

OA.No.170/00020/2017/CAT/Bangalore Bench
CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00020/2017

DATED THIS THE 21st DAY OF DECEMBER, 2018

HON'BLE DR.K.B.SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Sri Rajendra Babu
 S/o Late Shankarappa
 Aged about 57 years
 Working as Superintendent (Stores)
 515 Army Base Workshop, Ulsoor
 Bengaluru-560 008.
 Residing at No.17A, Central Street
 Cleveland Town
 Bengaluru-560 005.

....Applicant

(By Advocate Sri M.V.V.Ramana)

Vs.

1. Union of India
 Represented by its Secretary
 Ministry of Defence
 Government of India
 Sena Bhavan
 New Delhi-110011.

2. Commandant and
 Managing Director
 515 Army Base Workshop
 Ulsoor
 Bengaluru-560 008.

...Respondents

(By Advocate Sri K.Gajendra Vasu)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The applicant has filed the present OA seeking the following relief:

- a) *To issue Writ of Mandamus directing to re-instate the applicant without any undue delay.*
- b) *Pending the disposal of the application writ of certiorari quashing the order dtd.04th July 2014 Annexure-A3.*
- c) *To issue a writ of mandamus to re-instate the applicant on the*

post of Superintendent (Stores) in 515 Army Base Workshop which he was holding till 07th July 2014 in the interest of justice and equity.

2. According to the applicant, he was appointed as Lower Division Clerk(LDC) on 13.12.1983 in Madras Engineering Group and Centre, Bengaluru. Subsequently, he was transferred to Infantry School, Mhow and was posted as Store Keeper wherein he worked till April 1991. Thereafter, he was transferred to 515 Army Base Workshop, Bengaluru and reported to duty on 02.05.1991. The work of the applicant was in receiving the manufactured spare parts from the shop floors of 515 Army Base Workshop and arranging the transport for the same to the Armed Forces as per their various requirements through Civil Hired Trucks Railways, Registered post and personnel representatives. While working so, he had given a letter seeking Voluntary Retirement(VR) on 10.06.2014(Annexure-A1). He submits that as his colleagues and superiors persuaded him not to press VR application, he wanted to continue in the service. The respondents returned the letter/request for VR by registered post on 18.06.2014(Annexure-A2) which was received by him on 24.06.2014. By thinking that his VR was rejected, the applicant went to the office regularly hoping to continue in service. However, he was stalled back stating that his VR application has been accepted on 04.07.2014(Annexure-A3). Challenging which, he filed an OA.No.888/2015 which was subsequently withdrawn by him under the misconception that the respondents had the original application of VR with them.
3. He submits that when he came to know that the respondents without having any documents on record in original to prove that he has submitted a letter seeking VR, he approached the respondents on 17.08.2016(Annexure-A4) to supply him a certified copy of the alleged VR letter. The respondents vide letter dtd.15.09.2016(Annexure-A5) replied that the original VR application

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has been returned and hence certified copy was not provided. Based on the above, the applicant approached the respondents on 24.09.2016(Annexure-A6) seeking re-instatement into service. The respondents vide letter dtd.04.10.2016(Annexure-A7) stated that the applicant has signed all the retirement documents and pension documents which have also been processed. He submits that the respondents have clearly stated that on 15.09.2016 the original application of VR was returned to the applicant. Thus the respondents could not have acted upon the application which was returned officially to the applicant and the respondents could not have acted upon an imaginary application of the applicant in the absence of the original application and they did not have any authority to act upon the so called application of VR without any documents in their custody. And the very fact that the original application of VR is returned by registered post shows that VR application has not been considered. The statement of the respondents that the retirement/pensionary benefits have been paid to the applicant is totally false as he has not received any benefits as stated. Aggrieved by the action of the respondents, he filed the present OA seeking the relief as stated above.

4. The respondents have filed their reply statement wherein they submit that the applicant was appointed as LDC at HQ, MEG & Centre, Bangalore on 13.12.1983. He was posted to HW, Infantry School, Mhow (MP) w.e.f. 16.12.1985 as Store Keeper-II on surplus adjustment. After reporting, the applicant absented himself from duty w.e.f 09-28.05.1986 wherein no reasons for absenting are found in the records. Following his absence from duty without prior permission, he submitted an application dtd.01.07.1986 requesting for Voluntary Retirement from service directly without following the proper channel/official procedure which was rejected due to ban on

employment during that period. The same was intimated to the applicant vide letter dtd.29.07.1986. Since the applicant was absenting himself from duty regularly HW, Infantry School, Mhow has issued warning letter dtd.07.10.1986. Thus it is shown that the applicant is not interested in working since his appointment. Thereafter, he was posted to 515 Army Base Workshop, Bangalore on compassionate ground on 30.04.1991. The applicant submitted another VR application dtd.15.04.2010 with a request to relieve him from service and the same was placed before the appointing authority for consideration. After the appointing authority advised him to withdraw his VR application, he had withdrawn his VR application on 01.10.2010. After which he submitted his last VR application on 10.06.2014 while on leave with a request to relieve him from duty w.e.f. 14.06.2014. After submitting his VR application, the applicant was absent himself from duty without prior intimation/permission from 14.06.2014. The application was returned to him on 18.06.2014 for a change of his mind and with an intention of joining duty immediately. The individual reported to duty on 24.06.2014 and a verbal request made before the group officer to consider his VR application dtd.10.6.2014. Accordingly, the group officer has recommended his case for VR. The appointing authority was forced to accept his resignation w.e.f. 05.07.2014 since the applicant was adamant not to continue in service. The applicant who is well aware that his VR was accepted w.e.f. 05.07.2014, has not raised any objections regarding much acceptance with his high ups for almost one year, rather he has co-operated with the department by signing his pension papers on 18.02.2015 etc., without any problems or hesitation and after receiving pension and commutation vide PPO dtd.08.06.2015, now he again approached the Tribunal by filing the OA as an afterthought with ulterior motive. The applicant had filed earlier an OA.888/2015 which was dismissed

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by this Tribunal as withdrawn.

5. The respondents further submit that if the applicant wanted to continue in service, he could have submitted an application for withdrawal of VR, which he has not done, instead of completing all the formalities including processing pension papers. The applicant was habitual in submitting application for VR. He submitted his first VR application on 01.07.1986(Annexure-R1) which was turned down by the Infantry School Mhow at Annexure-R2. He submitted second VR application on 15.04.2010(Annexure-R3). The appointment authority himself intervened and advised the applicant to withdraw his VR application and advised him to report back to duty vide letter dtd.30.04.2010(Annexure-R4). Accordingly he submitted his request dtd.01.10.2010(Annexure-R5) for withdrawal of his VR application. He again submitted his VR application dtd.10.06.2014(Annexure-R6) with a request to relieve him from duty w.e.f. 14.06.2014. The applicant absented himself from duty and rejoined on 24.06.2014 and insisted the group officer verbally considering his earlier application for VR. His application was accepted on 04.07.2014 which the applicant has challenged in OA.No.888/2015 on 15.07.2015 after a period of more than one year of acceptance of VR and also after receiving all pensionary benefits. The copy of the judgment in OA.No.888/2015 is produced at Annexure-R7. There is no original application forwarded by the Section Head of the applicant where he was employed due to shortage of time, the applicant himself requested to forward the copy of the application instead of original application of VR. The applicant clearly knows about his VR accepted on the basis of the photo copy of the original application. It clearly shows the mala fide intention of the applicant that if the respondent have original application then the acceptance of VR is acceptable by him otherwise it is not acceptable to him. Had he represented before

signing the pension documents, the case of VR could have been averted. There is no provision existing to re-instate the applicant in service once the VR application accepted and necessary casualties published and after issue of Pension Payment Order(Annexure-R8). Hence, the OA being devoid of merit is liable to be dismissed.

6. The applicant has filed rejoinder wherein he admits that he has submitted VR applications on two occasions but on 10.06.2014 a letter for VR was submitted due to the reasons mentioned separately along with the letter, which include non-providing of sufficient labour to dispatch the manufactured spares for the machinery used by the armed forces. He brought the details to the knowledge of the 2nd respondent several times and being frustrated for not providing any succour, he submitted VR along with details(Annexure-A8) enumerating the complaints and the situations faced at the hands of the 2nd respondent. Fearing about any action that may be initiated against him, the 2nd respondent informed the applicant that his application for VR is being returned to him and that no action can be initiated in the absence of any communication from the applicant since the original papers were being returned. The 2nd respondent also did not accept to take formal letter from the applicant as that would make the application given by the applicant along with all enclosures a part of the record. Once the application although withdrawn becomes a part of the record action needs to be taken on the complaints raised by the applicant which the 2nd respondent was not interested. On 30.06.2014, he had fallen sick and could not attend to work from 01.07.2014 to 05.07.2014 for which he applied for medical leave. When he reported for duty on 07.07.2014, a letter relieving him from duty was handed over to him stating that his VR application has been accepted and letter of relieving was dated 05.07.2014. The 2nd respondent to cover up the deficiencies and

preventing a detailed enquiry in to the complaint alleged by the applicant returned all the papers and acted upon on a non-existent VR application. He could have retained the VR application along with enclosures and could have acted upon it in its entirety. The letter seeking VR is not at all voluntary but is linked to the issues raised by the applicant.

7. The applicant further submits that the 2nd respondent having sanctioned medical leave changed it into earned leave since as per rule 7(2) of Fundamental Rule and supplementary regulations, a person on medical leave cannot be relieved from duty and hence amended it to earned leave without any intimation to the applicant. And conversion of medical leave into earned leave is not permissible under Rule 7(2) of the CCS(Leave) Rules, 1972 and CCS(Leave)(Amendment) Rules, 1997(Annexures-A9 & A10). The service rules also prevents that no action regarding voluntary retirement can be initiated against employee who is on medical leave and to overcome this difficulty they converted the medical leave into earned leave. All these actions initiated by the 2nd respondent went to prove that in order not to act upon the issues raised by the applicant which may prove detrimental to their own interests told the applicant that all the papers were being returned and that he can continue in service, but 24 days after the submission of the VR letter, they relieved the applicant without keeping the papers submitted by the applicant as part of the record. If the 2nd respondent was acting truthfully, the applicant should have been relieved on 30.06.2014 but waited till the applicant applied for leave and that too medical leave from 01.07.2014 to 05.07.2014 and no explanation was given for the action of relieving the applicant on 05.07.2014. The applicant could not have been relieved when he was on medical leave and the same was pointed out by the auditor on 28.07.2014. The copies of the Auditor letters produced at Annexures-A11 to A14. To circumvent this

problem, the 2nd respondent on 31.12.2014, six months later, has re-initiated the action converting the medical leave into earned leave which cannot be done as the applicant was officially relieved on 05.07.2014. The copy of the DO Part II order is produced at Annexure-A15. In order to cover up their deficiencies and mistakes, the 2nd respondent resorted to act upon a non-existing voluntary retirement letter and relieving the applicant from duty when on medical leave which is not permissible under the law and again to cover up the mistake converted the medical leave into earned leave which is prohibited in the service rules. No pensionary benefits have been received by the applicant till date as has been submitted by the respondents and the proof of the same in the statement of account dtd.05.10.2016 & 21.8.2017(Annexure-A16 & A17) shows no pension in the account. The statement of the 2nd respondent that the applicant was on leave on 10.6.2014 with a request to relieve him from duty from 14.6.2014 is wrong as after returning the VR letter to the applicant, he came back and reported for duty indicates that the applicant continued in service without a break. And the statement that VR was recommended by the group officer on oral request is also wholly wrong as no employee either temporary or permanent moreover a permanent employee can be relieved from duty on an oral request without any documentary proof and the service rules also do not provide for such a measure. The 2nd respondent did not even seek handing over of the charge from the applicant as he was store keeper but only insisted that he should not report for duty.

8. We have heard the Learned Counsel for the parties. The Learned Counsels for the applicant and the respondents have made submissions reiterating the factual position and their points as highlighted by them in the OA and the reply statements. The Learned Counsel for the applicant has filed written arguments note contending that the applicant was never paid any amount of

gratuity, pension and commutation till March 2018. On 17.5.2018, an amount of Rs.21,038/-, on 28.05.2018, an amount of Rs.19,228/-, on 27.6.2018 an amount of Rs.17,298/- and on 26.7.2018 an amount of Rs.17,298/-(Annexure-A18) were credited to the SBI account of the applicant which was not done for more than three years. In fact the statement of the 2nd respondent has proved that, pension along with arrears had to be paid from 5.7.2014, but no such payment has been made nor the arrears of pension, gratuity and commutation have been paid by the 2nd respondent. The alleged letter dtd.8.6.2015 sanctioning pension and gratuity was also never sent to the applicant. The order produced as Annexure-R8 says that a sum of Rs.5,90,330/- and amount of sum of Rs.3,84,712/- was payable to the applicant but was never paid and that order at Annexure-R8 does not bear the signature of any officials and hence no credit can be given for this order as the same does not have any authentication nor has been acted upon.

9. The respondents have also filed their written arguments note wherein they submit that in his third VR application, the applicant made a request to relieve him from duty w.e.f. 14.06.2014 on which date he was absent from duty. When he reported to duty, he was advised to submit fresh application. But the applicant was adamant and instead of submitting fresh application and date for voluntary retirement he insisted on his earlier application dtd.10.06.2014 for consideration. Accordingly, the group officer recommended his case for voluntary retirement vide letter dtd.25.06.2014 and the applicant was relieved from duty w.e.f. 05.07.2014. If the applicant's intention to withdraw his voluntary retirement application, he could have submitted an application for cancelling his request for VR which was not submitted by him. And he was not forcibly relieved from his duties. His repeated requests to the management and his applications for VR has been accepted by the appointing authority.

The applicant submitted in the OA itself that he submitted his clearance certificate which is required at the time of retirement/VR. It is also evident that the applicant has not submitted any representation on acceptance of his VR from service w.e.f. 05.07.2014. He has also completed all the formalities which are required while proceeding on VR. The applicant has been sanctioned all pensionary awards vide PCDA dtd.08.06.2015. The original copy of PPO has been forwarded to Head Branch of SBI Vide letter dtd.15.07.2018 for making necessary payment to the individual with retrospective effect from 06.07.2014 and a copy of the same has also been forwarded to the paying branch of the applicant and also a copy given to the applicant. On receipt of the above PPO, the applicant has to report to the Bank and to complete the bank formalities like signing of the Forms etc. then only pensionary awards being credited to the individual's account and this office is not having any role to keep pending of any entitlement sanctioned in the PPO to the individual. The delay in crediting pensionary awards to the applicant's account may be due to delay in submission/signing of documents by the applicant required by the Bank authorities. Regarding delay/non-receipt of his gratuity/commutation, this office has neither received any representation from the individual nor has he personally reported to this office. The applicant is receiving regular monthly pension as per the statement enclosed by him.

10. The applicant further filed reply to the written arguments note filed by the respondents. He submits that the contention of the respondents that the applicant has not given any application to reinstate him into service is erroneous as he has specifically sought for joining the duty by his letter dtd.24.09.2016(Annexure-A6) and he also requested for re-instatement and given two applications dtd.27.4.2016(Annexure-A21) and 01.07.2016(Annexure-A22) since the question of reinstating arises only if the

applicant had been relieved from duty as per service rules. The respondents flatly refused the same. In such situation, the respondents cannot claim that the applicant has not sought for reinstatement. The defence of the respondents is that the applicant did not request for pensionary benefits. Pensionary benefits as per service rules is part of employment and the employer is bound to pay the pension immediately after an employee is relieved due to retirement. The statement of the respondents is quite contrary to the actions since all of a sudden they credited an amount of Rs.19,228/- for the month of May, 2018, Rs.17,298/- for June 2018 and Rs.17,298 for July 2018 presumably pension in spite of the applicant not making any request which makes the statements of respondents hollow in that they have not followed their own statements which proves that the applicant was entitled to pension in the year 2014 itself and non-payment of the pension itself amounts to non-relieving the applicant. The bank statement produced by the respondents pertains to the health insurance, general provident fund and amount payable on the unutilised earned leave, which are not part of retirement benefits, but the savings of the applicant. As per the service rules, the amounts pertaining to retirement either voluntary or otherwise are gratuity and commutation of pension which are classified as retirement benefits.

11. The applicant was on medical leave from 01.07.2014 to 05.07.2014 but the respondents on their own changed the medical leave which was granted earlier to earned leave which is not permissible under the service rules as medical leave granted for health reasons and can be utilised only for that purpose. If the respondents have any doubt of the health condition of the applicant, they could have referred him to the medical board seeking an opinion which was not done. In the absence of any contrary opinion about the health condition of the applicant, the respondent had no authority to change

the medical leave to earned leave that too after a lapse of time. Even if the applicant was found to be unfit for medical leave then it could have been converted in to casual leave which was available to his credits. The change from medical leave to earned leave was also not done immediately but after six months i.e. on 31.12.2014(Annexure-A15 to the rejoinder). This anomaly was also pointed out by the local auditor that a person on medical leave cannot be relieved from duty under VR. To cover up the deficiency the respondents have resorted to change the medical leave to earned leave to legalise their illegal action.

12. We have gone through the main contentions of the applicant and reply of the respondents in detail. It is apparent that the applicant had sought voluntary retirement in the year 1986 and also in 2010 prior to June 2014 when he had again requested for voluntary retirement. Taking advantage of the original application for voluntary retirement having been returned to him vide Annexure-A2, the applicant has claimed that without the original application in place, the respondents have accepted his voluntary retirement w.e.f. 5.7.2014 vide Annexure-A3 and would claim in his letter dtd.27.4.2016(Annexure-A21) and letter dtd.1.7.2016(Annexure-A22) that the termination of his service w.e.f. 5.7.2014 is wholly illegal. Apparently, he had signed all the relevant documents for processing his retirement benefits in the meantime. And as can be seen from Annexure-R8, his pension, retirement gratuity and capitalised value of pension have all been sanctioned as early as 8.6.2015. The OA.888/2015 filed by the applicant with all the same details and requesting for continuing in service has also been dismissed by this Tribunal on 08.10.2015 with the following order:

“We heard the matter in great detail. We heard the applicant also, other than the counsel. Finally wisdom dawned on the applicant and he sought to withdraw the OA. Therefore, the OA is dismissed as withdrawn. No order as

to costs.”

13.If, as stated by the applicant, the respondents had wrongly taken action on a copy of his voluntary retirement application dtd.10.6.2014, what prevented him from agitating this on 5.7.2014 or immediately thereafter when the respondents had accepted his voluntary retirement application and gave him the order of relief is not clear. He had waited till April, 2016 to claim that the same has been done illegally while at the same time signing all necessary papers relating to processing of his retirement benefits. The OA.No.888/2015 filed by the applicant with identical pleas had also been dismissed as withdrawn in 2015. The OA lacks merit and hence dismissed. No costs.

(C.V.SANKAR)
MEMBER (A)

(DR.K.B.SURESH)
MEMBER (J)

/ps/

Annexures referred to by the applicant in OA.No.170/00020/2017

- Annexure-A1: Copy of submission of voluntary resignation application dtd.10th June 2014
- Annexure-A2: Copy of return of voluntary resignation application dtd.18th June 14
- Annexure-A3: Copy of the acceptance of voluntary retirement application without any application-as per the impugned order dtd.04th July 2014
- Annexure-A4: Copy of seeking certified copy of voluntary retirement letter from the respondent dtd.17th August 2016
- Annexure-A5: Copy of the original voluntary resignation application of the applicant has already been returned through registered post by the respondent dtd.15th September 2016
- Annexure-A6: Copy of request for reinstatement in service by the respondent dtd.24th September 2016
- Annexure-A7: Copy of request for re-instatement rejected by the respondent dtd.04th October 2016

Annexures with reply statement:

Annexure-R1: Resignation letter
Annexure-R2: Reply
Annexure-R3: Voluntary retirement letter
Annexure-R4: Reply to voluntary retirement letter
Annexure-R5: Retrieval of voluntary retirement
Annexure-R6: Application seeking voluntary retirement
Annexure-R7: Copy of the order
Annexure-R8: Pension Payment Order

Annexures with rejoinder:

Annexure-A8: The copies of the enclosures
Annexure-A9 & A10: The copy of the Central Civil Service (Leave) Rules, 1972 and
Central Civil Service (Leave) (Amendment) Rules, 1997
Annexure-A11 to A14: The copies of the Auditor Letters
Annexure-A15: The copy of the DO Part II order
Annexure-A16 & A17: The copies of the bank statements

Annexures with written arguments note filed by the applicant:

Annexure-A18: Certified copy of bank statement of applicant from 14.07.2015 to
14.08.2018
Annexure-A19: Salary slip of applicant for the month of June 2014

Annexures with written arguments note filed by the respondents:

-NIL-

Annexures with reply written arguments note filed by the applicant:

Annexure-A20: The copy of the letter 81203/Gen/MCO dtd.25.6.2014
Annexure-A21 & 22: The copies of the applications
