

Union of India Vs. Deepak Sharma

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SooperKanoon Citation : sooperkanoon.com/1086944

Court : Delhi

Decided On : Sep-18-2013

Judge : Najmi Waziri

Appellant : Union of India

Respondent : Deepak Sharma

Advocate for Def. : Mr. Naresh Kaushik

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

18. h September, 2013 + WP(C) No.5547 OF 2012 & CM 11331/2012 UNION OF INDIA Through: Appellant Mr.R.V.Sinha with Mr.A.S. Singh, Advocates. versus DEEPAK SHARMA Through: Respondent Mr.Naresh Kaushik, Advocate. CORAM: HON'BLE MR. JUSTICE S. RAVINDRA BHAT HON'BLE MR. JUSTICE NAJMI WAZIRI % 1. MR. JUSTICE NAJMI WAZIRI (Oral) The petitioner being aggrieved by an order of the Central Administrative Tribunal in O. A. 4162 of 2010 dated 5th March, 2012, (impugned order) has preferred this petition. The impugned order directs the petitioner to:

...consider the applicants letter dated 31.08.2007 requesting for voluntary retirement, as per the provisions of Rule 48-A within a period of nine weeks from the date of receipt of a certified copy of this order. It goes without saying that subsequent to the issue of acceptance of his voluntary retirement, the applicant

would be entitled to all the retrial (sic: retiral) benefits including Pension, Gratuity, Leave Encashment etc. as per law and the respondents - MEA would be entitled to adjust the amount equivalent to the notice period that would be as per the prescribed rules. It is noticed that applicant is partly responsible for the confusion. Therefore, we make it clear that the applicant will not be entitled to any interest on the arrear amount of his entitled retirement due. Let the exercise as ordained in the above orders be completed within a period of three months from today.

2. The facts of the case are that the respondent/applicant, having worked with the appellant, by a letter of 31st August, 2007 sought voluntary retirement after completing twenty two years of service. The genesis of this request lay in the petitioners need to respond to his letter of appointment for the post of FS-4 from the United Nations Integrated Mission in Timor-Leste which he had received a few weeks prior thereto. The said letter required him to convey his acceptance within seven days from the date it was issued, i.e. 18th July, 2007. By a letter of 20th July, 2007, he sought the requisite permission to accept the offer of appointment and by another letter of 13th August, 2007 he reiterated his request. Sensing that the time available with him was very little, by a letter dated 31st August, 2007 he requested for voluntary retirement with effect from the next day, i.e., 1st September, 2007. He felt he was eligible to invoke this option under the applicable Service Rules, i.e. after the completion of twenty two years of service. He also stated that if for any reason the application for voluntary retirement was not acceptable, then the letter may be treated as notice for resignation from government service with immediate effect. He then proceeded to join the United Nations service. Vigilance clearance was accorded to him on 25th July, 2007. His resignation was accepted with effect from 12th September, 2007.

3. The respondent/applicants contention before the Tribunal was that his offer of resignation was purely conditional and was to be considered only in case the application for voluntary retirement was not acceptable for any reason. Even in such eventuality, he would have expected to be intimated the reasons for the declination of the application for voluntary retirement. However, the letter of 12th September, 2007 accepting his resignation did not contain even a whisper of why his request for voluntary retirement was rejected. He made representations to the

Government seeking review, i.e. that the acceptance of the resignation be treated as voluntary retirement from government service and that the term of service with the United Nations be treated as his being on deputation. This request was declined by an order dated 9th June, 2010. Incidentally, this consideration of review and the communication of the government decision were made pursuant to an order dated 18th April, 2010, passed by the Tribunal in an earlier O. A. filed by the respondent/applicant.

4. In the present impugned order, the Tribunal has considered whether the respondent/applicant would be entitled under Rule 48-A of the CCS (Pension) Rules, 1972, and reasoned that although it required three months notice in writing to the appointing authority to retire voluntarily from the service, there was urgency in this case and that the respondent/applicant had already requested more than forty days earlier, i.e., on 20 th July, 2007, seeking to be relieved so that he could join the United Nations Mission, but the appellant / government failed to respond. That it was out of exasperation that the letter of resignation was written. Indeed, the Additional Secretary (Admin), MEA, had noted in the official file on 31st August, 2007:

He came to see me to request that he be given a sympathetic hearing. I do not know if there is any constraint in relieving him, if there is a way without infringing any regulations, and would request that it be done. The Tribunal reasoned that the resignation had to be clear and unconditional. It held the respondent/applicants letter to be a conditional resignation and relied upon the judgements of the Supreme Court in *P. K. Ramachandra Iyer v Union of India*, (1984) 2 SCC 141 and *Dr. Praba Atri v State of Uttar Pradesh*, (2003) 1 SCC 701. In those cases, the Supreme Court had set aside the communication purporting to accept the resignations concerned. The Tribunal held that although the circumstances in the present case may be different, but the law in *Dr. Praba Atris case* (supra) would hold the field and would apply. Further relying on the ratio in *Yashwant Hari Katakhar v UOI*, (1996) 7 SCC 113 the Tribunal reasoned that in this case too, the government should favourably consider the grant of retiral benefits, since the respondent/applicant had already put in more than twenty two years of qualifying service. The Tribunal found that the respondent/applicant had applied forty days

earlier (to the letter of voluntary retirement cum resignation) for permission to join the United Nations Mission and in any case the government had twelve clear days to decide the application for voluntary retirement before it accepted - on 12th September, 2007 - the offer of resignation. Therefore, the argument of the government that only one days notice was given for responding to the respondent/applicants letter was found untenable and the order dated 9th June, 2010, though speaking, was considered arbitrary and was accordingly quashed.

5. Learned Counsel for the appellant, Mr. R. V. Sinha, submitted that the impugned order is unsustainable. He contended that the letter dated 31st August, 2007 is unambiguous in its language and meaning. He submits that the letter firstly requests for a voluntary retirement, failing which, it offers resignation with immediate effect. The respondent/applicant did not wait even for a day to receive any response from the Government and proceeded to join the United Nations Mission. His was an Icouldnt-care-less-and-do-as-you-wish-as-I-have-resigned attitude. He contended that the aforesaid letter could not be treated as a request under Rule 48-A (1) for being considered for voluntary retirement.

6. Mr. Naresh Kaushik, learned counsel for the respondent/applicant reiterated the contentions made on behalf of the respondent/applicant before the Tribunal. He further argued that under Rule 48-A (3-A) (b), it was always open to the Government to curtail the period of notice of three months on merits and on the appointing authority being satisfied that the period of notice would not cause any administrative inconvenience, the period could be relaxed (on the condition that the Government servant would not apply for commutation of a part of his pension before the expiry of the notice period). He also submitted that the respondent/applicant had categorically offered to the government that three months salary be recovered in lieu of the three months mandatory notice for voluntary retirement from the leave due to him. He further submitted that the respondent/applicant had duly complied with the requirement of Rule 48-A, but the appellant had failed to act diligently, fairly and responsibly. It had, without application of mind, rejected the bona fide request for voluntary retirement and instead rushed to accept his resignation from government service.

7. This Court has considered the contentions of the parties and notices that the requirement under Rule 48-A (1) is that the Government servant, upon being eligible for voluntary retirement, must first give a notice in writing under to the appointing authority, of not less than three months. It is only after this specific request is made, that the applicant could invoke the benefit of sub-rule (3-A) (a) whereby the government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor. So it is only upon the application being made three months prior to the intended date of retirement that a request for lessening or waiving the period of waiting for the three months could be made. When the request is made in this manner, the Appointing Authority could exercise the discretion, based upon the exigencies of the case, for relaxation of the three months period under Rule 48-A (3-A) (b). In the present case, just the exact opposite was done, i.e., the application for voluntary retirement was made to be with immediate effect and the three months notice period was sought to be adjusted against pay for the subsequent misconstrued three the months; relevant the respondent/applicant Rule. Insofar as had the respondent/applicant had not made any request in writing three months earlier, and had instead notified the government to accept his resignation with immediate effect from 31st August, 2007, the aforesaid provision for relaxation of three months period would not be available to him. In the circumstances, the government was well within its rights to accept the resignation as was done in the instant case. The Tribunal had misdirected itself in construing the applicability of Rule 48-A (3-A) (b) and in concluding that twelve days were sufficient for the government to process the request of the respondent/applicant for voluntary retirement.

8. For the reasons aforesaid, the impugned order is set aside and the petition is allowed. There shall be no order as to cost. NAJMI WAZIRI (JUDGE) S. RAVINDRA BHAT (JUDGE) SEPTEMBER 18 2013