisionary~~ pensionary benefits together with all arrears.

3. Facts in this case are not in dispute, but what has strongly been disputed by Shri C.Suryanarayana, learned counsel for the Applicant, is the competence of the C.G.M.T. Hyderabad to reject the request of the Applicant for voluntary retirement and the validity of the condition imposed in the retirement order that he would not be entitled to retiral benefits till after the finalisation of the criminal case against him. His contention is that the Applicant's request for voluntary retirement having been accepted, there can be no justification either to deny him the pensionary benefits or to refuse to treat the period of suspension prior to retirement as on duty.

4. Admittedly, the appointing authority of the Applicant was the T.D.M. Vijaywada (Respondent No.3) and not the C.G.M.T. Hyderabad (Respondent No.2). Rule 48-A of the Pension Rules, permits an employee to seek voluntary retirement. Clauses 1 and 2 of Rule 48-A which are relevant to the issue in hand are reproduced below:-

"(1) At any time after a Govt. 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.

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- (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."

(Underlined for emphasis)

5. The Applicant requested for voluntary retirement vide his representation dt. 27.2.89 addressed to the T.D.M. but the latter referred the case to the C.G.M.T., who then rejected it on 20.4.89, that is, within two months of the date of request for voluntary retirement. Learned counsel for the Applicant seriously questioned the competence of the C.G.M.T. to turn down the Applicant's request for voluntary retirement. According to him, as the request was not refused by the appointing authority, the retirement of the Applicant became effective from 1.6.89. Shri N.V. Raghava Reddy, learned counsel for the Respondents drew my attention to the guidelines contained in the Govt. of India's decisions printed below Rule 48-A in Swamy's Compilation, Twelfth Edition. These are to the effect that when a request for voluntary retirement is received by the appointing authority it may generally accept it except when prosecution in a criminal case is contemplated or launched in a court of law against the Govt. servant concerned, in which case approval of the Head of the Department (in the case of a Group 'C' servant, as the Applicant is) will be sought. The Respondent's contention is that it was in terms of the said guidelines, the case was referred to the C.G.M.T. It is, therefore, obvious that there is no irregularity in the case being referred by the T.D.M. to the C.G.M.T. or in the latter's decision not to permit the Applicant to retire voluntarily. The order of the C.G.M.T. (which is at Annexure A-3) shows that it was routed ~~xxxxxx~~ to the Applicant "through the T.D.M. Vijaywada".

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The fact that the T.D.M. Vijaywada referred the case to the C.G.M.T. Hyderabad, coupled with the fact that he forwarded the C.G.M.T.'s order to the Applicant, would sufficiently show that the appointing authority (T.D.M. Vijaywada) cannot be said to have "not refused to grant permission". This would be so despite the fact that the T.D.M. himself did not make a separate order under his signature or authority.

6. The term "appointing authority" as used in Rule 48-A of the Pension Rules, has its own connotation, as given in the Explanation to the said rule, which is as under:-

"Explanation:- For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Govt. servant seeks voluntary retirement."

7. The above Explanation signifies that the "appointing authority" for the purpose of Rule 48-A includes both de facto and de jure appointing authorities. Thus, an authority superior to the de facto appointing authority shall also be an appointing authority for the purpose of Rule 48-A provided he too is competent to make appointment to the post which the employee held. Although it is an admitted fact that T.D.M. Vijaywada was the appointing authority of the Applicant, there is nothing on record to show that the next superior authority viz: the C.G.M.T. was not competent to make appointment to the post of Telephone Supervisor, Operative.

8. For the reasons aforesaid, it cannot be held that the Applicant's retirement became automatically effective after the period of notice, that is, w.e.f. 1.6.89. The main purpose of the argument advanced by the Applicant's counsel is to show that if the date of retirement of the Applicant was shown as on 1.6.89, he would be entitled to full pensionary benefits as on that date neither any departmental nor judicial

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proceedings were instituted against the Applicant. The retirement of the Applicant, as already observed, cannot be said to be effective from 1.6.89. It became effective, factually and even otherwise, only from 27.10.89.

9. Learned counsel for the Applicant referred to the judgement in Ramchandra Keshav Adke (Dead) by Lrs. Vs. Govind Joti Chavare & Ors., AIR 1975 SC 915, wherein it was re-affirmed that "where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all, and that other methods of performance are necessarily forbidden". In the case before me, the competent authority instead of taking a decision on the request of the Applicant, referred it to the Head of the Department. This was done in compliance with the relevant instructions. Further on receipt of the order of the Head of the Department (C.G.M.T.) he communicated it to the Applicant. In these circumstances, the present case is easily distinguishable.

10. Another case relied upon by Shri C.Suryanarayana is that of P.N.M.Elayadam Vs. Union of India & Ors., (1994) 26 ATC 442. In that case, the appointing authority, to whom the request for retirement was addressed, gave no decision within the period of notice stipulated in Rule 48-A(2) of the Pension Rules. It can have no relevance to the Applicant's case where, within the period of notice, he was duly informed that his request was not accepted.

11. It was urged on behalf of the Applicant that, once the Applicant's request for retirement was accepted and he was allowed to retire, there no longer exists the relationship of master and servant between the Government and the Applicant and hence the former can exercise

no control over the pensionary entitlements of the latter. Reliance was placed on A.N.Gupta Vs. State Bank of India, 1975(2) SLR397, wherein it was held that on the retirement of the employee, the relationship of master and servant ceases. There can be no doubt about the said proposition. However, right to pension, which is a statutory pension, does not depend upon the ~~continuance~~ of the master and servant relationship. That is why, even on the death of the servant, the family can claim (family) pension because the statute provides for it. For the same reason, where the statute provides that the pension of a retired employee can be withheld under certain circumstances, it can be so withheld notwithstanding the termination of the master and servant nexus.

12. On the question of denial of pensionary benefits to the Applicant, Shri C.Suryanarayana, learned counsel for the Applicant elaborately contended that pension is no longer a bounty which could be withheld at the will of the authorities concerned. In support of his contention, he referred to the undermentioned cases:-

- (1) State of Punjab Vs. K.R.Erry & Sobhag Rai Mehta, 1972 SLR 837.
- (2) State of Punjab & Another Vs. Iqbal Singh, 1976(1) SLR 525.
- (3) Shri Goverdhan Dass Vs. The State of Himachal Pradesh & Ors. 1985(3) SLR 115.
- (4) D.V.Kapoor Vs. Union of India & Ors. 1990(14) ATC 906.

13. There is no need to enter into an elaborate discussion of the salient features of the judgements in the afore-stated cases. They all reiterate the principle that pension is no longer a bounty, that the employee's right to pension is a statutory right and that deprivation of such right must be in accordance with law and in conformity with the principles of natural justice.

14. The Respondents' contention is that the Applicant agreed to proceed on voluntary retirement on the condition that he would not be granted terminal pensionary benefits. This has not only been stoutly denied by the Applicant, but there is also nothing on record to indicate that the Applicant had, at any time, agreed to forego his pensionary benefits. As already noted, the various pronouncements of the Hon'ble Supreme Court clearly indicate that an employee's right to pension being statutory right, it can be denied only in such circumstances as specified by the statute and in conformity with the principles of natural justice.

15. Rule 9(4) read with Rule 69 of the Pension Rules, enables the competent authority to sanction provisional pension equal to the maximum pension, which would have been admissible on the basis of qualifying service upto the date of retirement of the Govt. servant where departmental/judicial proceedings have been instituted against such Govt. servant. There is, however, no provision, statutory or otherwise, which empowers the competent authority to withhold all the pensionary benefits of a Govt. servant in a case where judicial proceedings are pending against him. Shri N.V.Raghava Reddy, learned counsel for the Respondents has referred to a communication dt. 17.5.94 from the Addl. Director-General of Police, CID, AP, Hyderabad to the Asst. General Manager(Admn), Telecommunications, Andhra Pradesh, Hyderabad to the effect that on completion of investigation a charge-sheet was filed against the accused (Applicant) on 10.7.88 and 18.7.88 vide PRC No.2/90 and 3/90 in the Court of VII A.M.M., Guntur. It is evident that judicial proceedings against the Applicant have been commenced and accordingly he would be entitled only to provisional pension under Rule 69 of the Pension Rules and not to all the retiral/pensionary benefits.

16. For the aforestated reasons, I am of the considered opinion that while the Applicant's contention that he is entitled to all the pensionary benefits cannot be accepted as valid, the decision of the Respondents to deny pension

to the Applicant till the finalisation of the criminal case against him cannot also be upheld as the same is clearly contrary to what is laid down in Rule 9(4) and Rule 69 of the Pension Rules. Consequently, the O.A. is allowed to the extent that the Respondents are hereby directed to authorise grant of provisional pension, in terms of Rule 69 of the Pension Rules, to the Applicant. This shall be done within three months from the date of communication of this order. Needless for me to clarify that the Applicant's entitlement to provisional pension would be w.e.f. 27.10.89, the date from which his retirement became effective. Arrears accruing on this count shall be paid to the Applicant within six months with interest at the rate of 10% p.a.

17. As regards the claim of the Applicant for treating the period of his suspension as 'on duty', the same has to be rejected because the decision of the competent authority (Respondent No.2) to the effect that "a separate order shall be issued by the competent authority at the appropriate time after the settlement of the criminal case" is in tune with the extant instructions.

18. No order as to costs.


A.B. Gorthi
Member (A)

Dated: 12 Sept., 1994.


Dy. Registrar (Ud1)

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Copy to:-

1. The Secretary, Ministry of Communications, (Dept. of Telecom) Union of India, Sanchar Bhawan, New Delhi-110 001.
2. The Chief General Manager, Telecommunications, A.P. Hyd-500 001.
3. The Telecom, Dist. Manager, Office of GMT, Vijayawada-520 010.
4. One copy to Mr. C. Suryanarayana, Advocate, CAT, Hyd.
5. One copy to Mr. N.V. Raghava Reddy, Addl. CGSC, CAT, Hyd.
6. One copy to Library, CAT, Hyd.
7. One spare.
8. Copy to all Bench & Reporters as per Standard list of CAT, Hyd.
9. One copy to Dy. Registrar (Ud1), CAT, Hyd.

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE-CHAIRMAN

AND

THE HON'BLE MR. K. RANGARATH M (JUDGE)

DATE: 12-9-94

ORDER/JUDGMENT.

M.A.No./R.A/C.A.No.

O.A.No. 409/93

(T.A.No.)

(W.P.No.)

Admitted and Interim directions
Issued.

Allowed.

OA partly allowed

Disposed of with directions.

Dismissed

Dismissed as withdrawn

Dismissed for Default.

Ordered/Rejected

No order as to costs.

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