

Deepak Sharma Vs. Union of India

Deepak Sharma Vs. Union of India

SooperKanoon Citation : sooperkanoon.com/939908

Court : Central Administrative Tribunal CAT Delhi

Decided On : Mar-05-2012

Judge : V.K. Bali, Chairman & the Honourable Dr. Ramesh Chandra Panda, Member (a)

Appeal No. : OA No.4162 of 2010

Appellant : Deepak Sharma

Respondent : Union of India

Advocate for Def. : Shri. H.K. Gangwani

Advocate for Pet/Ap. : For the Applicant: Naresh Kaushik, Advocate. For the Respondent: H.K. Gangwani, Advocate.

Judgement :

DR. RAMESH CHANDRA Panda, MEMBER (A)

1. Shri Deepak Sharma, the applicant herein, is seeking to quash and set aside the order dated 9.6.2010 (Annex.-P1) wherein the respondents refused to reconsider /review their action on his request for acceptance of voluntary retirement sought by him after completion of 22 years of service. Feeling aggrieved and assailing the said order dated 9.6.2010, the applicant is before this Tribunal with the following prayers:

“a. that the present OA be allowed;

b. that the Respondents be directed to produce the original records pertaining to the voluntary retirement of the applicant and the issuance of the impugned orders for perusal of this Hon’ble Tribunal.

c. that this Hon’ble Tribunal may be pleased to hold that in the facts and circumstances of the case, the impugned action/order dated 09.06.2010 of the respondents refusing to reconsider it action/order and to treat the request of the applicant for voluntary retirement as resignation was illegal, arbitrary, unreasonable, unjust and improper and quash the Order dated 09.06.2010 and set aside the same and direct the respondents to reconsider the applicant’s case for treating him on voluntary retirement w.e.f. 01.09.2007, with all consequential benefits under the relevant rules and the law.

d. that the respondent be directed to pay the retirement dues and arrears of pension etc. with 18% interest.

e. pass any such other or further order or direction as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the case.”

2. Brief facts of the case would disclose that the applicant who was an employee of the Ministry of External Affairs (MEA) and on 18th July, 2007 was working as Assistant, received an offer of appointment (Annexure P2 Colly) from the United Nations Integrated Mission in Timor-Leste (UN Mission in short) for the post of FS4. Vide his note dated 20.07.2007 (Annexure-P2 colly), he informed the MEA Administration Section that he had to convey his acceptance within seven days from the date of issue of the offer of appointment. On 13.8.2007, in continuation of his earlier letter dated 20.7.2007, he wrote another letter (page-23) to the JS (UNES) inter alia informing that Cadre Controlling Authority i.e. JS(AD) had already accorded clearance on 23.7.2007 and BOS and NGO clearances received on 24.7.2007, and requested to grant necessary clearance. A copy of the said letter is at Annexure P3. Initially, his request was to permit him to go on deputation to the UN Mission but lateron he requested vide his letter dated 31.8.2007 to the Additional Secretary (Admn.) that as the time available was short, he should be

allowed to go on voluntary retirement w.e.f. 01.09.2007 as he was eligible for the same having completed 22 years of service (he joined MEA on 7.12.1984). He also interalia requested that in lieu of three months notice, three months salary could be recovered for the notice period from his salary for undertaking the voluntary retirement. However, the Joint Secretary (CNV) vide the Memorandum dated 31.8.2007 (page 25) intimated him that the matter was under consideration in the Ministry and the decision of his voluntary retirement would be conveyed to him in due course. However, on the same day i.e. 31.8.2007, the applicant submitted a hand written note on the copy of the said Memorandum dated 31.8.2007 to the JS (CNV) stating therein that if the Ministry was enable to accept his request for VRS, this note may be treated as a letter of resignation w.e.f. 01.9.2007. The Memorandum issued by the MEA and the note given by him thereon are at Annexure-P5. It is the case of the applicant that the vigilance clearance was accorded by the NGO Section and he was cleared from the BOS angle vide their note dated 25.7.2007. He was surprised to get the communication from the respondents that they accepted his resignation w.e.f. 12.9.2007. It is the applicant's case that his offer of resignation was purely conditional based on the eventuality that in case the offer for voluntary retirement was not acceptable for whatever be the reasons, the said note should be treated as his resignation from service. Thereafter, the applicant has submitted number of representations requesting the respondent to reconsider and review the said decision but he was not favoured with any reasonable reply and he was conveyed vide a communication dated 19.10.2009 (page 40) in response to an appeal filed by him under Right to Information Act, 2005 permitting him to peruse the relevant files and take the photocopies from the respective files. Feeling aggrieved by the unfavourable decision of the respondents, the applicant approached the Tribunal in OA No.1258/2010 which was decided at the admission stage without going into the merits of the case by directing the respondents to consider the prayer of the applicant in the OA by treating the OA also as supplementary representation and to inform him by a reasoned and speaking order within a period of two months. Accordingly, the respondents have passed an order dated 09.6.2010. Challenging the said order, the applicant is visiting this Tribunal for the second time for the same cause of action.

3. Shri Naresh Kaushik, learned counsel for the applicant highlighting the background of the case would submit that the action of the respondents not granting voluntary retirement to the applicant though he has put in qualified years of service in terms of Rule 48-A of the CCS (Pension) Rules, 1972 have arbitrarily accepted the conditional resignation without assigning any plausible reasons as to how and why his request for voluntary retirement was not accepted? Referring to the averments of the respondent that certain allegations and investigations were pending against the applicant, he would contend that the nature of investigation going on against him had not been disclosed. Shri Kaushik informs that the applicant has not been involved in defalcation of Government funds nor he is involved in such misconducts which may result in the penalty of dismissal or removal from service. Therefore, the order passed by respondents dated 09.6.2010 stating that since the applicant was not willing to wait even for one day and submitted his resignation w.e.f. 01.9.2007, vigilance clearance was given for acceptance of his resignation from Government service w.e.f. 01.09.2007. Such stand of the respondent, Shri Naresh Kaushik submits, is absolutely frivolous, and contends that the applicant's proposal was pending with MEA for more than 1= months, while the applicant had specifically mentioned the urgency to intimate the said UN Mission about the acceptance within seven days. His submission is that allegation of the respondent that the applicant was not willing to wait even for one day is an after thought, not as per the facts of the case. He submits that the conditional resignation does not amount to resignation perse and respondent in a clever manner ignored the condition part of the resignation note and did not consider his case for voluntary retirement to accept the resignation. Such approach of the respondent is not admissible under law. It is his contention that applicant has been indirectly coerced and has been deprived of the retiral benefits after putting in 22 years of regular service with the respondents. Such action of the respondent should be treated as punitive. In support of his contention he places reliance on the judgment of Hon'ble High Court of Allahabad in Dr. Shanker Nath Das Vs. State of UP and Others [2002-2-AWJ-1327] to submit that a Government Servant's lien on a post cannot be in any circumstances be terminated or forfeited even with his consent or as a result of conditional resignation beyond his control, if the result will be to leave him without any benefit of pension, or pensionary rights.

Therefore, he submits that the OA deserves to be allowed and the respondent should be directed to accept the voluntary retirement submitted by the applicant.

4. Shri H.K. Gangwani, learned counsel for the respondents would argue that applicant has submitted his resignation note which was accepted by the Government. In respect of resignation, there is nothing called as conditional or otherwise. He submits that there was no vigilance clearance for the applicant as the applicant was issued a recordable warning on 22.8.2007 for committing certain irregularities in matters related to the settlement of payment and claim to refund of VAT while he was working in the Embassy of India at The Hague. A ban of five years of his foreign postings was also imposed on him in view of his misconduct. Shri Gangwani would submit that vigilance clearance for his request to the UN Mission was not granted for the above reason. Further, there were investigations for four more acts of misconduct which were underway and a formal departmental proceeding was being contemplated to enquire into those misconducts. In view of the above facts of the investigation going on, on his alleged misconduct, the respondent has accepted the resignation of the applicant and treated the matter as closed. Now that the applicant has come to the Tribunal in the present OA, full facts of the case have been placed before the Tribunal indicating that the applicant is not entitled to be granted voluntary retirement. Therefore, he urges that the OA should be dismissed.

5. After hearing the counsel for the parties on 18.11.2011, the case was reserved for orders. However, while preparing the judgment it was noted that the certain clarifications would be required from the parties. Accordingly, the following orders were passed on 01.12.2011 seeking the views of the parties in the matter:-

“Arguments in this case were heard on 18.11.2011 when judgment was reserved. During the course of arguments, Government of India’s decision No.(iii) below Rule 48-A of the CCS (Pension) Rules, 1972, was not brought to our notice. It appears that the same may have relevance to the controversy in issue. The said decision reads as follows:-

“(iii) Guidelines for acceptance of notice - A notice of voluntary retirement given after completion of twenty year’s qualifying service will require acceptance by the

appointing authority if the date of retirement on the expiry of the notice would be earlier than the date on which the Government servant concerned could have retired voluntarily under the existing rules applicable to him [e.g., FR 56 (k), Rule 48 of the Pension Rules, Article 459 (i) of CSRs or any other similar rule]. Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned. If it is proposed to accept the notice of voluntary retirement even in such cases, approval of the Minister-in-charge should be obtained in regard to Group 'A' and Group 'B' Government servants and that of the Head of the Department in the cases of Group 'C' and Group 'D' Government servants. Even where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice."

2. List the case again on 13.12.2011 for re-hearing for the learned counsel representing the parties to have their respective views on the Government's decision reproduced above. Copy of this order be provided to counsel for parties."

We heard the parties finally on 27.2.2012 who clarified that the Government decision (iii) below Rule 48-A of the CCS (Pension) Rules, 1972 would be applicable in case of the voluntary retirement.

6. Having heard the contentions of the rival parties, with the assistance of the counsel, we perused the pleadings as well. The short question before us for determination is whether the applicant would be entitled to the benefits under Rule 48-A of the CCS (Pension) Rules, 1972?

7. Admitted facts are that the applicant has put in more than 22 years of service and as per Rule 48-A of the CCS (Pension) Rules, 1972, he was eligible to avail

voluntary retirement having completed more than 20 years of qualifying service. It is admitted fact that the applicant has submitted a note dated 31.8.2007 for voluntary retirement w.e.f. 01.09.2007. There is no letter withdrawing the voluntary retirement request from the applicant. He has specifically mentioned that three months salary in lieu of minimum three months of notice to be deducted from his dues. Though the respondents have a right to refuse voluntary retirement. But, the respondent could not disclose whether the applicant's request has been refused? We infer that no such order has been passed. On the other hand, the MEA Memorandum dated 31.08.2007 unambiguously informs that "the matter is under consideration of the Ministry and its decision will be conveyed in due course." But, the MEA never conveyed its decision to the applicant on his voluntary retirement. The Government of India decision No.(iii) under Rule 48-A envisages that acceptance of voluntary retirement is generally given in all case's except under two conditions. One of such condition is stipulated to be any disciplinary proceeding pending or contemplated against the Government employee where the imposition of penalty of dismissal or removal from service would be warranted. The impugned order reveals that matters under investigation do not warrant action resulting in his dismissal or removal from service. Thus, from this angle, he was eligible for voluntary retirement.

8. At this stage, we may refer to the statutory rule position in respect of voluntary retirement. Rule 48-A of CCS (Pension) Rules reads thus:-

"48-A. Retirement on completion of 20 years' qualifying service,

(1) 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.

(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.

(3-A) (a) 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 ; (b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.”

9. In his note dated 20.7.2007, he clearly indicated his request that within 7 days he must convey the willingness to the UN Mission about the acceptance of the offer. As he did not receive any response from the respondent, he requested for voluntary retirement in his letter dated 31.8.2007. Between 27.2.2007 to 31.08.2007 the respondent had already got more than 40 days to examine the applicant's case. The applicant could not get even the response favourably and he was responded with letter dated 31.8.2007 indicating therein that his voluntary retirement w.e.f. 01.9.2007 was under consideration. On account of exasperation or frustration born out of an idea of being harassed, he submitted a note on 31.08.2007 on the said Memorandum dated 31.8.2007 indicating his conditional resignation. It is appropriate for us to take the extract of the Memorandum and the note given by the applicant thereon.

“Ministry of External Affairs

CNV Division

No.Q/Vig/843/09/06 August 31, 2007

Memorandum

Shri Deepak Sharma, Assistant, may refer to his note dated 31-8.07 to Additional Secretary (AD), applying for voluntary retirement with effect from 1st September 2007.

2. Shri Sharma is hereby informed that the matter is under consideration in the Ministry and its decision will be conveyed to Shri Sharma in due course.

(Debnath Shaw)

Joint Secretary (CNV)

To

Shri Deepak Sharma,

Assistant,

UN Division,

Ministry of External Affairs,

New Delhi.

Ref. Note above.

If Ministry is unable to accept my offer of VRS, it may please treat this note as my letter of resignation with effect from 1/9/2007.

(Deepak Sharma)

Assistant

31/8/07

JS(CNV)”

10. The above communications by the respondents would manifest that the applicant's voluntary retirement was under consideration. But as the time was running out and the applicant had to join UN Mission, he submitted the said note in a conditional manner. His note had two parts viz first part was about the voluntary retirement and the second part resignation being fully dependent on the 1st part. A resignation has to be clear and unconditional. We have no hesitation in our mind that the above note of the applicant is a conditional resignation. Such conditional resignation is not legally admissible. In this context, we place our reliance on the judgments of Hon'ble Supreme Court in P.K. Ramachandra Iyer and Others Versus Union of India [AIR 1984 SC 541] and Dr. Praba Atri Versus State of UP [AIR 2003 SC 534]. In the latter judgment, it was observed as follows:-

“8. In P. K. Ramachandra Iyer and Ors., etc. v. Union of India and Ors., etc., this Court had an occasion to consider the nature and character of a letter written by one of the petitioners in that case who after stating in the letter that he has been all along patiently waiting for the redressal of his grievance, yet justice has not been done to him and "as such, after showing so much patience in the matter. I am sorry to decide that I should resign from the membership of the faculty in protest against such a treatment and against the discrimination and victimization shown to me by the head of the division in the allotment of students of 1968 and 1969 batches and departmental candidates". In that context, this Court observed that the callous and heartless attitude of the academic council in seizing an opportunity to get rid of him by treating the said letter to be a letter of resignation when really he was all along making representations seeking justice to him and "out of exasperation the said person wrote that letter stating that the only honourable course left open to him was to resign rather than suffer". In Moti Ram v. Param Devi and Anr., this Court observed as hereunder:-

"As pointed out by this Court, 'resignation' means the spontaneous relinquishment of one's own right and in relation to an office, it connotes the act of giving up or relinquishing the office. It has been held that in the general juristic sense, in order to constitute a complete and operative resignation there must be the intention to

give up or relinquish the office and the concomitant act of its relinquishment. It has also been observed that the act of relinquishment may take different forms or assume a unilateral or bilateral character, depending on the nature of the office and the conditions governing it. [See: Union of India v. Gopal Chandra Misra] If the act of relinquishment is of unilateral character, it comes into effect when such act indicating the intention to relinquish the office is communicated to the competent authority. The authority to whom the act of relinquishment is communicated is not required to take any action and the relinquishment takes effect from the date of such communication where the resignation is intended to operate in present!. A resignation may also be prospective to be operative from a future date and in that event it would take effect from the date indicated therein and not from the date of communication. In cases where the act of relinquishment is of a bilateral character, the communication of the intention to relinquish, by itself, would not be sufficient to result in relinquishment of the office and some action is required to be taken on such communication of the intention to relinquish, e.g., acceptance of the said request to relinquish the office, and in such a case the relinquishment does not become effective or operative till such action is taken. As to whether the act of relinquishment of an office is unilateral or bilateral in character would depend upon the nature of the office and the conditions governing it."

The Apex Court set aside the communication issued purporting to accept the resignation. In the present OA, the facts and circumstances may be different but the law laid in Dr. Prabha Atri's case (supra) holds the field and will be applicable.

11. As per the judgment of three judge bench of Hon'ble Supreme Court in Yashwant Hari Katakhar Versus UOI [1996-7-SCC-113] , it has been held that Government employee having put in sufficient qualifying service and tendering voluntary retirement should be considered favourably and retrial benefits should be sanctioned and the period so spent in the Government cannot be simply ignored. In the instant case, the applicant has put in more than 22 years of qualifying service. He is eligible as per Rule 48-A of the CCS (Pension) Rules, 1972 to avail voluntary retirement. He has only sought the voluntary retirement but the urgency of getting relieved to join the UN Mission was intimated to the MEA more than 40 days back and as the crucial day for him to join the post was

approaching, he should have been relieved on or before 31.08.2007. On the other hand, they did not relieve him but he seems to have been put to write for his resignation which was very quickly processed and his resignation was accepted within 12 days and order issued on 12.09.2007. If the 40 days time that the respondents could take to decide his request to join the UN Mission is considered in the background 12 days taken for acceptance of his resignation, we are not convinced on the argument advanced by the respondent 'MEA in its order dated 09.06.2010 stating that the applicant gave only one day time to accept the voluntary retirement. It is pertinent here to note that when the applicant met the Additional Secretary (Admn.), MEA on 31.08.2007, he recorded the following' 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, I would request that it be done. 'This note was recorded by the Additional Secretary (Admn.) on 31.08.2007. It is, therefore, considered necessary that with the haste the respondent' MEA accepted his resignation within 12 days during which period his voluntary retirement could have been considered and accepted.

12. Considering the totality of facts and circumstances of the case, we find that the impugned order dated 9.6.2010, though a speaking order but it does not convince us as to why the respondent MEA would not decide the case of the applicant for voluntary retirement. The possible opportunity for the respondent to relieve the applicant to join his post in UN Mission and thereafter the request for voluntary retirement could have been processed and order issued in his favour within same period of 12 days. The impugned order, in our considered opinion is an arbitrary action of the respondents and deserves to be quashed. We order accordingly.

13. Resultantly, we direct the respondents to consider the applicant's letter dated 31.08.2007 requesting for voluntary retirement and pass the order on his 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 benefits including Pension, Gratuity, Leave Encashment etc. as per law and the respondent' 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.

14. In terms of our above directions, the OA is allowed leaving the parties to bear their respective costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com