

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

O.A. No.3025/2017

Thursday, this the 4th day of April 2019

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

Sh. Bibhu Dutt Mishra
Aged about 49 years
s/o Sh. Benudhar Mishra
r/o 177, New Rajdhani Enclave
Vikas Marg, Delhi – 110 092

..Applicant
(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
(Mr. Hanu Bhasker, Advocate)

O R D E R (ORAL)

Justice L. Narasimha Reddy:

The applicant is an officer of 1994 batch of Indian Revenue Service. He joined the service on 02.01.1996. Through an order dated 03.11.2015, the Central Board of Direct Taxes (CBDT) commuted different kinds of leaves and periods of absence, in his favour. The applicant issued a notice dated

06.11.2015 to the appointing authority, stating that he intends to avail the benefit of voluntary retirement from service (VRS) under Rule 48 A of CCS (Pension) Rules, 1972 and that his voluntary retirement shall be effective from 10.02.2016. The applicant was issued a letter dated 07.01.2016 informing him that he did not complete 20 years of qualifying service, as on the date of notice. The Department has also referred the matter to Department of Personnel & Training (DoPT), which, in turn, opined that the application can be taken to have been filed within time, if the effective date of retirement falls after 20 years of qualifying service.

2. When the matter was pending as such, the respondents issued an office order dated 24.08.2017, through which 72 days of extra-ordinary leave, i.e., 56 days from 06.11.2003 to 31.12.2003 and 16 days from 20.01.2004 to 04.02.2004, which was commuted in terms of order dated 03.11.2015, shall not count as qualifying service, under Rule 21 of CCS (Pension) Rules, 1972.

3. This O.A. is filed challenging the office order dated 24.08.2017 and for a declaration to the effect that the applicant has voluntarily retired from service w.e.f. 10.02.2016, and for a direction to the respondents to release the pensionary benefits, with interest @ 8% per annum.

4. The applicant contends that the notice issued by him is strictly in accordance with law and by the operation of proviso to Rule 48 A (2) of CCS (Pension) Rules, his voluntary retirement has come into effect.

5. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that the application for VRS was found to be not in accordance with law and accordingly, a communication was issued on 07.01.2016. It is also stated that though the DoPT opined that the application submitted before completion of 20 years of qualifying service shall be taken as valid, in case the effective date falls after completion of such service, the same was not accepted by the CBDT, According to them, an objection raised by the DoPT as to the nature of commutation ordered in favour of the applicant, pointing out that the period of 72 days was not covered by any medical certificate, at the relevant point of time, and accordingly, did not qualify for commutation order dated 24.08.2017 is said to have been passed in that context. The respondents further contend that the proviso to Rule 48 A (2) does not operate, once the application is found to be not in accordance with law. Other grounds also pleaded.

6. We heard the applicant, who appeared in person and Mr. Hanu Bhasker, learned counsel for respondents, in detail.

7. On earlier occasion, the O.A. was allowed through an order dated 10.07.2018, holding that the applicant is entitled for pensionary benefits, consequent upon coming into force the VRS w.e.f. 10.02.2016. The respondents filed R.A. No.260/2018, stating that the letter dated 07.01.2016, through which the applicant was informed that his notice is not in accordance with law, was not taken into account, while deciding the O.A. On appreciating the grounds raised and on hearing both the parties, R.A. was allowed through an order dated 22.01.2019 and the order dated 10.07.2018 passed in O.A. was recalled.

8. Thereafter we heard the matter afresh, in detail.

9. The applicant issued notice dated 06.11.2015 to avail the benefit of VRS. By that time, he did not complete 20 years of qualifying service. According to him, he completes 20 years of service by 02.01.2016, based on the commutation granted vide order dated 03.11.2015, and accordingly, in the notice, he indicated the date of his voluntary retirement to be effective from 10.02.2016.

10. Rule 48 A (2) reads as under:

“(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

Provided that where the appointing authority does not refuse to grant the permission for retirement before

the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

11. A perusal of sub-rule 2 discloses that the application filed for VRS needs to be sanctioned by the appointing authority. The proviso contains a deeming provision, in the sense, if no action is taken on the application before the expiry of the stipulated time, the request is deemed to have been accepted. In the instant case, the respondents informed the applicant through communication dated 07.01.2016, much before the effective date, i.e., 10.02.2016, that the application is incomplete. It reads as under:-

"I am directed to say that Shri Bibhu Dutt Mishra, CIT (DR), ITAT, New Delhi has given Voluntary Retirement from Service Notice dated 06.11.2015 under Rule 48 A of CCS Pension Rules, 1972 with effect from 10.02.2016.

2. Rule 48 A of the CCS (Pension) Rules, 1972 provide 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" (copy enclosed). Accordingly, Shri Bibhu Dutt Mishra, CIT (DR), ITAT, New Delhi had not completed 20 year of Qualifying Service as on date of giving notice of VRS i.e. 06.11.2015.

3. It is, therefore, requested to advise to Shri Bibhu Dutt Mishra, CIT (DR), ITAT, New Delhi to give a fresh notice to VRS after completing 20 year of Qualifying Service under Rule 48 A of CCS Pension Rules, 1972.

4. A copy of this letter may please be served upon the officer and acknowledgement may please be forwarded to the Board for information."

12. It is no doubt true that the respondents referred the case of the applicant to DoPT, which, in turn, opined that it would be sufficient if the effective date of voluntary retirement occurs subsequent to the completion of 20 years of qualifying service, notwithstanding the fact that the date of notice is earlier to that. The fact, however, remains that the appointing authority did not accept that. Therefore, the application deserves to be treated as the one, which is pending decision by the appointing authority.

13. The matter does not rest at that. The respondents issued the impugned order dated 24.08.2017, taking 72 days of commutation. The relevant part of the order reads:-

“4. The period of Extra-ordinary Leave (without medial certificate) for 56 days from 06.11.2003 to 31.12.2003 and for 16 days from 20.01.2004 to 04.02.2004 shall not be counted as qualifying service under Rule 21 of CCS (Pension) Rules.”

14. It is not in dispute that this very period was commuted in the order dated 03.11.2015. Though the applicant has raised several grounds in challenge to the order dated 24.08.2017, we are satisfied that it deserves to be set aside, on the sole ground that no show cause notice was issued before it was passed. Valuable rights have accrued to the applicant on account of commutation granted through order dated 03.11.2015. If the respondents were of the view that the order dated 03.11.2015 was in relation to any spell of absence, which was commuted, it

was obligatory on their part to issue show cause notice. Since such a notice was not issued, the order dated 24.08.2017 deserves to be set aside. As a result, the notice issued by the applicant on 06.11.2015 for VRS needs to be treated as the one which is pending.

In this scenario, the prayer for declaration that the applicant has retired from service, cannot be acceded to.

15. We, therefore, partly allow the O.A. and set aside the impugned order dated 24.08.2017, but leaving it open to the respondents to issue a show cause notice and take steps in accordance with law. In case no steps as regards the commutation of leave or absence are taken within four weeks from the date of receipt of a copy of this order, the notice dated 06.11.2015 shall be considered in accordance with the relevant provisions of law, within a period of four weeks thereafter.

There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

April 4, 2019
/sunil/