

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT CAMP : GWALIOR

O.A.No.391 of 2002

Hon'ble Shri J.K.Kaushik, Judicial Member

for consideration pl.

*(Signature)*  
25/4/03

(R.K.Upadhyaya)  
Administrative Member

25.4.2003

*I agree*

*(Signature)*  
25/4

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH  
CIRCUIT SITTING : GWALIOR

Original Application No.391 of 2002

Gwalior, this the 25th day of April, 2003.

Hon'ble Mr.R.K.Upadhyaya - Member (Admnv.)  
Hon'ble Mr.J.K.Kaushik - Member (Judicial)

Abdul Rahim Khan S/o Late Shri A.G.Khan,  
Aged 43 yrs, Occupation : Unemployed,  
R/o Kampoo Road, Awadpura, Lashkar, Gwalior - Applicant  
(By Advocate - Shri Pradeep Shrivastava)

Versus

1. Union of India through the Comptroller and Auditor General of India, La Bahadur Shah Zafar Marg, New Delhi.
2. Principal Accountant General of M.P., Jhansi Road, Gwalior.
3. Dy.Accountant General (Admn), Account and Entitlement (i) A.G.M.P., New Building, Jhansi Road, Lashkar, Gwalior - Respondents

O R D E R

By R.K.Upadhyaya, Member (Admnv.)-

The applicant has claimed the following relief-

"In the aforesaid circumstances, the applicant prays that after condoning delay, and summoning the original record pertaining to his disciplinary proceedings and retirement the matter may be heard on merits and decided infavour of applicant and against the respondents with a direction to take him back in service with all service benefits which he could have accrued during his tenure beginning from 5.10.1998 till today".

2. The applicant who was working as Senior Accountant gave a notice for voluntary retirement on 30.6.1998 (Annexure-A-6) as he had already completed 20 years of service. In his notice, he expressed his desire that he be permitted to retire with effect from 30.9.1998. Pursuant to the notice of the applicant, the competent authority accepted his voluntary retirement with effect from 30.9.1998 as per order passed on 10.8.1998 (Annexure-A-7). It is claimed by the applicant that he made an application

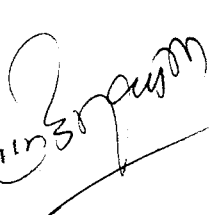
*(Signature)*

on 9.3.2000 (Annexure-A-10) to the Comptroller and Auditor General of India seeking reinstatement in the service. It is claimed by the learned counsel of the applicant that no decision on the appeal dated 9.3.2000 (Annexure-A-10) filed by the applicant has been communicated to the applicant by the C&AG. Therefore, this O.A. has been filed.

3. In support of his claim that this application be treated as having been filed within period of limitation, an affidavit of one Shri Shafi Ahmad, Advocate has been filed which states that the applicant approached him in January, 2001 stating that he has been retired against his wishes. This affidavit further states that he had advised the applicant to wait for the orders of the CAG before filing any Original Application in this Tribunal. However, on 10.4.2002 the applicant approached him and took away the file stating that he wanted to consult another lawyer. The applicant claims that the delay in filing this Original Application has been on account of wrong advice of the counsel. Therefore, this Tribunal should condone the delay and admit the Original Application for decision on merits.

4. We have heard the applicant as well as his counsel and have also perused the material available on record.


5. The cause of action arose in this case when the applicant's voluntarily retirement was accepted vide order dated 10.8.1998 (Annexure-A-7). Therefore, the applicant should have filed this O.A. within one year i.e. before 10.8.1999. This OA has been filed only on 11.4.2002 i.e. beyond the period of limitation. The claim of the applicant that a representation dated 9.3.2000 was pending before the C&AG and the applicant had approached one Shri Shafi Ahmad, Advocate in January, 2001, who gave him wrong advice will also not explain the delay in filing the present Original Application inasmuch as there is no explanation regarding the period of delay between 10.8.1999 and 9.3.2000. In other words the application deserves to be dismissed as being barred by limitation.



6. So far as the claim of the applicant on merits is concerned, the same is also not tenable in law. The applicant had filed an application for voluntary retirement on 30.6.1998 with effect from 30.9.1998. Under the rules he could have withdrawn his application for voluntary retirement within the period of notice before acceptance of his voluntary retirement. In this case the applicant has done nothing up to 30.9.1998. On the other hand he has accepted the retiral dues without protest. Some story has been made out that the notice of retirement was under threat. On the face of it, the same is only an after thought inasmuch as no regular FIR has been filed by the applicant against the officer who allegedly threatened him and got the notice signed by him against the wishes of the applicant. There is also no application of the applicant to any higher authority intimating the coercive action of the officer concerned in getting the notice of voluntary retirement signed by the applicant. In the circumstances, the story made out is totally unacceptable and deserves to be rejected. In case a Government servant takes voluntary retirement and the same is accepted by the competent authority, there is no provision in the rules to recall that order of voluntary retirement. Therefore, even on merits the applicant has no case.

7. In the circumstances, for the reasons stated in the preceding paragraphs, <sup>ad</sup> this application is dismissed both on the point of limitation as well as on merits, without any order as to costs.

  
(J.K.Kaushik)  
Judicial Member

  
(R.K.Upadhyaya)  
Admnv.Member.

पृष्ठ सं. औ/न्य.....

किसी भी कारण से.....

(1).....

(2).....

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सूचना एवं जानकारी.....

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*[Handwritten signature]*  
1.5.03