

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.21/428/2019

Date of Order: 04.07.2019

Between:

Smt. M. Gayatri D/O Late Sri M. Vyasulu
Aged about 56 years, Occ: Section Supervisor, Gr.C
Department of Post, R/O Flat No.103,
Yoga Apartments, Gollaguda, Subash Nagar
Trimulgherry, Secunderabad – 500 015.

.... Applicant

AND

1. The Union of India
Ministry of Communication
Rep. by its Secretary
Department of Post, Dak Bhawan
Sansad Marg, New Delhi – 110 001.

2. The Asst. Director (Staff & Vig.)
Ministry of Communication
Office of the Postmaster General
Hyderabad Region, Hyderabad – 500 001.

3. The Postmaster General
Hyderabad Region
Hyderabad – 500 001.

... Respondents

Counsel for the Applicant ... Mr. Narinder Pal Singh.

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC.

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The OA is filed by the applicant for having been directed to renew her application for voluntary retirement.

3. Applicant after serving the respondents organisation for 35 years sought voluntary retirement while working in the grade of Section Supervisor, vide her letter dated 12.12.2018. Albeit, the notice period expired on 29.3.2019, orders of acceptance of her voluntary retirement were not received. Besides, due to bifurcation of the State of Andhra Pradesh, she was allotted to A.P. Circle with the proviso that she has been deemed to be relieved, vide order dated 2.3.2017. Aggrieved, applicant approached this Tribunal in OA 363/2017 wherein it was directed to dispose of the representations made in regard to the allotment. As the Tribunal order was not complied, unable to bear the harassment, applicant approached this Tribunal by filing OA 234/2018 praying to retain her at the old station. The OA is pending adjudication. As the request of the applicant for voluntary retirement was not conceded to, OA has been filed.

4. The contentions of the applicant are that as per sub rule 2 of Rule 48-A of CCS (Pension) Rules, 1972, respondents have to accept the voluntary retirement after the expiry of the 3 months notice period. Applicant has been subjected to undue harassment forcing her to opt for voluntary retirement and even that is not being granted as per rules.

5. Learned Counsel for the respondents has submitted a Note containing the instructions received by her from the respondents. According to the Note, applicant was allotted to A.P Circle on 5.10.2016 and vide email dated 15.2.2017 orders were communicated stating that the applicant is deemed to have been relieved from Telangana Circle. Applicant did not report to A.P Circle and was absent for the period from 15.2.2017 to 4.7.2017/**26.9.2018**. Later, applicant was re-allotted to A.P circle on 26.9.2018. Applicant assumed duties as Section Supervisor at Hyderabad on 1.10.2018. The period of absence from 15.2.2017 to 26.9.2018 was treated as unauthorised absence by the Chief Postmaster General, A.P Postal circle. Applicant sought voluntary retirement as she was not paid salary for the unauthorised period of absence. Applicant filed OA 234/2018 seeking retention at old station and pay salary for the absent period. The OA is pending. In the meanwhile, respondents directed the applicant to apply for voluntary retirement after regularisation of the unauthorised absence vide letter dated 27.2.2019, which was received by the

applicant on 5.3.2019. The period of absence was treated as *dies non*, vide letter dated 18.4.2019 which was received by the applicant on 20.4.2019. Despite receipt of the letter, applicant has not reported to duty but filed the instant OA. Applicant was repeatedly directed to report to duty on 3.4.2019 and by e-mails on 8.4.2019 & 15.4.2019. In response, applicant informed by e-mail that her case is pending in the Tribunal and gave the mobile number of her counsel. The period of absence from 30.3.2019 is to be regularised and since applicant was directed to renew her request for voluntary retirement, it would tantamount to her request being rejected. The learned counsel for respondents deserves to be appreciated for obtaining a detailed Note in a day to adjudicate on the issue.

6. Heard both the counsel and perused the material papers on record.

7. I) Applicant was allotted to A.P. Circle on 5.10.2016 after the bifurcation of the Postal Circle. On 15.2.2017, e-mail was issued stating that the applicant was deemed to be relieved. At this juncture, it needs to be mentioned, that the applicant belongs to the fairer sex. When such allotments are to be made to other circles, particularly in special circumstances of bifurcation of a State, usual process to be followed is to prepare an alert list indicating the names of the employees who are likely to be allotted to the residual A.P. Postal Circle. Thereafter, based on the representations received

and the guidelines pertaining to allotments to other circles, orders have to be issued. Applicant alleged that no such process was followed. The Note submitted does not repel this submission of the applicant. Therefore, the basic measures of calling for volunteers, and if there are no volunteers picking up the juniors for allotment is the usual practice adopted in such transfers. Sometimes, Govt. organisations go to the extent of filling up the vacancies in the new Circle through direct recruitment and till that time draw manpower from the old Circle on deputation basis. These are measures adopted to motivate employees to accept transfers in extraordinary circumstance where employees are moved *en-masse* due to bifurcation of a Department/Circle. Such circumstance call for special dispensation so that Organisational efficiency does not suffer and at the same time employees morale is kept high. The Note does not spell out any such measures countering the submission of the applicant that due process of law was not followed in transferring the official.

II) Instead it is seen that the Chief Postmaster General Telangana vide e-mail dated 15.2.2017 treats the relief of the applicant from the old station as deemed to have been relieved and more so when her representation was pending consideration by Postal Directorate as submitted by the learned Applicant counsel. Applicant on not being able to join the A.P

circle , Chief Post Master General of A.P. Postal Circle, treats her absence for the period 15.2.2017 to 26.9.2018 as unauthorised absence and later the 3rd respondent ordered the absence to be treated as dies-non. After dealing with the absence as described, respondents instead of considering her request for voluntary retirement direct her to renew her request on 27.2.2019. In other words, it was a formality to be complied once again. Respondents did not reject the request of the applicant for voluntary retirement. Having not rejected the request would mean the respondents were willing to allow the applicant to retire voluntarily. The period of absence from 30.3.2019, as was dealt on the previous occasion, could have been treated as *dies non*. Respondents' assertion that the applicant was directed to renew her request for voluntary retirement on 27.2.2019 has to be construed as rejection of her request for voluntary retirement is illogical. Administrative orders are to be clear. They cannot be vague as to be interpreted the way respondents like to interpret.

III) Unable to bear the unfair approach of the respondents, applicant opted for voluntary retirement on 12.12.2018. Postal Directorate located at Delhi, as per the learned counsel submission, considered her request and reallocated her to the old station. Had the Chief Postmaster General Telangana and A.P. waited for the orders of the Postal Directorate, the difficulties to

which the applicant has been put to, could have been avoided. Officers heading lower formations need to take a balanced view and apply rules in a manner which do not hurt the interests of the organisation and that of the employees. In the present case, the conduct of the Chief Postmasters General, has been such that the applicant has been forced to seek voluntary retirement. Respondents need to introspect on this, since an organisation is not made of just money and material but with the third component of men. A humane approach in dealing with the third element, within the ambit of rules, will lead to Organisational growth. Rules are meant to help the Organisation to grow by involving all the stake holders and not to use them to compel employees to seek voluntary retirement. Entire episode does not speak well of the respondents in dealing with a sensitive issue of transfer concerning a female employee. On the subject of transfer, the observations of the Hon'ble Apex Court, in ***B. Varadha Rao v. State of Karnataka, (1986) 4 SCC 131***, extracted herein under, is an eye opener:

“One cannot but deprecate that frequent, unscheduled and unreasonable transfers can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralisation. It therefore follows that the policy of transfer should be reasonable and fair and should apply to everybody equally. But, at the same time, it cannot be forgotten that so far as superior or more responsible posts are concerned, continued

posting at one station or in one department of the government is not conducive to good administration. It creates vested interest and therefore we find that even from the British times the general policy has been to restrict the period of posting for a definite period."

IV) The applicant belongs to lower rung of the bureaucracy. The respondents, as claimed by the learned counsel for the applicant, are known to accommodate senior officers at the level of Post Master General in stations where the said post does not exist. If they have done so, then similar kind consideration should not be denied to lower rung employees of the respondents organisation. Otherwise, it would mean gross discrimination. The transfer was unscheduled due to the bifurcation. The transfer policy should be uniformly applied and in general for female employees there are certain inbuilt relaxations which need to be invoked. In the context of the Hon'ble Apex Court observation the applicant request to retain at the old station has been dealt in an arbitrary manner and in an insensitive manner, particularly when the Government is doing its best to promote the interests of the female employees in Government organisation. The issue of transfer has been touched upon as it has been the seed which germinated into the request for voluntary retirement by circumstances created by the respondents.

V) Adding to the woes, applicant's absence has been treated as *dies non* and her request for voluntary retirement is being denied on flimsy

grounds. Treating the absence as *dies non*, no questions can be asked. However, respondents directing the applicant to report to duty to regularise the further absence from 30.3.2019 is a colourable exercise of power. It is not known as to what prevented the respondents to treat this period as *dies non* and accede to her request for voluntary retirement. Respondents have not rejected the request of voluntary retirement but asked her to renew the request which is uncalled for, given the circumstances in which the applicant has been placed over the years. Applicant is eligible for voluntary retirement considering the years of service rendered by her and her unwillingness to continue in service due to the alleged harassment in the hands of the respondents. It goes without saying that an unwilling worker is a liability to an organisation. The way respondents dealt with her request for retention and voluntary retirement does present an impression of malaise and unfairness. It is not out of place to state that the respondents organisation being an instrumentality of the State should conduct its affairs as a model employer. In regard to the conduct of a model employer, the observation of the Hon'ble Supreme Court in Secretary, State Of Karnataka And vs. Umadevi And Others [(2006)4SCC1], is reproduced here under:

*"53. We have stated the role of the State as a **model employer** with the fond hope that in future a deliberate disregard is not taken recourse*

*to and deviancy of such magnitude is not adopted to frustrate the claims of the employees. It should always be borne in mind that legitimate aspirations of the employees are not guillotined and a situation is not created where hopes end in despair. Hope for everyone is gloriously precious and a **model employer** should not convert it to be deceitful and treacherous by playing a game of chess with their seniority. A sense of calm sensibility and concerned sincerity should be reflected in every step. An atmosphere of trust has to prevail and when the employees are absolutely sure that their trust shall not be betrayed and they shall be treated with dignified fairness then only the concept of good governance can be concretized. We say no more."*

VI) The legitimate aspiration of the applicant to voluntarily retire is being guillotined on grounds which lack reasonableness. Respondents should not play the game of chess in regard to the voluntary retirement sought by the applicant by asking her to renew her request rather than being clear either to accept or reject the request. Atmosphere of trust has to be created and it should not be destroyed by being not fair in dealing with genuine requests of voluntary retirement. The respondents primarily rejecting the applicant's request for retention has put her to undue mental trauma which persisted by not deciding her request for voluntary retirement. Therefore, the dignified fairness which is required to deal with employees is conspicuously absent. The Hon'ble Supreme Court observation cited supra need to be introspected and

ruminated upon by the respondents in the best interests of the respondents organisation, taking the applicant case as a case study in Human Relation Management.

VII) Before parting, it requires to be observed that the direction given that the applicant needs to join for regularising the period of absence is an empty formality. It would not make any material difference to the request of the applicant for voluntary retirement except to continue the woes of the applicant for a further period of time. When on a previous occasion period of absence was treated as *dies non*, the same decision can be applied to the later occasion of absence from 30.3.2019. The applicant was not involved in a fraud nor was her conduct was adverse as per the Note submitted. Therefore, directing the applicant to join duty is only a ruse and an empty formality to be complied with. An empty formality has no legal significance as observed by the Hon'ble Supreme Court as under:

i) Haryana Financial Corpn. v. Kailash Chandra Ahuja, (2008) 9

SCC 31, the Apex Court has stated:-

"40. In Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529 the relevant rule provided automatic termination of service of an employee on unauthorized absence for certain period. M remained absent for more than five years and, hence, the post was deemed to have been vacated by him. M challenged the order being violative of natural justice as no opportunity of hearing was afforded before taking the action. Though the Court held that the rules of natural justice were violated, it refused to set aside the order on the ground that

no prejudice was caused to M. Referring to several cases, considering the theory of "useless" or "empty" formality and noting "admitted or undisputed" facts, the Court held that the only conclusion which could be drawn was that had M been given a notice, it "would not have made any difference" and, hence, no prejudice had been caused to M."

II) **Prakash Ratan Sinha v. State of Bihar**, (2009) 14 SCC 690, at page 692, the Apex Court has stated:

"6. The Court to sustain its view, has placed reliance on the observations made by this Court in *State of Maharashtra v. Jalgaon Municipal Council* and *Canara Bank v. Debasis Das* (2003) 4 SCC 557.

7. In *Jalgaon Municipal Council Case* (2003) 9 SCC 731 , it was stated:(SCC p. 758, para 32)

"32. ... There is also a situation which Prof. Wade and Forsyth term as 'dubious doctrine' that right to a fair hearing may stand excluded where the court forms an opinion that a hearing would make no difference."

However, it was held that "utter caution is needed before bringing the last exception into play". In *Canara Bank* , it was observed, that, where grant of opportunity in terms of principles of natural justice does not improve the situation, "unless (*sic* useless) formality theory" can be pressed into service."

Therefore, the direction to the applicant to join duty after the applicant giving notice of voluntary retirement without taking a decision on the matter till the expiry of 3 months period, is an empty formality which is invalid in the eyes of law.

VIII) Before parting, it must be adduced that the respondents should have shown grace in accepting the request of voluntary retirement given the turmoil to which the applicant has been subjected to. Administration is all about flexibility in balancing the interests of the organisation and that of the employees. Leadership is meant to coalesce the twin interest so that the organisation progresses. Tribunal relies on the observation of the Hon'ble Apex

Court in **Balram Gupta v. Union of India**, 1987 Supp SCC 228, as under, in making the above assertion:

*“In the modern and uncertain age it is very difficult to arrange one’s future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize the Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways “to ease out” uncomfortable employees. As a **model employer** the Government must conduct itself with high probity and candour with its employees.”*

The only difference is that in the cited case applicant wanted to withdraw the voluntary retirement and in the present case applicant wants to go on voluntary retirement but not being allowed to do so. In both cases grievance is one and the same but with a 180 degree shift. A circuitous way has been discovered to procrastinate or further complicate the matter by bringing in the element of some period of absence. The core principle of showing grace, flexibility and avoiding circuitous means of complicating simple issues remains the same. The instant case is a classic case which is covered by the above verdict of the Hon’ble Apex court cited supra.

IX) Hence, in view of the facts and circumstances enumerated above as well as the Hon'ble Supreme Court observations, OA succeeds. Respondents are therefore, directed to consider as under:

- i) To consider applicant's request for voluntary retirement from 29.3.2019 and issue appropriate orders
- ii) To release pension and other terminal/retirement benefits accordingly, as per extant rules of the respondents organisation.
- iii) It is left open to the respondents to treat the absence of the applicant from 30.3.2019, as per relevant norms.
- iv) Time allowed to implement the order is 8 weeks from the date of receipt of the order.
- v) No order as to costs.

With the above directions the OA is allowed.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 4th day of July, 2019

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