

1

16

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.867/2003 with OA No.2341/2003

New Delhi, this the 15th day of September, 2004

Hon'ble Shri S.K. Naik, Member(A)

OA 867/2003

Jaipal S.Sangwan, IAS(Retd)
Plot No.9-A, Secgtor 6
Faridabad, Haryana-121006

.. Applicant

(Shri Sanjay Pal, Advocate)

versus

1. Union of India, through
Secretary, M/Personnel, PG & Pensions
DoPT, North Block, New Delhi
2. State of Haryana, through
Chief Secretary, Central Secretariat
Chandigarh

.. Respondents

(Shri K.C.D.Gangswani, Advocate for R-1 and
Shri Sunder Khatri, Advocate for R-2)

OA 2341/2003 ✓

R.D.Sheokand, IAS
Spl.Secretary to Govt. of Haryana
Political & Services Department, on behalf of
State of Haryana, through the Chief Secretary
To Govt. of Haryana, Chandigarh

.. Applicant

(Shri Sunder Khatri, Advocate)

versus

1. Secretary
Min. of Personnel, PG & Pensions
DoPT, North Block
2. Shri J.P.S.Sangwan, IAS(Retd)
Plot No.9A, Sector 6, Faridabad

.. Respondents

(Shri K.C.D.Gangswani, Advocate for R-1 and Shri Sanjay Pal for R-2)

ORDER(oral)

These are two OAs, OA 867/2003 and OA 2341/2003, arising out of the same cause of action i.e. grant of waiver from the requirement of giving at least three months prior notice in writing as required under Rule 16(2) of the All India Services (Death-cum-retirement Benefits) Rules, 1958.

2. While OA 867/2003 has been filed by Shri Jaipal S.Sangwan, a former IAS Officer of State of Haryana, OA 2341/2003 has been filed on behalf of State of Haryana against the Union of India as the prime respondent.

For

While Shri Sangwan has challenged the orders of the Government of Haryana who have not agreed to the waiver of requirement of three months notice period as approved by the Union of India, Government of Haryana have challenged the authority of the Union of India in reconsidering the request of Shri Sangwan and having granted him the waiver. Thus, these two OAs are somewhat connected and being disposed of simultaneously vide this order,.

OA 867/2003

3. Applicant Shri Sangwan while working as OSD, Land Use Board, Haryana at Chandigarh sought voluntary retirement on 13.3.2002 on the ground of certain compelling personal circumstances and stating therein that he was unable to continue in service any longer. The request therein was made for the voluntary retirement forthwith and also to waive the condition of notice period. Further, he relinquished charge of the post on the same day. The request for voluntary retirement was made to the Secretary, Ministry of Personnel, Public Grievances & Pensions, New Delhi (Respondent No.1, R-1 for short) through the Chief Secretary, Government of Haryana, Chandigarh (Respondent No.2, R-2 for short). R-1 vide their letter dated 7.5.2002 informed the applicant that they have decided not to grant waiver of mandatory period of three months in consultation with R-2. Subsequently, applicant represented against the decision of R-1 and requested them for reconsideration vide his letter dated 21.5.2002 stating therein the details with regard to the illness of his wife and also the right of an employee to seek voluntary retirement as enunciated by various judgements of Supreme Court. R-1 on reconsideration of representation, vide their letter dated 6.6.2002 addressed to R-2 with a copy to the applicant approved waiver of three months notice period for voluntary retirement. Thus the applicant stood voluntarily retired from 13.3.2002. R-1 in exercise of powers conferred upon them under Rule 3 of All India Services (Conditions of Service-Residuary matters) Rules, 1960 directed R-2 to take further action accordingly.

4. R-2 however did not quite agree with the waiver granted by R-1 and made further references which were turned down by R-1. In utter disregard to the decision to grant waiver of the notice period, R-2 on 31.10.2002 passed an order stating that Shri Sangwan shall retire from service on 31.10.2002 on attaining the age of superannuation. Subsequently, vide their letter dated 3.3.2003, the Accountant General (Accounts), Haryana was addressed by R-2 to prepare pension entitlement etc. of the applicant treating his date of retirement to be 31.10.2002 and not 13.3.2002. Applicant thereafter made various representations firstly on 16.11.2002 and again on 28.11.2002 requesting them to treat his date of retirement to be 13.3.2002 and not

7.
Decide

31.10.2002 and grant him necessary retirement benefits. However, R-2 is bent upon depriving him of the benefits from the date of voluntary retirement i.e. 13.3.2002 as is clear from their letter to the AG, Haryana. Aggrieved against this attitude of R-2 that this OA has been filed, seeking a direction to them to immediately release his pensionary benefits along with interest @ 18% per annum.

5. The counsel for the applicant has stated that for the All India Services to which the applicant belonged the appointing authority is the President of India, the cadre controlling authority is R-1 and the All India Services Rules are administered by R-1. Applicant therefore had applied for voluntary retirement under compelling personal circumstances to R-1, who had though originally in consultation with R-2 not agreed to the waiver of mandatory period of notice of three months, have subsequently on representation filed by him giving full facts with regard to the illness of his wife and other personal problems, reconsidered the case and vide their letter dated 6.6.2002 granted the waiver. In this regard the counsel for the applicant has referred to Rule 3 of AIS (Conditions of Service-Residuary matters) Rules, 1960, extracts of which will be useful for proper adjudication of this matter:

Power to relax rules and regulations in certain cases – where the Central Government is satisfied that the operation of –

- (i) any rules made or deemed to have been made under the All India Services Act, 1951 (61 of 1951), or
- (ii) any regulation made under any such rules, regulating the conditions of service of persons appointed to an All India Service causes undue hardship in any particular case, it may, by order, dispense with or relax the requirements of that rule or regulation, as the case may be, to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner.

6. Learned counsel for the applicant drawing my attention to the letter dated 6.6.2002 of R-1 has contended that they have in exercise of their power under the Rule quoted above and after due consideration of the representation of the applicant have granted the waiver. Since it has been granted in exercise of legal power, R-2 could not have taken any objection thereto but should have complied with the decision of R-1 and release the pensionary benefits treating the date of retirement as 3.3.2002. While the legal position is abundantly clear, learned counsel has also referred to the judgement of the Supreme Court in **Manjushree Pathak Vs. Assam Industrial Development Corpn. Ltd.** (2000) 7 SCC 390 in which in a somewhat similar case of allegation of indulgence in political activities, the Supreme Court has held that the petitioner therein was entitled to the relief of being treated to have voluntarily retired from the date of her application for voluntary retirement

7
back

and has granted her all retirement benefits, since the employee has satisfied all the conditions precedent under the Scheme for voluntary retirement. In the case in hand, the counsel has submitted that the applicant fulfilled all the conditions for seeking voluntary retirement and had explained the compelling circumstances as well as prolonged illness of his wife duly supported by reports from the Hospital concerned. He has contended that the action of R-2 therefore is wholly unjustified, illegal and arbitrary and therefore pleaded that the OA be allowed and R-2 be directed to release the retirement benefits treating the date of retirement as 13.3.2002 with interest thereon for the delayed payment.

7. Learned counsel for ~~the~~ ^{No 1 (R1) ~~du~~} respondents has supported the claim of the applicant and has stated that R-2 should have complied with the decision conveyed to them waiving the requirement of three months ^{notia} period and extended the retirement benefits to the applicant accordingly. He has further reiterated that R-1 in exercise of the power conferred upon them under Rule 3(supra) have rightly taken into consideration the representation of the applicant and after objective assessment of the background and various judicial decisions granted him waiver and this decision cannot be ignored or disobeyed by R-2.

8. R-2 however have contested the OA. Counsel for R-2 has submitted that R-1 had originally taken a right decision not to grant waiver of the mandatory period of three months after consulting R-2 which was conveyed to the applicant vide their letter dated 7.5.2002. He has contended that R-2 was not consulted when the representation of the applicant was taken up for reconsideration in by R-1 and therefore R-1 had gone beyond the ambit of the Rules to take a view contrary to their earlier decision. This was necessary since the applicant was an employee of R-2. The counsel has further argued that the applicant at the time of his request dated 13.3.2002 seeking voluntary retirement has not mentioned anything with regard to the illness of his wife or her medical treatment but has only made a reference to them in a improper manner in his subsequent representation before R-1 which is an after-thought. Since the applicant was due for superannuation on 31.10.2002, R-2 has therefore rightly advised AG, Haryana to give him necessary retirement benefits accordingly.

9. I have considered the arguments advanced by the learned counsel for the parties.

10. I find it a peculiar dispute in which when a Government servant has sought voluntary retirement after putting in 33 years of service and still the State Government is not willing to consider his request for voluntary

deon

retirement. While the applicant has sought to be voluntarily retired w.e.f. 13.3.2002, R-2 has been insisting that he has retired on 31.10.2002. As has been rightly pointed out by the learned counsel for the applicant and as also been submitted by the learned counsel for R-1, power to relax the Rules and regulations squarely vests with the Central Government. Since the Government of India in exercise of this power has relaxed the mandatory voluntary retirement requirement of three months notice, there is absolutely no ground for R-2 to have any reservation or objection to the above decision of R-1. In fact any objection therein will be a gross violation of the mandatory power vested with the Government of India. The argument advanced by the learned counsel for R-2 is totally unacceptable and not tenable. Furthermore, I notice that R-2 in their reply have not stated as how they intend to treat the period from the date of retirement i.e. 13.3.2002 until 31.10.2002, if according to them the applicant was to retire from 31.10.2002. It is rather strange that the Government of Haryana should be raising any objection to the reconsideration by the Government of India, which is fully within its competence. The plea of applicant not having produced medical certificate at the initial stage also will have no bearing at this point of time as R-1 at the time of reconsideration of the case must have taken all the facts and circumstances into account before delivering their decision to grant him the waiver. This plea of the counsel for R-2 therefore has to fail and is accordingly rejected.

11. Under the circumstances, I allow this OA, set aside and quash both the impugned orders. I further direct R-2 to release all the pensionary benefits to the applicant treating the date of retirement as 13.3.2002, along with interest @ 9% per annum. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

OA 2341/2003

12. At the outset, learned counsel for R-1 has raised preliminary objection that this OA is not maintainable. He has submitted that this OA has been filed by Shri R.D. Sheokand, Special Secretary to the Government of Haryana, Political & Services Department on behalf of State of Haryana. Thus the applicant in this case is the State of Haryana and Union of India has been made the prime Respondent. According to the learned counsel, since the State of Haryana is not a person in service, provisions of Section 19 of Administrative Tribunal Act, 1985 cannot be invoked under the AT Act, 1985. It is only a Central Government servant, whose service interests are affected, can file an OA before this Tribunal. Since the applicant, who has moved this application on behalf of Government of Haryana, has no service

3001

3

621

interest of his own, it will not be maintainable. If the State of Haryana is to be the applicant, any dispute arising between the State of Haryana and Central Government has to be adjudicated in accordance with the provisions contained in the Constitution of India. I quite agree with the argument/contention of the learned counsel for R-1 and hold that this OA is not maintainable and the same is accordingly dismissed.

13. Let a copy of this order be placed in both OA files.


(S.K. Naik)
Member(A)

/gtv/