
(2005) 05 DEL CK 0058
In the Delhi High Court
Case No : WP (C) 4602 of 2005

F.S. Viridi	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 26-05-2005

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(2), 21, 21(1), 21(2)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15, 19
Central Civil Services (Pension) Rules, 1972 — Rule 9, 9(2)

Citation : (2005) 120 DLT 581

Hon'ble Judges : Rekha Sharma, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : P.P. Khurana and Anand Singh, for the Appellant; Vinod Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Rekha Sharma, J.—It all started in the year 1970. That was the year when the petitioner before us who was working as an Assistant in the Ministry of External Affairs was posted in the office of High Commission of India at London. It was a tenure posting of three years. On completion of his tenure, he was sent a communication dated 12th March, 1974 informing him that his substitute having been selected, he should keep himself in readiness to come back to India. On receiving this communication, he rather than preparing himself for a journey homeward made a representation dated 13th March, 1974 requesting the department for extending his term in the High Commission till July, 1974 on the ground that his children were in the middle of their academic session. The request was turned down, and consequent thereto, vide office order dated 30th May, 1974 he was relieved of his duties in the High Commission with effect from 29th May, 1974. He however was not prepared to come back.

2. On 30th May, 1974, he sent a letter requesting the department to grant him 32 days ex-India leave. This request too was declined. Faced with this, he submitted

an application dated 1st September, 1974 seeking pre-mature retirement and in that application itself, he tendered three months notice which he was required to give as per the requirement of Ministry of Finance Notification No. 7(IV)-EV/67-II dated 9th May, 1969. He also made a request to grant him ex-India leave on full pay preparatory to retirement. The department did accede to his request for voluntary retirement but not in the manner requested by him. It firstly proceeded to hold an inquiry against him as per the procedure laid down in Rules 14, 15 and 19 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (hereinafter called the 'Rules of 1965'), on the allegation, that he willfully remained absent from duty with effect from 30th May, 1974. However, no inquiry as contemplated was held, as according to the department, he had deliberately given a wrong address to the High Commission of India at London for which reason communications sent to him by registered post came back undelivered and despite all reasonable efforts made by the Commission, his correct address could not be ascertained. In these circumstances, it was not found practicable to hold an inquiry in the manner prescribed in Rules 14 and 15 of the Rules of 1965, and accordingly, it was decided to take action against him under Rule 19(ii) of the said Rules which permits the disciplinary authority to dispense with the holding of an inquiry provided the Union Public Service Commission has been consulted where such consultations necessary. The said rule also authorises the disciplinary authority to consider the circumstances of the case and make such orders therein as it deems fit. Having regard to this rule and on a careful consideration of the facts of the case in consultation with the Union Public Service Commission, the petitioner was found guilty of grave misconduct on account of his absence from duty from 30th May, 1974 to 31st December, 1974 and also for disobedience of the Government's order transferring him from the High Commission of India, London, to the Headquarters of the Ministry of External Affairs, New Delhi. Consequently, the President in exercise of the powers conferred upon him by Rule 9(i) of the Central Civil Services (Pension) Rules, 1972 (hereinafter called the 'Pension Rules') ordered permanent withholding of entire pensionary benefits admissible to the petitioner. However, he was taken to have retired from service with effect from 22nd December, 1974 i.e. on the expiry of three months from the date of service of notice of voluntary retirement.

3. The above order by the President was passed on 17th August, 1976 inviting in its wake another representation from the petitioner dated 30th October, 1978. Consequent thereto, the department after taking into account all factors relevant to the case modified its order dated 17th August, 1976 to the extent that his death-cum-retirement gratuity was ordered to be released. This was done by order dated 22nd May, 1979. The petitioner was still not satisfied and understandably. The order permanently withholding his pensionary benefits was staring him at his face. It was not revoked. He, Therefore continued to make representations and it appears that in one of the representations dated 3rd March, 1983, he made a grievance that his representation dated 14th May, 1979 was not considered. The department responding to the same wrote to him on 3rd

March, 1983 informing him that it was after consideration of the facts of the case and in consultation with the Union Public Service Commission that it was decided to release his death-cum-retirement gratuity and that while taking this decision, his representation dated 14th May, 1979 was also considered carefully.

4. It appears that in the year 2000 the petitioner made two more representations dated 13th April, 2000 and 5th June, 2000. One was addressed to the Prime Minister of India and the other to the Ministry of External Affairs. This is borne out from a communication of the department dated 13th July, 2000 which makes reference to these two representations and then goes on to inform the petitioner that his matter was being re-considered and if it was indeed found that there were grounds to re-consider and review the penalty, the same would be communicated to him. Thereafter, he did not hear from the department. Finding no response, he moved the Central Administrative Tribunal. The petition was taken up by the Tribunal on 6th December, 2001 when the department was directed to re-consider and review the matter. With that direction, the petition stood disposed of. Consequent upon that direction, the department addressed a communication to the Section officer, Central Administrative Tribunal, Principal Bench, New Delhi informing the Tribunal that the representation of the petitioner dated 13th April, 2000 addressed to the Prime Minister was rejected on 5th October, 2001 and he was even informed about the same as also was told that no further correspondence from his end would be entertained. The petitioner, in the meanwhile, had moved a Contempt Petition against the department which was withdrawn by him after he was apprised of the letter dated 1st January, 2002. He however was granted permission to file appropriate proceedings. This led the petitioner to move the Central Administrative Tribunal again.

5. Two principle questions arose before the Tribunal.

6 (1) Was the petition within time ? This was the first question posed.

7. The second question revolved around the validity of the order dated 17th August, 1976, whereby, the pension of the petitioner was withheld permanently.

8. It was argued before the Tribunal that the order passed on 17th August, 1976, was void ab initio and that no limitation applied to an order of such a nature. On being asked as to how the order was void ab initio, it was submitted that since no charge-sheet was issued to the petitioner during the period he was in service and Therefore, no proceedings could have been initiated against him under Rule 9 of the Pension Rules. The Tribunal rejected the submission and held that Rule 9 (2) (b) (i) of the Pension Rules provides that the departmental proceedings if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be instituted save with the sanction of the President. The Tribunal then examined whether the proceedings under Rule 9 were initiated with the sanction of the President and came to the conclusion that the very opening paragraph of the order dated 19th August, 1976 indicated that the President in exercise of the powers conferred by sub-clause 1

of clause (b) of sub-rule 2 of Rule 9 of the Pension Rules, 1972 had granted sanction to the institution of departmental proceedings against Shri F. S. Viridi. It thus concluded that the petitioner failed to prove the allegation that the proceedings were initiated without valid sanction of the President and it was, Therefore, not open to him to contend that the order passed was void ab initio. Having held so, the Tribunal dealt with the question of limitation and on this score, its finding was that the order dated 17th August, 1976 was a quasi-judicial order against which the petitioner availed of no judicial remedy and, Therefore, it had attained finality.

9. The Tribunal thus dismissed the petition vide its order dated 6th January, 2004 against which the petitioner preferred a review which also was dismissed on 15th March, 2004. It is these two orders which have been assailed before us.

10. The petitioner is primarily aggrieved by order dated 17th August, 1976. This is the order by which his pensionary benefits have been permanently withheld. It was passed much prior to the coming into force of the Administrative Tribunal Act, 1985. We feel that the first question which arises for consideration is whether a petition assailing an order passed on 17th August, 1976 could be entertained by the Tribunal, which itself had come into existence in the year 1985. The question of limitation, if at all, will come later.

11. The relevant section of The Administrative Tribunals Act, 1985 which deals with a situation like the present is Section 21.

12. 21. Limitation.-(1) A Tribunal shall not admit an application,-

(a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made ;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where -

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court.

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1)

or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-Section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1), or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.'"

13. It is apparent from a reading of Section 21(2)(a) and 21(b) that the Tribunal was competent to entertain applications in respect of those grievances which had arisen before it came into existence. This however, was not without a rider for it could entertain only such grievances which arose within a span of three years immediately preceding the date on which the jurisdiction, power and authority of the Tribunal became exercisable. The order dated 17th August, 1976 was passed nine years before the Tribunal came into existence. The petitioner during all these nine years took no steps to challenge the order in any Court of law. He had, at that relevant time the option to move the High Court or any other judicial forum for redressal of his grievance. He exercised no such option. He slumbered over the matter for years together. The fault squarely lies with him. He did make representations, but they were of no help to him. Filing of repeated representations would also not extend limitation, without statutory sanction for filing such representations. This is settled law in our service jurisprudence. The representations would not confer authority on the Tribunal to entertain the petition unless he was statutorily required to make representations which however was not the case. It is true that the Tribunal vide an earlier order dated 6th December, 2001 entertained the petition and asked the department to consider his representation, but then again, such exercise of power whether done rightly or wrongly, cannot confer jurisdiction on the Tribunal to entertain a petition in respect of an order passed in the year 1976. We are one with the Tribunal that the order dated 7th August, 1976 attained finality. We, Therefore hold, that it rightly did not exercise its jurisdiction in entertaining the petition.

14. We may say a word or two on merits too. Having perused the order passed on 17th August, 1976, we find no infirmity or illegality in the same so as to hold that it could not be passed against an employee who stood already retired. We feel that the Tribunal rightly held that such an order could be passed after obtaining sanction of the President under sub-clause (1) of Clause (b) of sub-rule 2 of Rule 9 of the Pension Rules. The order dated 17th August, 1976 clearly indicates that the sanction as envisaged in the said rule was obtained from the President and it was only thereafter that the further order withholding the pension of the petitioner permanently was passed.

15. For what has been recorded by us, we find that the petition has no merit. The same Therefore stands dismissed.