

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

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Date of Decision: 16/11/2001

OA 90/96

Sudesh Pal, Fitter O/o Telecommunication Wing, Customs & Central Excise, Statue Circle, Jaipur.

... Applicant

Versus

1. Union of India through Secretary, Ministry of Finance, Govt. of India, New Delhi.
2. Commissioner, Central Excise & Customs, New Central Revenue Building, Statue Circle, Jaipur.

... Respondents

CORAM:

HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

For the Applicant ... Mr.P.P.Mathur, proxy counsel for Mr.R.N.Mathur

For the Respondents ... Mr.Hemant Gupta, proxy counsel for Mr.M.Rafiq

O R D E R

PER HON'BLE MR.A.P.NAGRATH, ADMINISTRATIVE MEMBER

Applicant has filed this OA u/s 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs :-

"i) That the respondents may be directed to accept the request of the applicant for voluntary retirement; and

ii) That the respondents may be directed to consider period of leave which is credited in favour of the applicant as period of notice. Even after exhausting the period of notice leave remain in favour of the applicant, the respondents may be directed to make payment of the leave due to the applicant; and

iii) That the respondent No.2 and any authority

subordinate to it may be directed to grant sanction of leave to the applicant which is due;

iv) That the respondents may be directed to grant leave for period between 1.4.95 to 30.9.95."

2. Applicant's case is that he joined as Fitter in the department of Customs & Central Excise on 23.7.75. He applied for leave from 1.12.94 to 30.3.95. This leave was sanctioned and the sanction letter also indicated that he had 116 days of EL and 160 leave on half pay due to his credit. It has been stated that he has further leave to his credit after issuance of that letter dated 24.11.94. He submitted an application for grant of further leave on medical grounds. The respondent department asked him to submit a medical certificate in support of his leave. It has been stated that since the applicant did not keep good health, he submitted an application seeking voluntary retirement by his application dated 8.9.95. The respondents did not accept his request for voluntary retirement and have been repeatedly asking the applicant to join duty. It has been submitted that applicant is not in a position to join duty and he is not willing to do so and that he has right to seek voluntary retirement. The respondents are not issuing acceptance of the voluntary retirement for no valid reasons. He had sought voluntary retirement under Rule 48-A of CCS (Pension) Rules, 1965 and had sought waiver of the period of notice under the provisions of Rule 48-A(3-A)(b) of the CCS (Pension) Rules, 1965. The respondent cannot withhold sanction of his leave and acceptance of his request for voluntary retirement. Therefore, he has sought a relief through this OA, as above.

3. In the reply filed by the respondents it has been admitted that applicant's EL for 120 days from 1.12.94 to 31.3.95 was sanctioned and he further applied for leave of 89 days w.e.f. 3.4.95 to 30.6.95 and proceeded without sanction of leave. He was informed vide letter dated 17/18.4.95 that the leave for the period from 3.4.95 to 30.6.95 has not been sanctioned and he must join duties immediately. The applicant joined the duties on 3.7.95 and produced a revised leave application for 28 days EL w.e.f. 3.4.95 to 30.4.95 and commutation<sup>of</sup> leave of 61 days w.e.f. 1.5.95 to 30.6.95. Since the leave had not been recommended by the controlling officer and the medical certificate was issued by a local registered Clinic, the leave applied for was not sanctioned. In regard to the above, period of absence from duty is now the subject matter of disciplinary proceedings initiated against the applicant vide Office Memo

dated 4.7.96. Applicant's notice for voluntary retirement was not accepted as he has not completed 20 years qualifying service and he was informed accordingly through a letter dated 1.8.95. The applicant again joined his duty on 4.9.95 and on 12.9.95 again produced an application for 46 days EL w.e.f. 12.9.95 to 27.10.95 on the ground that he was seeking voluntary retirement. This leave was not sanctioned as the same had not been recommended by the controlling officer. The applicant joined the duties only on 30.6.95 after expiry of the period of which he wanted leave and which was not sanctioned. He applied for 8 days casual leave w.e.f. 1.4.95 with permission to leave headquarters on the ground of urgent work. He must join duty on 14.11.95 but did not join thereafter in spite of repeated messages sent to him through various communications including telegraphic messages. The applicant replied on 1.2.96 informing that he has applied for voluntary retirement due to physical incapability and he did not want to join duty and he ~~should~~ not <sup>be</sup> bothered in future to join duty or to produce medical certificates. The applicant instead of complying with the instructions to join duty, made an allegation against the Assistant Director (Communication) that he was demanding Rs.5000/- for settling his leave case. A charge-sheet was issued to the applicant for making false allegation against his controlling officer and for remaining wilful absent from duty during the period from 3.4.95 to 30.6.95, 12.9.95 to 27.10.95 and 14.11.95 onwards. In view of such facts and circumstances, the disciplinary proceedings against the applicant initiated already, the request of the applicant for voluntary retirement was stated to be rightly rejected specially keeping in view the provisions of Rule 48-A of the Pension Rules. It has been stated further that leave cannot be claimed as a matter of right and the discretion to refuse or revoke leave is reserved with the authority empowered to grant it. The staff cannot be permitted to avail leave at the cost of requirement of public service. The applicant has failed to comply with the instructions under Rule 48-A of the CCS (Pension) Rules, where it has been clearly provided that before a Government servant gives notice of voluntary retirement with reference to the appropriate authority that he has in fact completed 20 years of service qualifying for pension. The applicant did not make any reference to this effect before writing letter for voluntary retirement. His request for voluntary retirement has been rightly rejected on the ground that he has not completed 20 years of qualifying service. Further, since the disciplinary proceedings against the applicant have already <sup>been</sup> initiated, the question of granting him voluntary retirement does not arise.

4. In the rejoinder to the reply the applicant has stated that he is seeking voluntary retirement on account of personal and family reasons. The disciplinary inquiry has not been initiated against him so far. The period between 6.7.95 to 31.8.95 has been sanctioned as leave by the Additional Commissioner, Customs, Jaipur. Now only a short period of leave remains to be sanctioned. He claims to have a right to proceed on voluntary retirement, which cannot be denied in certain circumstances.

5. Heard the learned counsel for the parties. During the oral arguments the learned counsel for the applicant only reiterated what has been mentioned in the written submissions of the parties.

6. In the facts and circumstances of this case, it is necessary to see the provisions of Rule 48-A of CCS (Pension) rules, 1965, which are reproduced as under :-

"48-A Retirement on completion of 20 years' 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 Co-operation (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."

The respondents have stated that the applicant did not check up with them whether he has completed 20 years qualifying service, and that was a failure on his part. In Government of India decision, as incorporated under Rule 48-A of the relevant rules in Swamy's Compilation, it has been indicated that before a Government servant gives notice of voluntary retirement with reference to Rule 48-A, he should satisfy himself by means of a reference to the appropriate administrative authority that he has, in fact, completed 20 years' of service qualifying for pension. It is clear from the reading of these instructions that it is just to ensure that the applicant seeking voluntary retirement has completed the requisite 20 years' of service. Respondents' case is that on the date of the notice the applicant had not completed 20 years' of service and that his leave had not been sanctioned which could not be included as a part of qualifying service. It is not disputed that the applicant joined service on 23.7.75 and in the leave sanctioning order dated 24.11.94 it had been indicated that he has 116 days of EL and 160 half pay leave to his credit. If there was no break in his service, the 20 years period would be completed on 22.7.95. Applicant last attended his duties, as per respondents, on 14.11.95. His period of unauthorised absence being taken up from 3.4.95 to 30.6.95, 12.9.95 to 27.10.95 and 14.11.95 onwards.

7. Reverting back to the Government of India decision on the matter, it has been stated under clause 1(v), regarding instructions to regulate voluntary retirement, and availing leave standing to credit alongwith notice period - A Government servant giving notice of voluntary retirement may also apply, before the expiry of the notice, for the leave standing to his credit which may be granted to him to run concurrently with the period of notice. In decision 5(b) included in Appendix 10 to the rules, the clarification provides that leave due and admissible may be allowed, if applied for by the government servant during the period of notice.

8. If that is the position of the rules and guidelines laid down by the Government, I have come to the conclusion that action of the respondents in not accepting the request of the applicant for voluntary retirement is totally arbitrary and not proper exercise of authority vested in the respondents. Functionaries empowered to exercise authority have to exercise that power fairly and impartially and not arbitrarily. If a person is unwilling to continue in service because of his personal reasons, there appears to be no reasonable ground to force him to continue in service if otherwise he completes the requisite qualifying service for making a request for voluntary retirement. The only ground on which voluntary retirement could be refused under the rules is if the retirement is sought at a time when departmental proceedings for removal or dismissal of the employee have been initiated or a criminal case is pending. This has not been the situation in the instant case. The disciplinary proceedings now being envisaged are for some period of unauthorised absence from duty and that too much after the applicant had given the notice for voluntary retirement. <sup>Therefore</sup> I consider the action of the respondents in refusing acceptance of the notice for voluntary retirement as arbitrary and liable to be rejected.

9. In view of the facts as above, this OA is allowed. The respondents are directed to consider the request of the applicant for voluntary retirement for acceptance after taking into account all the leave due at his credit. The applicant is entitled to all consequential benefits. No order as to costs.

*Chrys*  
(A.P.NAGRATH)  
MEMBER (A)