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02.12.2009

OA No. 424/2005

Mr. Rajendra Vaish, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.


(B.L. KHATRI)
MEMBER(A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 02nd day of December, 2009

ORIGINAL APPLICATION NO. 424/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Dr. Lalit Kishore son of Late Shri Chaman Lal, aged about 58 years, previously Assistant Commissioner, Kendriya Vidyalaya Sangathan, resident of 68, Jai Jawan Colony, JLN Marg, Jaipur.

.....APPLICANT

(By Advocate: Mr. Rajendra Vaish)

VERSUS

Kendriya Vidyalaya Sangathan through the Commissiner, 18 Institutional Area, Shaheed Jeet Singh Marg, New Delhi.

.....RESPONDENTS

(By Advocate: Mr. V.S. Gurjar)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) By an appropriate order or direction the impugned order dated 20.4.2001 Annexure A/1 may kindly be declared as illegal and be quashed and set aside and the respondent no. 2 may be directed to pass appropriate order of voluntary retirement of the applicant in view of their approval vide memo dated 26.3.2001 Annexure A/25 and voluntary retirement of the applicant may be given effect with subsequent pension and pensionary benefits.
- (ii) By an appropriate order or direction the respondent may be directed to comply to the provisions of CCS Pension Rules, 1972 and order for PPO and GPO in favour of the applicant and release pension to the applicant by counting his pas service for the purpose of pension as mentioned in Para 4.6 and further in view of Rule 26(2) of CCS Pension Rules, 1972, read with Rule 30 of Rules, 1972.
- (iii) That any other beneficial orders or directions which this Hon'ble Tribunal deems just and proper in the facts and circumstances of the case be kindly passed in favour of the applicant.

(iv) Costs be quantified in favour of the applicant."

2. Briefly stated, facts of the case so far as relevant for the purpose of deciding this case are that the applicant while working as Assistant Commissioner in KVS was under transfer. The applicant instead of joining the duty at the place where he was transferred abandoned the service and subsequently a show cause notice dated 16.11.2000 (Annexure A/21) was issued to him. The applicant made a representation dated 23.11.2000 (Annexure A/22) against the show cause notice. While considering the representation of the applicant, an opportunity was given to the applicant by the Vice Chairman for personal hearing on 28.02.2001. It is also an admitted case between the parties that vide order dated 26.03.2001 (Annexure A/25), opportunity was given to the applicant to seek voluntary retirement on attaining the age of 55 years i.e. on 26.04.2001 under FR 56 (k) (1). Pursuant to the said opportunity afforded by the applicant to seek voluntary retirement and to communicate consent, the applicant vide letter dated 02.04.2001 (Annexure A/26) conveyed his consent for voluntary retirement. However, in the said letter, the applicant has also requested that he may also be granted pensionary benefits under CCS (Pension) Rules, 1972 and also his past service in the State of Haryana w.e.f. 01.09.1975 to 04.06.1983 be taken into consideration for pensionary benefits.

3. The respondents instead of acting upon the consent so given by the applicant issued an impugned order dated 20.04.2001 (Annexure A/1) whereby the applicant was deemed to have been removed from the service of KVS with immediate effect in view of the provisions contained in Article

81(d) of the Education Code for Kendriya Vidyalayas. It is on these facts; the applicant has filed this OA thereby praying for the following reliefs.

4. Notice of this application was given to the respondents. The respondents have filed their reply thereby controverting the allegations made by the applicant in the OA. The respondents have justified their action on the ground that the applicant was holding an important post of Assistant commissioner, as such it was not proper to him to abandoned the job and remained absent from duty without joining where he was transferred.

5. We have heard the learned counsel for the parties at length. We are of the view that it will be in the interest of justice if the order of removal of the applicant from service vide impugned order dated 20.04.2001 (Annexure A/1) is treated as voluntary retirement under Rule 56 (k) (1) of FR 56. This we are saying because at one time the competent authority has taken the decision vide Memorandum dated 26.03.2001 (Annexure A/25) to permit the applicant to seek voluntary retirement under rule FR 56 (k) (1). The fact remains that the applicant has also consented to his retirement but at the same time, he has also made additional prayer for grant of pensionary benefits and to count to his past service in the State of Haryana. Though this consent order dated 02.04.2001 (Annexure A/26) may not be happy worded, the fact remains that the intention of the applicant was to proceed on voluntary retirement and he was not interested in serving the respondents' department. Thus keeping in view the totality of the circumstances of the case, we are of the view that the order dated 20.04.2001 (Annexure A/1) whereby the applicant has been

removed from service of KVS is required to be modified/superseded to the extant that the order of removal from service from KVS shall be treated as voluntary retirement of the applicant under FR 56 (k) (1). Order accordingly. We wish to make it clear that we have not given any finding on the point whether the applicant is governed by the PF Rules as contended by the respondents or the applicant is governed by the Pension Rules, 1972. That matter can be examined by the parties independently. For that purpose, if need be, the applicant may raise grievance through a representation before the appropriate authority. If such representation is made by the applicant within a period of 15 days, the respondents shall dispose of the same in accordance with law within a period of three months. Needless to add, in case the applicant will still ^{be} aggrieved by the order to be passed by the respondents on his representation, it will be permissible to him to challenge the same by filing substantive OA and disposal of this OA will not be construed as res-judicata.

6. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

AHQ