
(1985) 07 BOM CK 0048
In the Bombay High Court
Case No : Writ Petition No. 1888 of 1984

Laxman Kotamkar

APPELLANT

Vs

Central Board of Excise and Customs and Others

RESPONDENT

Date of Decision : 03-07-1985

Acts Referred:

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

Citation : (1985) 2 BomCR 573

Hon'ble Judges : V.V. Vaze, J;V.A. Mohta, J

Bench : Division Bench

Advocate : S.G. Aney, for the Appellant; R.P. Darda, for the Respondent

Final Decision : Allowed

Judgement

V.A. Mohta, J.—Petitioner Laxman Kotamkar, born on 15th January, 1928, was serving in the department of Central Excise since 4th February, 1952. He started his career as an Inspector/Range Officer and rose to the position of Superintendent of Central Excise some time in 1979. On 31st January, 1984, on completion of 32 years of his service, he gave a notice of voluntary retirement with effect from 30th April, 1984. His grievance in the present petition relates to non-finalisation of the pension papers.

2. The Collector, Central Excise and Customs, Nagpur (respondent No. 2) informed the petitioner to wait for some time for voluntary retirement as there were vacancies in the grade of Group II Superintendents to which the petitioner belonged. The petitioner took no time to reply that he was keen to retire and was not agreeable to wait. On 30th April, 1984, he relinquished his charge, when the final pension papers were already prepared. On 9th May, 1984, he was informed to hand over the complete charge to Shri G.N. Markandy and communicate the compliance. He complied even with that order and obtained charge report from the relieving officer on 14th May, 1984. He issued reminder thereafter by letter dated 7th June, 1984 and also met second respondent personally on 28th June, 1984. On 4th July, 1984, the petitioner was informed that as he had relinquished

the charge of his post, despite instructions to wait for some time, the relinquishing of the charge unilaterally was unauthorised and therefore, he should apply for earned leave for the period from 1st May, 1984 till the date on which the application for voluntary retirement is accepted by the competent authority. Realising that respondent No. 2 was in no mood to sign the pension papers, the present petition was filed on 24th August, 1984. The petition was admitted and on 10th October, 1984 he was granted interim relief in terms of prayer Clause (iv) namely, grant of monthly pension of Rs. 741/- and release of his contribution to the provident fund.

3. Having heard Shri Aney, the learned Counsel for the petitioner, and Shri Darda, the learned Counsel for the respondents, it seems clear to us that there is no justification whatsoever for withholding the finalisation of the pension papers and consequent release of terminal benefits. In the first place, in view of the fact that (i) the petitioner had given a clear three months notice of retirement on completion of 30 years qualifying service and (ii) he was not under suspension, the notice did not require acceptance at all. The Central Civil Services Pension Rules govern the matter and Rule 48 is the relevant rule. It reads as under :

"48. Retirement on completion of 30 years qualifying service.

(1) At any time after a Government servant has completed thirty years qualifying service----

(a) he may retire from service, or

(b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:

Provided that---

(a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and

(b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months pay and allowances in lieu of such notice.

Provided further that where the Government servant giving notice under Clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule.

(1-A)(a) A Government servant referred to in Clause (a) of the first proviso to sub-Rule (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefore.

(b) On receipt of a request under Clause (a) the appointing authority 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, appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for communication of a part of his pension before the expiry of the period of notice of three months."

Second provision to sub-Rule (1) was inserted on 25th January, 1974 and sub-Rule (1-A) was inserted on 5th March, 1981. Choice to withhold permission exists only when either the notice is of shorter duration or the Government servant is under suspension. Any doubt about this interpretation is cleared on perusal of Rule 48-A about retirement on completion of 20 years qualifying service which makes the acceptance of the notice by the appointing authority a necessity before valid retirement takes place. Rule 48-A(1) and (2) read as under :

"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."

On making comparison of these two provisions, it is clear that whereas in cases of retirement on completion of twenty years qualifying service, acceptance is made necessary, in cases of retirement on completion of 30 years qualifying service, it is not so, provided other requirements of Rule 48 are fulfilled. It is nobody's case that the other requirements were not fulfilled. Under the circumstances, it is apparent that the petitioner stood voluntarily retired on 30th April, 1984. Handing over of further charge on 14th May has merely a technical value in the whole background.

4. Apart from the application of Rule 48, even on undisputed facts we see no justification whatsoever in withholding the finalisation of the pension papers by respondent No. 2. The only reason that there were too many vacancies cannot justify the delay which in this case amounts to refusal. Under the circumstances, we direct respondent No. 2 to finalise the pension papers within a period of one month and make the line clear for receiving the retirement benefits.

5. In the result, the petition is allowed and the rule made absolute in the above terms. Respondent No. 2 to pay the costs of the petitioner.