

**Central Administrative Tribunal
Principal Bench**

OA No.3025/2017

New Delhi, this the 10th day of July, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Sh. Bibhu Dutt Mishra, Aged about 49 years
S/o Sh. Benudhar Mishra
R/o 177, New Rajdhani Enclave
Vikas Marg, Delhi-110092. ...Applicant

(By: Applicant in person)

Versus

Union of India through

1. Secretary, Ministry of Finance
Department of Revenue
North Block, New Delhi.
2. Chairperson, Central Board of Direct Taxes
Ministry of Finance
Department of Revenue
North Block, New Delhi. ...Respondents

(By Advocate: Shri Rajeev Kumar)

ORDER (ORAL)

Justice L. Narasimha Reddy :-

The applicant is an officer of 1994 batch of Indian Revenue Service. He served the department for about 20 years. He submitted an application on 06.11.2015 to the appointing authority with a request to permit him to retire on voluntary basis w.e.f. 10.02.2016. It was mentioned that he would be completing 20 years of

service on 02.01.2016. The application was kept pending and no order was passed thereon.

2. Rule 48-A(2) of CCS (Pension) Rules, is to the effect that notice of voluntary retirement given under Sub Rule 1 shall require acceptance of the appointing authority. Proviso thereto mandates that in case the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of said period. By operation of proviso to Rule 48-A(2), the application submitted by the applicant seeking voluntary retirement is deemed to have been accepted. This is fortified by Annexure A-2.

3. A doubt was expressed to the effect that the application was submitted much before the applicant completed 20 years of service that qualifies him to pension. The department itself issued a certificate dated 25.07.2017(Annexure A-2) to the effect that the applicant completed 20 years, 1 month and 10 days of service as on 10.02.2016, the effective date mentioned in the application seeking VRS.

4. The first respondent, however, issued office order No.A-144/2017 (Annexure A-1) dated 24.08.2017 stating that having regard to the clarifications issued from time to time on this matter, the view taken in Annexure A-2 needs to be revised. On that basis, respondent no.2 refused to release the pension of the applicant. It is in this context, that the present OA is filed.

5. It is pleaded that once the applicant has completed 20 years of service and the request for voluntary retirement is deemed to have been accepted by operation of proviso to Rule 48-A(2), there is absolutely no basis for withholding the pension.

6. In the counter filed on behalf of respondents, it is stated that the very submission of the application for voluntary retirement is untenable inasmuch as it was made before the applicant completed 20 years of service. It is stated that once the application itself was untenable, it does not give rise to any legal consequences and the denial of pension cannot be found fault with.

7. The applicant argued the matter in person. We heard the arguments of Shri Rajeev Kumar, learned counsel appearing on behalf of the respondents.

8. The relevant facts are borne out by record and there is no doubt about them. The applicant completed 20 years of service by 02.01.2016. The relevant service regulation enables him to seek voluntary retirement after completion of 20 years of service. The application in this behalf was made on 06.11.2015 and he sought voluntary retirement w.e.f. 10.02.2016.

9. It may be true that the application was made before the applicant completed 20 years of service. The fact, however, remains that the effective date of the proposed retirement was after completion of 20 years of service. In other words, though the application was made before completion of 20 years, the retirement was to take effect after completion of 20 years of service. There is no rule which mandates that application for VRS must be made only after completion of the qualifying service for pension.

10. The doubt in this regard was clarified by the Department of Personnel and Training at the instance of respondents; vide I.D. note No.23.12.2016. The

DoPT clarified the legal position vis-à-vis the case of the applicant as under:-

"Department of Revenue may refer to their O.M. dated A-38012/40/2015-AdVI (A) dated 12.09.2016 seeking clarification regarding Voluntary Retirement notice of Sh. Bibhu Dutt Mishra, CIT (DR), ITAT, New Delhi under Rule 48 (A) of CCS (Pension Rules), 1972.

2. Though the officer rendered VRS notice two months before the completion of qualifying service, however, his intended date of retirement was after completion of twenty years of qualifying service which is well under the rules. Hence, the Administrative Department may not hold the permission to grant him voluntary retirement and the officer may be allowed deemed retirement from Govt. service w.e.f. 10.02.2016, in terms with sub-rule (2) of Rule 48 (A) of CCS (Pension) Rules, and his pensionary benefits may be released."

11. With this, the doubt if any, in the context of the entitlement of the applicant to seek the benefit of VRS and pension, stood clarified.

12. Further, the certificate contained in Annexure A-2 was nothing but a result of calculation of the length of service. However, for the reasons best known to the second respondent, they sought to revise it through the order contained in Annexure A-1. We do not find any legal or factual basis for the same.

13. We, therefore, allow this OA and hold that the applicant is entitled to all the pensionary benefits consequent upon the coming into force of his voluntary retirement w.e.f. 10.02.2016.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/vb/