

(2020) 02 DEL CK 0626

In the Delhi High Court

Case No : Civil Writ Petition No. 260 Of 2020, Civil Miscellaneous Application No. 779 Of 2020

Rajesh Kumar Singh

APPELLANT

Vs

Union Of India And Anr

RESPONDENT

Date of Decision : 06-02-2020

Acts Referred:

All India Services (Leave) Rules, 1955 — Rule 7, 7(2)

All India Service (Discipline & Appeal) Rules, 1969 — Rule 25, 25(1)(c)

Citation : (2020) 02 DEL CK 0626

Hon'ble Judges : G.S.Sistani, J;Anup Jairam Bhambhani, J

Bench : Division Bench

Advocate : Vimal Kirti Singh, Anamika, Jaswinder Singh, Chetan Kumar

Final Decision : Dismissed

Judgement

G.S. Sistani, J

1. The present petition is directed against order dated 30.09.2019 passed by the Central Administrative Tribunal ('Tribunal').
2. Mr. Jaswinder Singh, learned counsel enters appearance on behalf of respondent No. 1.
3. With the consent of the parties, the writ petition is set-down for final hearing and disposal at the admission stage itself.
4. The petitioner joined the Indian Administrative Services in 1984; and was assigned to the UP Cadre. In the year 1996 the petitioner sought study leave for a period of two years to pursue a Ph.D in Economics from the University of California, U.S.A. Study leave was sought from 13.08.1996 to 12.08.1998. The case of the petitioner is that in the year 2001, he joined duty for one day on 17.07.2001; and thereafter, again sought leave from the very next day i.e. 18.07.2001 till 31.12.2001; and thereafter applied for further extension upto 30.06.2002.

5. The petitioner was issued a show cause notice dated 10.07.2002 to explain as to why he should not be deemed to have resigned from service, in terms of Rule 7(2) of All India Services (Leave) Rules, 1955; pursuant to which a reply was sent by the petitioner vide letter dated 31.10.2002. Subsequently, a notification was issued on 19.05.2003 to the effect that the petitioner is deemed to have resigned from service. The petitioner thereafter submitted a memorial on 28.02.2017 under Rule 25 of the All India Service (Discipline & Appeal) Rules, 1969 with a request to reconsider/revoke the notification dated 19.05.2003; which memorial was rejected on 31.07.2017; which led to the filing of an O.A., which stands dismissed by way of the impugned order; and this has led to the filing of the present petition.

6. Mr. Vimal Kirti Singh, learned counsel for the petitioner has labored hard to contend that the order passed under Rule 7 of All India Services (Leave) Rules, 1955 is bad in law since the petitioner did not remain absent 'continuously' for the period of five years, which is evident from the fact that he joined duty for one day on 17.07.2001 and salary for said day was also released to him on 04.10.2016.

7. Learned counsel further submits that for the period 2003 to 2017, he was struggling to obtain documents from the government to show that he had joined service for that one day. He was also struggling to get salary for the said day. Both the aspects would show that he had joined back; and Rule 7 would thus not apply. He further submits that the petitioner completed his Ph.D. in the year 2002; and there is no delay in approaching the Tribunal for the reason that from the year 2003 he was interacting with the government on the matter; and the order of 2003 would accordingly stand merged with the order of 2017.

8. Opposing the petitioner learned counsel for the respondent submits that the petitioner had sought study leave only for a period of two years in the year 1996. Leave was sanctioned up-to the year 1998; whereafter the petitioner again sought leave from 18.07.2001 till 31.12.2001; and then an extension from 31.12.2001 to 30.06.2002. Counsel for the respondents submits that the petitioner's averment of joining for one day is greatly suspect as there is no communication from the department to the petitioner allowing him to join. There is also nothing on record to show the petitioner's joining back, and if so, at which office. He submits that the grant of salary for one day is also suspect as, for the petitioner having allegedly joined in the year 2001, the salary was released in 2016. Any further communication sought to be relied upon by the petitioner also cannot help his case since according to the respondents, the petitioner has been on leave from 1996 till the order of deemed resignation was passed in the year 2003. He submits that between 2003 and 2010, there is not a single correspondence between the petitioner and the respondents; and thus the delay in approaching the Tribunal has also not been satisfactorily explained. Even otherwise, he contends that the law is well-settled that only making representations does not extend the period of limitation.

9. It is also submitted on behalf of the respondents that the notification regarding deemed resignation was issued as far back as in the year 2003; and if the petitioner was aggrieved by the notification, he should have immediately knocked at the doors of justice. However, he continued to stay abroad; and it is only in 2017 when the memorial was submitted and rejected that an OA was filed. Counsel submits that a memorial submitted after a gap of more than 14 years would certainly not extend the period of limitation. In case the memorial was to be submitted, it should have been submitted within some reasonable time.

10. We have heard learned counsel for the parties and have considered their rival submissions.

11. We find that in this case, the petitioner has evidently taken the government for granted; and having sought study leave only for 2 years in the year 1996, the petitioner has remained out of the country till July 2008.

12. The first issue which arises for consideration is whether the long delay in approaching the Tribunal has been satisfactorily explained by the petitioner. Admittedly show cause notice was issued to the petitioner on 10.07.2002 and a final notification was issued on 19.05.2003 to the effect that the petitioner be deemed to have resigned from service. The petitioner is unable to show a single communication between the petitioner and the respondents from 2003 to 2010.

13. Learned counsel for the petitioner has submitted that from 2010 onwards he had been trying hard to obtain documents from the Government to show that he had worked for one day and that therefore Rule 7 would not apply. To this end the petitioner had made a representation/memorial dated 28.02.2017. In our view, filing of a representation is no ground to extend the period of limitation as held by the Apex Court in the case of State of Tripura vs. Arabanda Chakraborty reported as AIR 2014 SC 3570.

14. We are also not impressed by the submission that since a memorial was submitted on 28.02.2017, which was rejected on 31.07.2017 the notification dated 19.05.2003 would merge with the rejection order of 31.07.2017. We say so firstly, for the reason that the period for submitting a memorial is 90 days as per Rule 25(1)(c), which rule we reproduce below :

"25. Memorials-

25(1) A member of the Service shall be entitled to submit a memorial to the President against any order of the Central Government or the State Government by which he is aggrieved:

Provided that -

(a) xxxxx

(b) xxxxx

(c) such memorial shall be submitted within a period of ninety days from the date

of passing of an order in any appeal, review or revision, as the case may be, by the Central Government or the State Government as the case may be."

15. Secondly, the law does not permit a party to make a representation or submit a memorial beyond the period of limitation; and upon rejection thereof, to claim a fresh cause of action. This practice is, and must be, discouraged. Thus, the memorial having made after a gap of 14 years and well beyond the time period stipulated by the statute, would not extend the period of limitation.

16. As far as the legal plea raised by learned counsel for the petitioner as to the applicability of Rule 7 is concerned, in our view, to say that the Rule is attracted since the petitioner claims to have joined service for one day, would be to make a mockery and a farce of the rule.

17. In any case, the Tribunal has dealt with this submission in order dated 30.09.2019, para 11 of which we reproduce below:

"11. The applicant is not able to substantiate before us that he joined the duty on 17.07.2001. Firstly, there is no letter from him seeking permission to join duty. An officer who was on leave cannot join duty just like that. Various formalities need to be completed. His health condition needs to be certified. A specified order needs to be passed permitting him to join duty. In the case of the applicant, the allocation to Uttarakhand cadre took place when he was abroad. His leave was granted by the Government of UP and he was allotted to the Uttarakhand Cadre in absentia. It is just unimaginable that joining of such an officer could take as though it is withdrawal of money from ATM. Even where an employee in the lowest of the administration goes on leave for few months, his joining the duties is conditional on fulfilling so many requirements. In his anxiety to get the benefits from the State, the applicant has presented the theory of joining the duty on 17.07.2001."

18. We endorse the above views of the Tribunal.

19. In the above view of the matter, while deprecating the petitioner's conduct, we find no infirmity in the Tribunal's order; and no ground to entertain the writ petition. The petition is accordingly dismissed with costs of Rs.25,000/- to be paid to the Delhi High Court Bar Clerks' Association within four weeks.