

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A. No. 1126/2003
New Delhi is the 20 day of October, 2003
Hon'ble Mr. Kuldip Singh, Member (J)
Shri Daljeet Singh
Ex. Head Constable
No. 8th Battalion DAP,
R/o H.No.82
Village & PO Khanpur
New Delhi.

..Applicant

By Advocate: Shri H.K. Gangwani.

Versus

The Government of NCT of Delhi

Through

1. The Commissioner of Police
Delhi Police Headquarters,
ITO, Bahadurshah Zafar Marg,
New Delhi-110 002.
2. The Deputy Commissioner of Police,
8th Bn.
DAP,
New Delhi.

..Respondents

By Advocate: Mrs. Jasmine Ahmed.

ORDER

Applicant has assailed an order dated 24.5.2001
vide which an earlier order dated 23.5.2001 accepting
the request of the applicant for voluntary retirement had been
cancelled.

2. Facts in brief are that the applicant was working
as Constable in Delhi Police. He made an application to the
respondents giving notice of voluntary retirement of service
w.e.f. from 1.5.1999. The said request was accepted by
respondents vide their order dated 23.5.2001, Annexure A-2.
3. It is further submitted that the request of the
applicant was not accepted w.e.f. 1.5.99 as it appears

that the applicant was not having 20 years of approved service. However, the applicant had completed the required apporved service in accordance with law and was allowed to retire w.e.f. 27.5.2001.

4. It is further stated that since earlier some time ago the applicant was proceeded departmentally. He was awarded the penalty of punishment of forfeiture of one year's approved service but those are irrelevant for the present OA since the present OA relates to release of retiral benefits.

5. It is further stated that the applicant had been meeting the concerned authorities time and again for release of retiral benefits but the same has not been done. But in the meanwhile the respondents had issued the impugned order which is arbitrary unfair and improper and was issued in colourable exercise of powers.

6. It is further stated that the order does not discloses any reasons for withdrawal of the order dated 23.5.2001.

7. It is further stated that the relationship of master and servant has come to an end on 27.5.2001 whereas the impugned order was ~~served~~ in the previous proceedings filed by the applicant.

8. It is further stated that no notice was issued before passing the order dated 24.5.2001 hence the same be quashed and respondents be directed to release the retiral benefits of the applicant.

9. Respondents are contesting the OA. Respondents in their counter-affidavit pleaded that the applicant who was working in Delhi Police ~~was~~ was detailed on reserved duty did not report for duty on 22.4.1998 so he was marked absent for the same though later on he submitted that he was advised 3 days medical rest by the Doctor of Batra Hospital and stated that he remained from 27.4.1998 to 30.4.1998 in the Batra Hospital and the doctor advised him medical rest for 2 weeks w.e.f. 30.4.1998. But again he

remained absent. Ultimately disciplinary proceedings were conducted against him and his period of unauthorised absence from 22.4.1998 to 23.4.1998 and 25.4.1998 to 18.5.2001 was decided as dies non ^{for} all purpose including pension though the applicant had filed an appeal but the same was also rejected.

10. In the meantime the applicant had filed an OA and he had pleaded that he was not served with the order dated 24.5.2001 which was made available to the applicant ⁱⁿ ~~the~~ court and it was stated that the applicant was served with the order dated 24.5.2001 and liberty was given to challenge the said order by filing a separate OA as such the applicant has but the same cannot be entertained and filed the present OA so the same be dismissed.

11. The respondents further stated that since the period from 22.4.1998 to 23.4.1998 and 25.4.1998 to 18.5.2001 as dies non so ~~keeping in view~~ the above punishment and period as dies non the order of voluntary retirement which was issued inadvertently was withdrawn well before the implementation of order in question on administrative ground and as such there is no violation of principles of natural justice. Thus it is stated that the order which has been issued inadvertently has been rightly withdrawn.

12. I have heard the learned counsel for the parties and gone through the record.

13. The short question involved in this case is whether before issuing the order dated 24.5.2001 withdrawing the order dated 23.5.2001 vide which the request of the voluntary retirement of the applicant had been accepted whether a show cause notice was required to be served or not. The learned counsel for the applicant relied upon the judgment of Bhagwan Shukla Vs. U.O.I. reported in JT 1994 (5) SC 253 wherein the ~~power~~ of the employee was reduced to some extent without issuing show cause notice as the same had not been properly fixed so it was held

for

that since the order reducing the pay has civil consequences so the same has been passed without even issuing show cause notice ~~or even affording an opportunity~~ Arguing on the same lines, The learned counsel for the applicant submitted that vide order dated 23.5.2001 the request of the applicant for voluntary retirement had been accepted so the order dated 24.5.2001 should not have been passed without affording an opportunity to the applicant and without issuing any show cause notice to the applicant.

14. In my view this contention of the learned counsel for the applicant has no merits because the fact that earlier ^{when} the applicant had remained absent he was punished for the same and his absence was treated as dies non goes to show that the applicant had not completed the qualifying service for the purpose of voluntary retirement as required under FR 56(K) as well as Rule 48-A of the CCS (Pension) Rules and the order accepting the voluntary retirement seems to have been issued inadvertently.

15. The Government of India's decision appended to Rule 48A provides for retirement on completion of 20 years of qualifying service also mention that it is the duty of the Government servant himself that he should satisfy himself by means of a reference to the appropriate administrative authority that he has, in fact, completed 20 years of service qualifying for pension. The said instructions are reproduced hereinafter:-

"(ii) Verification of qualifying service before giving notice -

Before a Government servant gives notice of voluntary retirement with reference to Rule 48-A, he should satisfy himself by means of a reference to the appropriate administrative authority that he has, in fact, completed twenty years' service qualifying for pension.

In this case it does not appear that the applicant had ever satisfied himself about having rendered qualifying service before serving notice of voluntary retirement and in case the applicant had not completed the requisite qualifying service of 20 years for voluntary retirement then the order dated 23.5.2001 is per se void ab initio.

16. Moreover the order itself stated that it will be operative from 27.5.2001 whereas the impugned order withdrawing the order dated 23.5.2001 has been issued on 24.5.2001 before the order dated 23.5.2001 came into effect.

Thus no vested right had accrued in favour of the applicant even by issuing an order dated 23.5.2001 since the same was to take effect from 27.5.2001. Had the order withdrawing the same has been passed after 27.5.2001 then the applicant could have claimed that since right had already accrued to him so he is entitled for the relief. To my mind since by merely issuing the order dated 23.5.2001 which was to take effect from 27.5.2001 no right had been cleared so the respondents were within their right to withdraw the same even without issuing any show cause notice to him.

17. Thus I find that no interference is called for.

18. In view of the above, OA has no merits and the same is dismissed. No costs.


(KULDIP SINGH)
MEMBER (J)

Rakesh