

(2002) 09 GAU CK 0049

In the Gauhati High Court

Case No : Writ Petition (C) No. 229 (AP) of 2002

Dinendra Chandra Biswas

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 20-09-2002

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48A

Citation : (2003) 3 GLR 261

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : R.D. Lal, for the Appellant; B.L. Singh, Sr. GA, for the Respondent

Judgement

I.A. Ansari, J.—By making this application under Article 226 of the Constitution of India, the petitioner has approached this court seeking issuance of appropriate writ or writs commanding the respondents to determine and pay to the petitioner all his retiral benefits including pension, gratuity, GPF, leave encashment money, etc., together with interest, which might have accrued thereon.

2. Briefly stated, petitioner's case runs as follows :-

The petitioner was, initially, appointed, on 6.12.1960, as Field Assistant by the Director of Forests, North East Frontier Agency, Headquarters, at Shillong, and in the year 1962, the petitioner was promoted as Forester-I. On 1.4.1984, the petitioner made a request, in writing, to the authorities concerned requesting them to allow him to take voluntary retirement from service on completing 25 years of service, but the same was not accepted and petitioner's senior officers requested him to continue for, at least, one more year. The petitioner, once again, by his letter, dated 25.4.1985, addressed to the respondent No. 3 sought voluntary retirement with effect from the 1st of August 1985. The petitioner so opted to go on voluntary retirement, because of his domestic problems and ailments of his wife. The respondents No. 3 did not communicate to the

petitioner his decision on petitioner's notice, dated 25.4.1985, aforementioned till petitioner's voluntary retirement, which took effect on 1.8.1985. By his letter dated 25.8.1985, the petitioner requested the respondent No. 3 to pass necessary orders at his end, with regard to his notice for voluntary retirement as a period of about six months time was about to pass and also requested the respondent No. 3 to send to the petitioner latter's release order of voluntary retirement. The petitioner sent a reminder in this regard to the respondent No. 3 on 6.11.1985, but the respondent No. 3 did not react thereto. This apart, despite several representations made by the petitioner seeking retiral benefits, the respondents maintained total silence. The petitioner, eventually, sent a pleader's notice, dated 1.10.2001 but even this notice did not succeed in eliciting reaction from the respondents. Hence, the writ petition.

3. The respondents have contested this case by filing their affidavit the case of the respondents being, in brief, thus : The petitioner's last posting was at Central Wild Life Division, Yingkiong, vide order No. CWL/12/82/Estt/751-57 dated 30.6.1984, issued by the Chief Wild Life Warden, Arunachal Pradesh and the petitioner was released from Namdapha Wild Life Century Division, w.e.f. 16.3.1985, on the basis of the release order No. NWLS/32/p/82/1249-59, dated 13.3.1985, issued by the DFO, Namdapha Wild Life Century Division, Miao. The petitioner submitted application, for voluntary retirement w.e.f. 1.4.1984 vide his application dated 21.4.1984, and the petitioner was informed through Chief Wild Life Warden (now Chief Conservator of Forests, Wild Life) vide letter No. FOR.17/61/Pt.18019, dated 27.6.1984, that petitioner's request for voluntary retirement would be considered only after decision was given in the cases of the petitioner pending with Gauhati High Court and also upon finalization of all disciplinary cases pending against him. The said intimation was served upon the petitioner, on 14.9.1984, by the Divisional Forest Officer, Namdapha Wild Life Sanctuary Division, Thereafter, the petitioner, again, submitted application, dated 25.10.1985, followed by another application, dated 8.2.1987, requesting the respondents to accept his notice of voluntary retirement. The petitioner was duly informed, again, by the Chief Conservator of Forests, Arunachal Pradesh, vide his letter No. FOR.17/61/Pt/9543-45, dated 28.3.1987, that his notice for voluntary retirement would be considered by the respondents only after finalization of the High Court cases and also disciplinary proceedings pending against him. When the petitioner was transferred and posted to Central Wild Life Division, Yingkiong, he was also released from Namdapha Wild Life Sanctuary Division on 16.3.1985. The petitioner took Rs. 1500 as Travelling Expenses from DFO, Namdapha Wild Life Sanctuary Division, but did not report for duties at Central Wild Life Division and remained absent without any authority and/or intimation. This necessitated issuance of a Circular No. FOR.17/61/Pt/15,625-85, dated 18.5.1990 by the Principal Chief Conservator of Forests, Arunachal Pradesh, declaring that the petitioner had ceases to be in the Government Service with effect from 17.3.1990. Finally, Memorandum No. FOR.17/61/Pt/686-746, dated 18.5.1990, was issued by the PCCF, Arunachal Pradesh, to the effect that the petitioner had

ceased to be in Government service with effect from 17.3.1990 (AN) i.e., after 5 years from the date of his continuous absence from Government duty under Rule 12 of CCS (Leave) Rules, 1972. During December, 1985, the petitioner contested the General Election in the State of Assam from 124 Margherita Legislative Assembly seat without obtaining any prior approval from the competent authority or before getting acceptance of his notice of voluntary retirement from Government services by the competent authority. This was confirmed by EAC and Election Officer vide letter No. DEL.59/84/75 dated 19.3.1986. For early finalisation of High Court case No. Civil Rule 885 of 1983 pending against the petitioner, Government Advocate, Gauhati High Court, was requested to take up the matter with the Court vide letter No. FOR.17/61/Pt/314710-13, dated 15.9.1986. The High Court finally disposed of the case vide its order, dated 20.4.1987.

4. I have carefully perused the materials on record. I have heard Mr. R.D. Lal, learned counsel for the petitioner, and Mr. B. L. Singh, learned Senior Government Advocate, appearing on behalf of the State respondents.

5. What emerges from the submissions made on behalf of the parties is that according to the case of the petitioner, his initial appointment, as Field Assistant was on 6.12.1960 and it was on 1.1.1984 that he, for the first time, made a request, in writing, to the authorities concerned seeking to go on voluntary retirement from service on completing 25 years of service, but this request was turned down, whereupon he, once again, vide his letter 25.4.1985, with addressed to the respondent No. 3 applied for voluntary retirement with effect from the 1st of August, 1985, but to the letter, dated 24.5.1985, so sent, the petitioner received no response from the respondent concerned and the petitioner accordingly stood voluntarily retired on 1.8.1985. However, the petitioner submitted another representation dated 25.8.1985, requesting the respondent No. 3 to pass necessary orders at his end with regard to the petitioner's notice, dated 25.4.1985 aforementioned, but no formal order was passed even on this representation. However, while the respondents agree that they had declined petitioner's request made by the latter vide his letter, dated 1.4.1984 aforementioned to go on voluntary retirement, the respondents have, nowhere denied specifically in their affidavit-in-opposition that they had received petitioner's request, in writing, once again, vide his letter, dated 25.4.1984, aforementioned to allow him to go on voluntary retirement w.e.f. 1.8.1985 and/or that they had communicated to the petitioner that his request for voluntary retirement had not been acceded to.

6. In the absence of any specific denial by the respondents as indicated hereinabove, the logical inference will be that the respondents did receive petitioner's letter, dated 25.4.1984, aforementioned, but did not react thereto. Be that as it may, even according to the affidavit filed by the respondents, they did receive petitioners reminder, dated 25.10(8).1985, requesting the authority concerned to pass necessary orders on petitioner's notice, dated 25.4.1985,

whereby he had sought to go on voluntary retirement, but even this representation was not responded to and it was only on 28.3.1987 that the Chief Conservator of Forest, Arunachal Pradesh, vide his letter No. FOR.17/612/Pt/9543, dated 28.3.1987, informed the petitioner that the latter's notice for voluntary retirement would be considered only on finalisation of the High Court cases and also the disciplinary cases, which were allegedly pending against the petitioner.

7. Situated thus, there can be no escape from the conclusion that as regards the petitioner's letter dated 25.4.1985, aforementioned and the reminder thereto sent by him, vide letter, dated 25.8.1985, aforementioned, the respondents did not issue any letter to the petitioner disallowing or declining petitioner's request for allowing him to go on voluntary retirement.

8. Before proceeding any further, it is of immense importance to note that the fact the petitioner's case for voluntary retirement is covered by Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as the "CCS (Pension) Rules of 1972") is not in dispute before me. The provisions relating to voluntary retirement are to be found in Rule 48 and Rule 48A of the CCS (Pension) Rules of 1972. Both these sections are similarly worded. While the Rule 48 deals with voluntary retirement on completion of 30 years of qualifying service, Rule 48A deals with voluntary retirement on completion of 20 years of service. A combined reading of Rules 48 and 48A shows that while it is the absolute right of the government servant, under Rule 48 to go on retirement on completion of 30 years of qualifying service and the Government cannot stop such a person from going on retirement, Rule 48A lays down that the notice of voluntary retirement shall require acceptance by the appointing authority meaning thereby that under Rule 48, no formal acceptance of notice of voluntary retirement given by the Government servant is required and the Government servant will be deemed to have retired on the date mentioned in his notice while under Rule 48A(2) acceptance by the appointing authority of the notice of voluntary retirement is a condition precedent, but even rigour of Rule 48A(2) is diluted by the proviso appended to Rule 48A(2) inasmuch as this proviso lays down that if the authority concerned does not refuse permission before the expiry of the period mentioned in the notice seeking voluntary retirement, the retirement shall become effective from the date of the expiry of the said period.

9. In view of the fact that the petitioner received, admittedly, his initial appointment as a Field Assistant as far back as on 6.12.1960, it is quite clear that on 25.4.1985, when he, first, made the request to allow him to retire from services, he had not completed the qualifying period of service of 30/25 years for considering his case under Rule 48, but in view of the fact that he had, indeed, completed the qualifying period of more than 20 years, his case was governed by Rule 48A.

10. In view of the fact that the petitioner submitted his letter, dated 25.4.1985, aforementioned, in the form of a notice, addressed to the respondent No. 3

seeking to go on voluntary retirement with effect from 1.8.1985, but the respondents did not act thereto nor did they react even to the petitioner's reminder issued in this regard by his letter, dated 25.8.1985, aforementioned, this Court has no option but to conclude, and I do conclude, that the petitioner did stand retired from the service w.e.f. 1.8.1985. This view is further fortified from the fact that the respondents did not react to the second request made by the petitioner seeking to go on voluntary retirement until a letter, dated 28.3.1987, aforementioned, was issued by the Chief Conservator of Forest, Arunachal Pradesh. This letter of the Chief Conservator of Forest was issued, if I may point out, about one-and-a-half years after the petitioner had ceased to be a Government servant, his retirement having already taken effect on 1.8.1985.

11. Moreover, it needs to be borne in mind that the concept of *res judicata* does not apply to the requests for voluntary retirement. Hence, when the petitioner's initial request made, on 1.4.1984, to go on voluntary retirement was declined, there was no legal impediment on the part of the petitioner to make, again, a request to allow him to go on retirement on and from a different date. Since the petitioner had already completed more than 20 years of service w.e.f. 5.12.1980 and he made his request, in writing, on 25.4.1985, to allow him to go on voluntary retirement w.e.f. 1.8.1985, the respondents ought to have, if they did not want the petitioner to retire from service, informed the petitioner, within a period of three months from the date of the said letter, that petitioner's request for voluntary retirement was not accepted. Having not issued any such refusal, the respondents shall be deemed to have accepted the notice of voluntary retirement given by the petitioner by his letter, dated 25.4.1985, aforementioned and the petitioner shall be treated to have retired with effect from 1.8.1985.

12. Coupled with the above, it is also worth noticing that though the respondents informed the petitioner, according to the case of the respondents themselves, as far back as on 28.3.1987, that disciplinary cases were pending against the petitioner, it has been candidly conceded by the learned Senior Government Advocate that till the date of the hearing of this writ petitioner, no formal disciplinary proceeding against the petitioner has been drawn despite the fact that there has been, admittedly no judicial order from any court or any legal impediment restraining the respondents from drawing any such disciplinary proceeding, if they really meant so.

13. In view of the fact that the petitioner stood retired as far back as on 1.8.1985 and more than 17 years have already elapsed since the said date of his retirement, it will be abuse of powers if the authorities concerned are still allowed to withhold and/or refuse to make payment of pension and other retiral benefits of the petitioner. Viewed from this angle, the respondents deserve to be directed to make payment of the pension and all retiral benefits of the petitioner within a given period of time.

14. In the result and for the reasons discussed above, this writ petition partly succeeds. The respondents are hereby directed to finalise and pay to the

petitioner, within a period of three months from today, all pensionary arrear dues and other retiral benefits of the petitioner treating him to have retired from service w.e.f. 1.8.1985, It is further directed that the respondents shall, within a fortnight from today, inform the petitioner if any form is to be filed up by the petitioner or any document/certificate/paper are required to be submitted to the respondents for the purpose of enabling the respondents to clear petitioner's pension and his other lawful dues within the given period of three months.

15. In view of the fact that the respondents appear to have, under a mis-conceived view of the provisions of the law, kept the pensionary retiral benefits of the petitioner withheld and since the act/acts of so withholding of the pension and pensionary retiral benefits of the petitioner do not appear to be mala fide, I refrain from awarding any delayed payment interest on the amount that may be found due to be paid to the petitioner.

16. With the above observations and directions, this writ peittion shall stand disposed of.

17. No order as to costs.