

**Central Administrative Tribunal
Principal Bench**

OA No.113/2017

**Order reserved on :04.10.2017
Order pronounced on :09.10.2017**

Hon'ble Ms. Nita Chowdhury, Member (A)

Anurag Shukla
Aged about 48 years,
I.D. No.02870-M Group-A,
SFO (GD) J-4/33-B,
DDA Flats, Kalkaji,
New Delhi-110091.Applicant

(By Advocate: Shri D.K. Thakur)

Versus

1. Union of India

Through Secretary (R),
Cabinet Secretary,
B1-B2 Wing, 10th Floor,
Pt. Deendayal Upadhyaya Antyodaya Bhawan,
CGO Complex,
Lodhi Road,
New Delhi-110003.

2. Under Secretary (Pers.) VI

B1-B2 Wing, 10th Floor,
Pt. Deendayal Upadhyaya Antyodaya Bhawan,
CGO Complex,
Lodhi Road,
New Delhi-110003.

3. Deputy Commissioner (Admn.),

North Zone, Jammu. ...Respondents
(By Advocate: Shri Hanu Bhaskar)

ORDER

This Original Application has been filed by the applicants claiming the following reliefs:-

“(1) The applicant may be given VRS so that he can meet his personal liabilities/obligations towards his mother and only son.

(2) The salary of applicant may be disbursed immediately to save his life with his family members.

(3) May pass any other order/order which this Hon’ble Court may deem fit and proper”.

2. Facts, in brief, are that the applicant was selected through direct recruitment as Dy. Field Officer and joined the said organisation on 27.08.1992. The said post carried the all India transfer liability and as such he can be posted anywhere in India as per the requirements of the said organisation. Later on, he was promoted to the post of Field Officer w.e.f. 16.12.2005 and then as Sr. Field Officer w.e.f. 27.01.2012. However, w.e.f. 16.04.2010, he was posted abroad and was sanctioned Earned Leave w.e.f. 20.06.2013 to 05.07.2013. All of a sudden he got a message from his home that the admission of his son is in trouble so he came to India (Delhi) for admission of his son.

3. Thereafter he requested the respondents that he may be given posting in Delhi because of many other reasons. He was not paid salary from July 2013 to October, 2013. In 2013, he was transferred from Ministry of External Affairs to his parent

department. On 20.08.2014 he was transferred to Jammu but due to tension he was advised some tests and underwent Leproscopy Surgery. In January, 2015 applicant submitted an application for Voluntary Retirement (VRS) stating therein that his mother's pathetic physical condition but department did not agree to it and requested him to take back his application for VRS. He again submitted an application on 30.10.2015 for VRS as his mother is not keeping well and there is no one to look after his son. In February, 2016 applicant was threatened that his service will be terminated and recommended for Departmental Enquiry (DE). Since the DE is pending and IO has been transferred so he has requested that the DE be closed. He was not even provided CGHS card at Jammu so he was forced to spend amount from his pocket for his son and mother's treatment. His final request for VRS submitted on 01.11.2016 was rejected by the competent authority just 2 days prior to completion of three months. Hence, he has prayed that the OA be allowed and he be given VRS.

4. The respondents have filed their reply and submitted that applicant was initially appointed as Dy. Field Officer and joined the said organisation on 27.08.1992. The said post carried the All India transfer liability, so he can be posted anywhere in India as per the requirements of the said organisation. Later on, he was promoted to the post of Field Officer w.e.f. 16.12.2005 and then as Sr. Field Officer w.e.f. 27.01.2012. However, w.e.f. 16.04.2010, he

was posted abroad and was sanctioned Earned Leave w.e.f. 20.06.2013 to 05.07.2013. He overstayed his sanctioned leave despite the fact that his request for extension of leave for indefinite period was turned down by the competent authority. It was also mentioned that while he was posted abroad, he failed to discharge his official duties in a proper manner and refused to carry out the work assigned by his supervisory officers for which a Departmental Enquiry (DE) was initiated on 11.08.2014 against him under Rule 14 of the CCS (CCA) Rules, 1965 vide Memo of Charges dated 20.03.2015. He failed to appear in preliminary hearing held on 10.02.2016, 22.02.2016 and 15.03.2016 on one pretext or the other.

5. The respondents vehemently denies that applicant's office did not allow him to talk to his wife and that he was forced to join at Jammu and says this is not only gross exaggeration of fact, but a deliberate attempt to mislead the Hon'ble Court with an intent to gain sympathy. Applicant requested for voluntary retirement on 21.08.2015 and same was not acceded to. He was directed vide Memo dated 01.10.2015 to submit a fresh 3 months unconditional notice of voluntary retirement which was submitted by him on 3.8.2016. The competent authority has not accepted this request for voluntary retirement and asked him to join duties immediately. After reversion from abroad, he was posted to Jammu w.e.f. 01.09.2014 but applied for Casual Leave w.e.f. 24.08.2015 in

connection with illness of his mother but did not join back his duties despite repeated reminder from Jammu Office and Headquarters. As he has not resumed his duty, therefore, he is being treated as on unauthorised absent from duty and not paid pay and allowances. They have thus prayed that the OA be dismissed.

6. Heard the learned counsel for the parties and gone through the pleadings.

7. On the last date of hearing, i.e., 21.09.2017, the respondents were directed to give a list of date of events relating to the participation of the applicant in the DE proceedings so that it could be determined as to why these proceedings are taking so much time to conclude. The respondents have given through an affidavit dated 22.09.2017, the detailed events with regard to the enquiry and from the same it is found that they invited the applicant to participate in the enquiry on over a dozen occasions and he did not participate even once. Instead, he sent a request each time saying that due to his health related issues he would not able to participate and from the detailed information given by the respondents, it becomes amply clear that they have been trying to get the applicant to participate in the DE and give his version in the DE and the proceedings have not been concluded because the applicant has not participated or cooperated in the same. Besides this, respondents have informed that due to non-availability/unauthorised absence

of the applicant at his present place of posting in Jammu, another DE has since been started.

8. Today also, at the bar the counsel for the applicant was queried as to why he is not participating in the enquiry especially in view of the fact that the enquiry proceedings are delayed due to his non-participation. Counsel for applicant, after discussing with him said that applicant only wishes for disposal of his OA and is not willing to make any comment/commitment with regard to his participating in the on ongoing DE proceedings.

9. In view of the factual situation put forward by the respondents that the DE against the applicant started on 11.08.2014 and the memo of charges were served on 20.03.2015 and these actions predated his request for VRS, hence, in the circumstances it is not found legally tenable to accept the request of the applicant in the OA, i.e. the respondents be directed to accept his request for VRS. Accordingly, OA is without any merit and the same is dismissed. No costs.

**(Nita Chowdhury)
Member (A)**

Rakesh