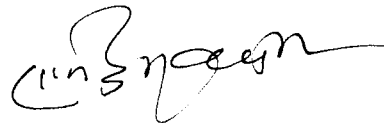


CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

O.A No. 699 / 98

Hon'ble Mr. A.K. Bhatnager, Judicial Member :-

For consideration please.



(R.K. Upadhyaya)
Administrative Member
23.5.2003

1 agree
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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 699 of 98

Jabalpur, this the 23rd day of May 2003.

Hon'ble Mr. R.K. Upadhyaya - Administrative Member
Hon'ble Mr. A.K. Bhatnagar - Judicial Member

U.K. Dixit, aged about 50 years,
son of Late Shri Chandraka pd.
Dixit, by occupation-Chargeman-
Grade-I, (Technical) Vehicle
Factory, Jabalpur. Resident of
No.2, Kirti Nagar, Ramnagar,
Adhartal, Jabalpur-482 004.

APPLICANT

(By Advocate - Shri S. Nagu)

VERSUS

1. Union of India,
Through the Secretary
Ministry of Defence, Production,
South Block, New Delhi.
2. Chairman/Director General
Ordinance Factory, Board,
10-A Auckland Road, Calcutta.
3. General Manager,
Vehicle Factory, Jabalpur.

RESPONDENTS

(By Advocate - Shri S.A.Dharmadhikari)

O R D E R

By R.K.Upadhyaya, Administrative Member -

The applicant has filed this Original Application
claiming the following reliefs:-

- "(i) to quash the entire proceedings of enquiry,
finding against the applicant right from the
stage of initiation of charge, issuance of the
memo dt.14.5.98 and also quash any other
consequential order passed in the said enquiry.
- (ii) to declare that the action of the respondents in
conducting enquiry under Rule 14 CCS(CCA) Rules
1965 after the retirement of the applicant is
void illegal, and arbitrary.
- (iii) to declare that the applicant stood voluntarily
retired w.e.f.18.7.93 when the statutory period
of 3 months under the Rules 48-A Pension Rules
1972 expired.
- (iv) Any other direction...."

2. It is claimed that the applicant while working as
Chargeman Grade-I (Technical) was absent from duty with
effect from 15.3.1993 being unwell. It is claimed by the
applicant that he had sent the communication informing

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about his illness to respondent no.3 under certificate of posting on 17.3.1993. A copy of the certificate of posting dated 17.3.1993 is filed as Annexure-A-1. It is also claimed by the applicant that as a measure of added precaution, he sent medical certificate and another intimation on 19.4.1993. A copy of the certificate of posting dated 19.4.1993 has been filed as Annexure-A-2. Subsequently, the applicant sent a notice of retirement on 19.4.1993 and he requested for retirement with effect from 18.7.1993 on expiry of three months' period. It is claimed by the applicant that he completed 20 years of service, therefore, he was eligible to retire under Rule 48A of CCS(Pension) Rules, 1972 on 19.4.1993. Since the applicant had already sent a notice of retirement and no rejection of the same was communicated to the applicant, he presumed himself retired after the expiry of the notice period. However, the impugned memorandum of charges dated 16.12.1994 (Annexure-A-3) was issued alleging misconduct of unauthorised absence from duty with effect from 15.3.1993. It is stated by the learned counsel of the applicant that a retired person could not be proceeded under the charge-sheet. It was under these circumstances that this Tribunal vide order dated 14.9.1998 had granted maintenance of status quo.

3. The respondents in their reply have stated that the applicant has approached this Tribunal "willfully withholding relevant facts and has tried to mislead" this Tribunal by pleading false averments. The applicant was working as Chargeman Grade-I and had remained absent with effect from 15.3.1993. He neither submitted any intimation nor any medical certificate within the prescribed time limit. Therefore, in view of his gross misconduct and on account of unauthorised absence from duty, the memorandum of charges was issued. In pursuance to the charge-sheet, an enquiry officer was appointed and before the enquiry officer, the applicant promised to produce the original certificate of postings and other relevant papers in support of his claim that he had given a

Chargeman

notice of retirement. However, the applicant never appeared before the enquiry officer, instead he approached this Tribunal and got an order of maintenance of status quo on false averments. The respondents have also stated that by an order dated 20.11.1995 the applicant was transferred to Tiruchirapally and his name was struck off from the strength of Vechile Factory, Jabalpur with effect from 22.7.1996. The learned counsel of the respondents stated that the alleged certificate of posting is not legible and it is difficult to decipher the name of the post office from where this was issued. In any case, the certificate of posting is not admissible evidence and no presumption can be raised that certain documents alleged to have been sent have been actually sent. It has no legal value. The applicant has neither produced a copy of the notice of retirement given by him nor submitted himself for the enquiry. He did not participate in the enquiry after he was asked to submit the relevant papers. It was, therefore, urged that the present O.A. should be dismissed with heavy cost.

4. We have heard the learned counsel of the parties and have carefully perused the records.

5. The learned counsel of the applicant was at pains to state the factual position as he claimed that he had not been contacted by the applicant recently. However, he argued his case on the basis of papers already filed in this Tribunal. The learned counsel stated that it has been submitted by the applicant that he had sent notice of retirement and he stood retired after the expiry of the notice period. It is rather strange that the whereabouts of the applicant are not known and the full facts are not brought before us for consideration. A copy of the alleged notice of retirement has also not been filed. We are with the respondents about the legal position of the certificate of posting which cannot be relied upon, for the purpose for which the learned counsel has advanced arguments. It nowhere shows that the applicant either submitted his leave application or intimation of his illness along with medical

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certificate. This also does not indicate that the applicant actually sent notice of retirement from service. In absence of the material and corroborative statements, we have no option but to believe the respondents, whose averments have not been contradicted by the applicant by way of rejoinder, as no rejoinder in this case has been filed. In other words, it will be presumed that there is nothing on record to suggest that the applicant gave any intimation about the leave along with medical certificate or any notice of voluntary retirement. However, this observation will not preclude the either side from proceeding in the matter in accordance with the rules. It is noticed that the applicant had appeared before the enquiry officer on 4.7.1996. The following questions and answers before the enquiry officer may be noticed:-

"Q.No.25 Please tell me why you are remaining absent since 15-3-93.

Ans. Because of my sickness.

Q.No.26 Are you still sick.

Ans. No

Q.No.27 Since when you are fit.

Ans. Since Jan'1996 I am fit.

Q.No.28 Once you are fit why you are not joining duty.

Ans. I have already submitted my request for Vol.retirement earlier and on 28.12.1994. In this connection I have not received any information from GM/VFJ.

Q.No.31 You are remaining absent continuously from 15.3.1993 why you had not given any application or submitted medical certificate as per rules to the Fy.

Ans. I have submitted application along with Medical certificate on 17.3.93 and further on 19.4.93. Also another application dt.28.12.94 was also sent. The despatch particulars will be submitted for your perusal. Copies of documents will be submitted.

Q.No.35 Do you want to say anything else reg. this case.

Ans. I will submit my detail answer within a week with documentary evidence in writing".

The applicant was informed by the enquiry officer on 4.7.1996 that the next sitting of the enquiry was to be held on 25.7.1996 at 10.00 a.m. However, from the details available in the enquiry file it is noticed that no detailed reply with documentary evidence was submitted by the applicant as promised by him. The applicant was also not present on

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25.7.1996 before the enquiry officer.

5.1 It appears that the enquiry officer had submitted his report which was also sent to the applicant as can be seen from the letter dated 14.5.1998 (Annexure-A-7), a copy of which was addressed to the applicant. It is also informed by the learned counsel of the respondents that in view of the order of status quo granted by this Tribunal on 14.9.1998, no final order pursuant to the issue of charge-sheet was issued by the respondents.

6. In view of the facts as stated earlier, we are of the view that there is nothing on record to suggest that the applicant actually sent any notice of retirement. Therefore, the contention of the learned counsel of the applicant that a retired person cannot be proceeded by issue of charge-sheet is not acceptable to us. The respondents are given liberty to proceed in the case of the applicant in accordance with law and the order of maintenance of status quo is hereby vacated.

7. In the result, the Original Application is dismissed, however, without any order as to costs.

(A.K.Bhatnagar)
Judicial Member

(R.K.Upadhyaya)
Administrative Member

rkv.

पृष्ठंकन सं ओ/न्या.....जबलपुर, दि.....

पत्तिलिपि अद्योतित:-

- (1) सचिव, उच्च न्यायालय दारुण विभाग, जबलपुर
- (2) आवेदक श्री/श्रीमती/कु.....के काउंसल S. Nagu Adh.
- (3) प्रत्यर्पी श्री/श्रीमती/कु.....के काउंसल S. M. Bharmachari Adh.
- (4) बांधपाल, के.प्र.अ., जबलपुर व्यापक सचिवालय एवं आवश्यक कार्यवाही हेतु

सूचना एवं आवश्यक कार्यवाही हेतु

उप सचिव
28/5/03

Beall
28/5/03