

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1307/2016

Order reserved on 18th May 2017

Order pronounced on 25th May 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Dr. Rawail Singh, aged 60 years
Retd. NRT, All India Radio
s/o late Gulzar Singh
r/o G-1, 2nd Floor
Front Side, South Extension Part 2
New Delhi – 110 049

Working as
Professor & Head of Department
Department of Punjabi
University of Delhi, Delhi

(Mrs. Harvinder Oberoi, Advocate)

..Applicant

Versus

1. UOI, through
Secretary
Ministry of Information & Broadcasting
Shastri Bhavan, New Delhi
2. Director General
All India Radio, Prasar Bharati
Akashvani Bhawan
New Delhi – 110 001
3. Govt. of NCT of Delhi
Through Secretary
Deptt. of Art, Culture & Languages
Delhi Secretariat
IP Estate, New Delhi – 110 002
4. Secretary
Punjabi Academy
DDA Community Centre, Motia Khan
Paharganj, New Delhi – 110 055

..Respondents

(Mr. Suvesh Kumar, Advocate for respondent No.2 –
Nemo for other respondents)

O R D E R

The applicant has filed the present O.A. under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

“(I) To direct the respondents to grant pension and pensionary benefits to the applicant in terms of rule 48-A CCS (Pension) Rules 1972, irrespective of fact that applicant was ordered to be retired under FR 56 (k), by directing the respondents to include the period of service which was rendered by the applicant as a deputationist in Delhi Administration as a regular service for the purpose of pension and pensionary benefits and the order of respondents dated 09.05.2014 may be modified accordingly.

(II) Alternatively To direct the respondents to grant pension and pensionary benefits to the applicant in terms of Rule 48-A CCS (Pension) Rules 1972, irrespective of the fact that applicant was ordered to be retired under FR 56 (k), by implementing the formula of Rule 49 (3) of the CCS pension rules and the order of respondents dated 09.05.2014 may be modified accordingly.

(III) To direct the respondents to consider the case of the applicant for full pension and pensionary benefits and to that extent, if it is required to amend the order dated 09.05.2014 the respondents be directed to amend the same.

(IV) To direct the respondents to clarify under which provisions of law applicant is not entitled for any pension as from 09.5.2014 nothing has been paid to the applicant inspite of the facts that according to the respondents applicant rendered 19 years 10 months and 9 days of service.

(V) To direct the respondent no.2 to review the order dated 09.05.2014 considering the situation of the case thoroughly to convert the notice dated 07.05.2014 as technical resignation from the date when the resignation was tendered by the applicant and to transfer the pension liability to the present employer i.e. University of Delhi. Resultantly under the facts and circumstances of the case this Hon’ble Tribunal may be pleased to allow the OA with all consequential benefits keeping in view peculiar fact of the case as mentioned in para 4 of the OA.

(VI) Quash and set aside the decision of respondents to treat the period of deputation from 16.01.2004 to 29.01.2014 as unauthorized absence and direct the respondents to treat the

same as qualifying service for the grant of pension and pensionary benefits.”

2. Brief facts of the case are under:-

2.1 The applicant initially joined the Punjabi Academy in the Government of National Capital Territory of Delhi (GNCTD) on 06.06.1984 as a Technical Assistant. He secured his promotion to the

post of Assistant Secretary, Literature & Programme on 11.08.1994.

2.2 He applied for the post of News Reader-cum-Translator (NRT) in the News Services Division (NSD) of All India Radio (AIR), New Delhi. He was selected to the post of NRT (Punjabi) Grade III on 14.05.1996.

2.3 The Director General, AIR, Prasar Bharti, New Delhi – respondent No.2, vide Annexure A-1 Office Memorandum (OM) dated 03.09.1996, approved counting of past services of the applicant from 06.06.1984 to 13.05.1996 while he was working in the Punjabi Academy in GNCTD.

2.4 The applicant applied for the post of Secretary in Punjabi Academy, Language Department, GNCTD through proper channel and was selected to the said post on deputation basis. He joined the said post on 02.03.2000. The deputation was for a period of 3 years. It was extended by about a year. His approved deputation ended on 15.01.2004. However, he continued to work as Secretary in Punjabi Academy, Language Department, GNCTD up to 29.01.2014.

2.5 GNCTD purportedly kept on extending the period of deputation without the concurrence of the lending organization, i.e., AIR. The applicant was finally relieved by the Punjabi Academy, GNCTD on 20.01.2014. Consequently, he reported in his parent organization on 30.01.2014.

2.6 The deputation period of the applicant with Punjabi Academy from 16.01.2014 to 29.01.2014 was declared unauthorized by respondent No.2 vide Annexure A-8 order dated 12.02.2014. The said order also stated that the Director General, AIR, being the competent authority, will decide appropriate action for this unauthorized deputation of the applicant.

2.7 The applicant while working as Secretary, Punjabi Academy in the Language Department of GNCTD had applied for the post of Professor in Punjabi at Delhi University. Vide Annexure A-5 letter dated 23.12.2013, he wrote to the Additional Secretary, Department of Art, Culture & Languages, GNCTD for grant of 'No Objection Certificate' (NOC) for it. A copy of the said letter was also marked to Deputy Director (Admn.), NSD, AIR, New Delhi with identical request.

2.8 Vide Annexure A-7 letter dated 05.02.2014, the applicant informed respondent No.2 that he has been selected as Professor in the Department of Punjabi, University of Delhi vide offer of appointment letter dated 21.01.2014 and requested that he may be

relieved of his duties as NRT (Punjabi) in AIR as early as possible, so that he could join his new assignment.

2.9 The applicant repeated the said request in his Annexure A-9 letter dated 12.03.2014 addressed to respondent No.2. As there was no proper response from respondent No.2 to these two letters of the applicant, vide his notice dated 29.04.2014, the applicant applied for voluntary retirement from service (VRS) w.e.f. 05.05.2014. This notice of the applicant was processed by respondent No.2 and vide Annexure A-10 communication dated 07.05.2014, the applicant was informed that his request for VRS can be considered under F.R. 56 (k). The contents of the said letter of respondent No.2 read as under:-

“Subject: Notice dated 20.04.2014 for voluntary retirement from service given by Shri Rawail Singh, NRG, Grade-III (Punjabi), NSD, AIR.

The undersigned is directed to refer to the notice dated 29.04.2014 for voluntary retirement from service w.e.f. 05.05.2014 given by Shri Rawail Singh, NRT, Grade-III (Punjabi), NSD, AIR and state that the period of 10 years and 14 days' overstay on deputation from 16.01.2004 in respect of Shri Rawail Singh, as Secretary, Punjabi Academy, Deptt. of Art, Culture and Language, Govt. of NCT of Delhi, has been treated as unauthorized absence from duty and therefore the said period cannot be allowed to be counted for the purpose of taking VRS under Rule 48-A of CCS (pension) Rules, 1972, as he does not fulfill the requirement of 20 years qualifying service, if the period of unauthorized absence from duty w.e.f. 16.01.2004 (10 years 14 days) is deducted from his total period of service of 29 years 10 months 23 days (as on 29.04.2014 i.e. the date of his application seeking VRS).

2. The request of Shri Rawail Singh, NRT, Grade-III (Punjabi) in NSD, AIR for retiring from service, may, however, be considered by the competent authority in this Directorate under FR-56 (k), subject to the following conditions:-

- (i) His period of deputation with Punjabi Academy, Deptt. of Art, Culture & Language, Govt. of NCT of Delhi from 16.01.2004 to 29.01.2014 will be treated as unauthorized and accordingly his absence from duty as NRT, Grade-III (Punjabi) in News Services Division of All India Radio will also be treated as unauthorized absence from duty.
- (ii) The above mentioned period of unauthorized overstay on deputation shall not count for service for the purpose of pension.
- (iii) Any increment due during the period of unauthorized overstay on deputation shall be deferred with cumulative effect, till 30.01.2014 on which he rejoined his parent cadre in News Services Division of All India Radio

3. If Shri Rawail Singh is willing to be considered for retirement from service under FR-56 (k) subject to the conditions mentioned at para-2 above, he may give notice of not less than 3 months in writing to Director General, All India Radio under intimation to Director General (News), AIR, with a separate request addressed to the same authority to accept his notice of less than 3 months giving reasons therefor under FR-56 (k) (1-A)."

2.10 The applicant, vide his Annexure A-11 letter dated 07.05.2014, agreed to the suggestion of respondent No.2 and accepted to take VRS under F.R. 56 (k). Accordingly, respondent No.2, vide Annexure A-13 order dated 09.05.2014, allowed the applicant to take VRS under F.R. 56 (k). The said order reads as under:-

“Subject: Notice dated 07.05.2014 given by Shri Rawail Singh, NRT, Grade III (Punjabi), NSD, AIR, seeking retirement from service under FR-56(k).

On acceptance of the notice dated 07.05.2014 given by Shri Rawail Singh, NRT, Grade-III (Punjabi), NSD, AIR seeking retirement from service under FR-56(k) by Director General, All India Radio, Shri Rawail Singh has been allowed to retire from service with effect from 09.05.2014 (AN) by curtailing the period of his notice and relaxing the requirement of notice of three

months to the extent necessary, subject to the following conditions:-

- (i) His period of deputation with Punjabi Academy, Deptt. of Art, Culture & Language, Govt. of NCT of Delhi from 16.01.2004 to 29.01.2014 will be treated as unauthorized and accordingly his absence from duty as NRT, Grade-III (Punjabi) in News Services Division of All India Radio will also be treated as unauthorized absence from duty.
- (ii) The above mentioned period of unauthorized overstay on deputation shall not count for service for the purpose of pension.
- (iii) Any increment due during the period of unauthorized overstay on deputation shall be deferred with cumulative effect, till 30.01.2014 on which he rejoined his parent cadre in News Services Division of All India Radio.

2. The request of Sh. Rawail Singh made in writing to his appointing authority i.e. Director General, AIR to accept his notice of less than three months for allowing him to join the post of Professor of Punjabi in Delhi University for which he was selected for appointment in February, 2014 by curtailing the period of his notice and relaxing the requirement of notice of three months subject to the condition that Sh. Singh shall not apply for commutation of a part of his pension, if permissible, before the expiry of the period of notice of three months, has also been accepted by Director General, AIR.”

2.11 The applicant's grievance is that respondent No.2, vide impugned Annexure A-13 order dated 09.05.2014, has wrongly treated the period of his deputation from 16.01.2004 to 29.01.2014 with Punjabi Academy, GNCTD as unauthorized absence. His contention is that after having rendered service of 29 years 10 months and 23 days in GNCTD and AIR put together, he is entitled for grant of pension. It is stated that in terms of Rule 48-A of CCS (Pension) Rules, 1972 (for short “Pension Rules”), a Government servant becomes entitled for pension on completion of 20 years of qualifying service. It is further

contended that even if it is considered that he has been ordered to be retired under F.R.56 (k) and his deputation with the Punjabi Academy from 16.01.2004 to 29.01.2014 is treated as unauthorized absence, even then his total regular service rendered in GNCTD and AIR comes to 19 years 10 days 9 days. Applying the principles laid down under Rule 49 (3) of the Pension Rules for reckoning fraction of a year, he would still have 20 years of qualifying service and thus becomes entitled for pension.

The applicant, impugning the Annexure A-13 order dated 09.05.2014 of respondent No.2 and claiming grant of pension as per the Pension Rules, has filed this O.A. claiming the reliefs as indicated in paragraph (1) above.

3. Pursuant to the notices issued, only respondent No.2 has entered appearance and has filed its reply. Respondent Nos.1, 3 & 4 have chosen not appear despite service of notice. The main averments made by respondent No.2 in the reply are as under:-

3.1 The applicant has applied for the post of Secretary, Punjabi Academy and his application was forwarded by the respondents. He joined the said Academy on 01.03.2000 on deputation basis for a period of three years. His period of deputation ended on 28.02.2003. After the period of deputation was over, he neither reported back to his parent organization, i.e., AIR, nor was there any request for his extension from the borrowing organization. Consequently, a letter

dated 19.05.2003 was sent by respondent No.2 to GNCTD (respondent No.3) informing that applicant's deputation period had expired on 28.02.2003 and in view of acute shortage of NRTs in NSD of AIR, his services may be placed back to NSD immediately. A request letter dated 06.03.2003 was, however, received from respondent No.4 for extension of the deputation of the applicant. Acceding to the said request, the deputation was extended up to 15.01.2004 with a condition that his services were urgently required in NSD, and hence any request for further extension of his deputation would not be considered.

3.2 Even after the completion of the extended deputation period, the applicant did not report for duty. The Punjabi Academy unilaterally, without the approval of respondent No.2, i.e., the appointing authority, kept extending the applicant's deputation.

3.3 Several letters have been written by respondent No.2 to GNCTD – respondent No.3 with regard to the repatriation of the applicant. These are letters dated 19.05.2003 (Annexure R-1), 24/29.08.2005 (Annexure R-2), 13/14.09.2004 (p. 59), 02/03.06.2005 (p. 60) and 17.05.2006 (p. 61).

3.4 A letter dated 14.06.2006 (Annexure R-4) was also sent to the applicant stating that the NSD of AIR had not received any request either from the applicant or from Punjabi Academy for further extension of his deputation. The applicant was asked in this letter as to

why his period of absence from 16.01.2004 onwards be not treated as unauthorized absence, for which why action should not be taken against him.

3.4 The applicant remained unauthorizedly absent from 16.01.2004 to 29.01.2014 (10 years 14 days) and thus cannot claim regularization of this unauthorized absence by taking shelter of VRS under Rule 48-A of the Pension Rules.

3.5 The applicant had applied for the post of Professor in Delhi University without the approval of respondent No.2, i.e., competent authority, which was in violation of Services Rules. His conduct shows that he is in the habit of not following the Service Rules and doing what he thinks beneficial to him.

3.6 In reply paragraph 4.4 of the O.A., respondent No.2 has agreed that it is correct that no order was issued to the applicant to return to the parent department but several letters were sent to the borrowing department for repatriation of the applicant.

3.7 The request of the applicant for VRS has been turned down due to the fact that he had not completed 20 years of qualifying service after his period of unauthorized absence of 10 years and 14 days is deducted from his total service of 29 years.

3.8 The applicant was finally relieved by GNCTD from the post of Secretary, Punjabi Academy vide Annexure A-6 order dated 29.01.2014 and repatriated to his parent organization, i.e., AIR. He joined and reported for duty at AIR the next date, i.e., 30.01.2014.

4. The applicant has also filed the rejoinder to the reply filed on behalf of respondent No.2. Besides reiterating the points raised by him in the O.A., he has stated that he was not aware of exchange of the letters between respondent No.2 and respondent No.3 in regard to his extended period of deputation to the Punjabi Academy of GNCTD. He has further stated that his parent organization, i.e., AIR had never directed him to join his duties in NSD on completion of his approved period of deputation.

5. With the completion of pleadings, the case was taken up for hearing the arguments of the parties on 18.05.2017. Brief arguments of Mrs. Harvinder Oberoi, learned counsel for applicant and that of Mr. Suvesh Kumar, learned counsel for respondent No.2 were heard. They, by and large, reiterated the averments made in their respective pleadings.

6. I have considered the arguments of the parties and have also perused the pleadings and documents annexed thereto.

7. Admittedly, the applicant was on deputation from NSD, AIR to GNCTD initially for a period of 3 years from 02.03.2000. The

deputation was further extended up to 15.01.2004 by respondent No.2. From the copies of correspondence between respondent No.2 to respondent No.3, it is quite evident that respondent No.2 had never agreed for extension of the deputation of the applicant beyond 15.01.2004. The extension of the applicant's deputation after 15.01.2004 has been done by respondent No.4 unilaterally. Obviously, such extension did not have concurrence of the lending organization, i.e., AIR. It is not clear from the records as to whether respondent No.4 had taken concurrence of respondent No.3 either for extending the deputation of the applicant. Several letters of respondent No.2 addressed to respondent No.3, which are on record, stand testimony to the fact that respondent No.2 never agreed for the extension of the applicant's deputation beyond 15.01.2004. In this view of the matter, it is quite natural to assume that the deputation of the applicant from 16.01.2004 to 29.01.2014 (10 years 14 days) was indeed unauthorized and hence respondent No.2 is well justified in treating it as unauthorized absence.

8. The applicant applied for VRS under Rule 48-A (1) of the Pension Rules, which states that 'At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service'. The applicant gave notice of VRS on 29.04.2014, in response to which respondent No.2, vide his Annexure A-10 letter dated 07.05.2014, informed him that his request

for VRS under Rule 48-A of the Pension Rules cannot be considered as he did not fulfill the requirement of 20 years of qualifying service if the unauthorized period of absence from 16.01.2004 to 29.01.2014 is excluded. Apparently, there is some mistake in this order. As noted earlier, the GNCTD had relieved the applicant from the post of Secretary, Punjabi Academy on 29.01.2014 itself and the applicant had returned for duty at AIR the next date, i.e., 30.01.2014. Hence the period from 30.01.2014 onwards cannot be called as unauthorized absence. The suggestion made by respondent No.2 in Annexure A-10 letter dated 07.05.2014 that AIR is ready to consider retiring him under F.R. 56 (k), subject to the condition that his unauthorized deputation shall not be counted for service for the purpose of pension, was accepted by the applicant vide his Annexure A-11 letter dated 07.05.2014 addressed to respondent No.2. Accordingly, respondent No.2, being the competent authority, allowed the applicant to retire from service under F.R. 56 (k) vide Annexure A-13 order dated 09.05.2014. This order clearly indicates that his deputation from 16.01.2004 to 29.01.2014 to the Punjabi Academy will be treated as unauthorized absence from duty.

9. F.R. 56 (k) (1) primarily deals the notice period in regard to seeking of voluntary retirement. It reads as under:-

“(k) (1) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group ‘A’ or Group ‘B’ service or post, (and had entered

Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years.”

10. The said Rule stipulates 3 months of notice period. The appointing authority, however, is competent to grant relaxation in the notice period. In the instant case, it is quite clear that the applicant had continued on deputation with the Punjabi Academy from 16.01.2004 to 29.01.2014 without proper authorization of respondent No.2 and thus this period cannot be counted towards reckoning of pensionary benefits. An intimation to this effect was sent by respondent No.2 to the applicant vide Annexure A-10 letter dated 07.05.2014, to which the applicant has implicitly acceded in his Annexure A-11 letter dated 07.05.2014 agreeing to take VRS under F.R. 56 (k). Thus, the regular period of service to be counted for the purpose of pensionary benefits would be as under:-

- a) From 06.06.1984 to 13.05.1996 (11 years 11 months and 6 days) when he worked as Technical Assistant and Assistant Secretary in Punjabi Academy, GNCTD prior to joining as NRT in NSD, AIR as per AIR's OM dated 03.09.1996 (Annexure A-1).
- b) From 14.05.1996 to 29.02.2000 (3 years 9 months and 14 days) when he had worked as NRT in NSD, AIR.

- c) From 01.03.2000 to 15.01.2004 (3 years 10 months and 13 days) when he was on approved deputation to Punjabi Academy, GNCTD.
- d) From 30.01.2014 to 29.04.2014 (3 months), i.e., the period when he worked in NSD, AIR on repatriation from Punjabi Academy and till he was granted VRS.

11. The total period of regular service for the purpose of pension thus comes to 19 years 7 months and 5 days, which is a summation of (a), (b), (c) & (d) *supra*. The applicant has prayed that for reckoning his qualifying service, provisions of Rule 49 (3) of the Pension Rules should be invoked. The said Rule reads as under:-

“(3) In calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed one half-year and reckoned as qualifying service.”

12. As stated earlier, the applicant has rendered regular service of 19 years 7 months and 5 days. If Rule 49 (3) of the Pension Rules is applied, his qualifying years of service would thus become to 20 years making him entitled for the pension under Rule 48-A of the Pension Rules.

13. In the conspectus of discussions in the foregoing paragraphs, the O.A. is disposed of with a direction to respondent No.2 to grant pension to the applicant in terms of Rule 48-A of the CCS (Pension) Rules, 1972 read with Rule 49 (3) within a period of three months

from the date of receipt of a copy of this order. The arrears of pension shall be paid within a month thereafter. It is, however, made clear that the applicant shall not be entitled for any interest on the arrears of pension.

No order as to costs.

(K.N. Shrivastava)
Member (A)

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