

V

CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./XXX. No. 92 of 1998

DATE OF DECISION 16.11.2000

Shri Narendra Nath Talukdar

PETITIONER(S)

Mr J.L. Sarkar, Mr M. Chanda and

Mrs. N.D. Goswami

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

The Union of India and others

RESPONDENT(S)

Mr B.S. Basumatary, Addl. C.G.S.C.

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.92 of 1998

Date of decision: This the 16th day of November 2000

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

Shri Narendra Nath Talukdar,
S.D.O.-III,
Office of the Defence Estate, Guwahati Circle,
Guwahati.Applicant

By Advocates Mr J.L. Sarkar, Mr M. Chanda and
Mrs N.D.Goswami.

- versus -

1. The Union of India, represented by the Secretary to the Government of India, Ministry of Defence, New Delhi.
2. The Director General, Defence Estate, Government of India, Ministry of Defence, New Delhi.
3. The Defence Estate Officer, Office of the Defence Estate Officer, Guwahati Circle, Guwahati.

.....Respondents

By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.

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O R D E R (ORAL)

CHOWDHURY.J. (V.C.)

This is an application under Section 19 of the Administrative Tribunals Act, 1985, seeking for a direction on the respondents to accord permission to the applicant to go on voluntary retirement. The applicant is presently holding the post of S.D.O.-III in the Office of the Defence Estate Officer, Guwahati Circle, Government of India, Ministry of Defence. He belongs to the category of Group 'C' Technical Staff of Defence Estates Organisation. In the year 1993 the applicant was transferred to Jodhpur. The transfer order was kept in abeyance because of O.A.No.52 of 1994 instituted by the applicant in the Tribunal. After disposal of

the aforesaid O.A. the respondents took steps for relieving the applicant from Guwahati. Finally, by order dated 28.4.1998 the applicant was relieved of his duties with effect from 28.4.1998 directing him to report for duty in the Office of the ADED, Jodhpur under Defence Estate Officer, Jodhpur, Rajasthan, after availing normal journey time as per rules. Situated thus, the applicant submitted notice for voluntary retirement. When his notice was not responded to the applicant moved this Tribunal by filing the present O.A. seeking for a direction on the respondents to accord the necessary sanction for his retirement. Hence this application.

2. Mr M. Chanda, learned counsel for the applicant, submitted that the applicant under compelling circumstances submitted the notice for voluntary retirement. The learned counsel submitted that the applicant's wife is an Acute Paranoid Physchotic patient who requires constant care and attention. The applicant, if he is to go to Jodhpur, it would seriously affect the health and mind of his wife and under these circumstances the applicant submitted the application for voluntary retirement on 28.4.1998 and to treat the retirement notice period of 3 months with effect from 24.4.1998. The respondents, instead of considering the application of the applicant in the right direction, procrastinated the matter without any good reason.

3. The respondents have submitted the written statement and stated that the application for voluntary retirement of the applicant was duly considered by the appointing authority and the appointing authority was not inclined to accept the same due to pendency of the appeal preferred by the applicant in the Hon'ble Gauhati High Court against the judgment and order dated 12.7.1996 passed by the Special Judge. According to the respondents since the applicant was already convicted and sentenced under Section 7 of the Prevention of Corruption Act and the appeal against the order of conviction was pending before the High Court, the respondent authority was not inclined to accept the application for voluntary retirement and accordingly the same was turned down. Mr Chanda, after referring to the written statement, submitted that in view of the proviso to Sub Rule (2) of Rule 48-A of Swamy's

Pension Compilation the applicant is deemed to have been retired on and from 23.7.1998. The learned counsel pointed out that in the notice dated 24.4.1998 the applicant specified that the three months period was to be counted with effect from 24.4.1998 as per the Pension Rules.

Even as per the subsequent reminder dated 24.4.1998 the period of notice had expired on 23.7.1998 and since within the aforesaid period the respondents did not refuse to grant the acceptance of the notice for voluntary retirement, the retirement was to become effective from the date of expiry of the three months period, namely, 23.7.1998.

4. Mr B.S. Basumatary, learned Addl. C.G.S.C., appearing for the respondents, on the other hand, submitted that the aforesaid application of the applicant was duly considered within the prescribed period by the Director, Defence Estates, Eastern Command on 20.7.1998. In support of his contention the learned Addl. C.G.S.C. produced the connected records. Referring to a note in the records, Mr Basumatary submitted that since the Director, Defence Estate, Eastern Command, who was the competent authority, refused to accept the notice within the period specified, therefore, question of giving effect to the proviso of Sub Rule (2) of Rule 48-A did not arise. Mr Chanda next submitted that under the Rules it is the Head of the Department who is to consider such application. The Director of Defence Estates, Eastern Command is not the Head of the Department.

5. Under the CCS Pension Rules such application for voluntary retirement is to be considered only by the appointing authority. The appointing authority is the person empowered to make appointments to the Service of which the Government servant is for the time being a member or to the grade of the Service in which the Government servant is for the time being included, or the authority empowered to make appointments to the post which the Government servant for the time being holds, or the authority which appointed the Government servant to such Service, grade or post, as the case may be. Under CCS(CCA) Rules, 1965, the Head of the Department for the purpose of exercising the powers as appointing, disciplinary, appellate or reviewing authority,

means the authority declared to be the Head of the Department under the Fundamental and Supplementary Rules or the Civil Service Regulations, as the case may be. The Pension Rules itself mentions about the appointing authority and the Director, Defence Estates, Eastern Command, passed the said order. The applicant being a Group 'C' employee, the Director, Defence Estate, Eastern Command is also a person who is authorised to consider the application for voluntary retirement as the appointing authority. The contention of Mr Chanda that such order ought to have been passed by the Director General, Defence Estate, Government of India, in the circumstances, cannot be accepted. The reason given by the respondent authority refusing to accord permission for voluntary retirement also cannot be said to be unlawful or arbitrary. In the circumstances the application cannot be accepted and the same is accordingly dismissed.

6. Mr. Chanda again submitted that in the circumstances the respondents may be directed for reconsidering the case of the applicant for transfer which is seriously opposed by Mr Basumatary. Considering the facts and circumstances of the case, I am not inclined to pass any direction to the authority for reconsidering the case. However, as a Government servant it will always be open for the applicant to approach the authority with such prayer even after joining the new assignment and in such case the authority would have to sympathetically consider such prayer in the given facts and circumstances of the case. The interim order dated 15.5.1998 stands vacated.

7. The application is accordingly dismissed. There shall, however, be no order as to costs.

(D. N. CHOWDHURY)
VICE-CHAIRMAN