
(2019) 03 CAT CK 0132

In the Central Administrative Tribunal

Case No : Original Application No. 1479 Of 2016

Sanjeev Singh Ahluwalia

APPELLANT

Vs

Union Of India And Ors

RESPONDENT

Date of Decision : 26-03-2019

Acts Referred:

All India Services (Leave) Rules, 1955 — Rule 7, 7(2), 7(2)(a), 7(2)(b), 7(2)(c)
All India Services (Deathcum-Retirement Benefits) Rules, 1958 — Rule 16(2)

Citation : (2019) 03 CAT CK 0132

Hon'ble Judges : L. Narasimh Reddy, J; Mohd. Jamshed, J

Bench : Division Bench

Advocate : H.K. Gangwani, Vidya Sagar, Mayank Kapoor, Aman Oberoi, Hanu Bhaskar, Nikhil Majithia

Final Decision : Dismissed

Judgement

1. The applicant was an IAS Officer of UP Cadre of 1980 batch. In the year 2015, he was holding the post of Joint Secretary, on Central deputation in the Government of India. He sought premature repatriation, and on a request made by him, he was accorded permission to accept an assignment of World Bank to serve in Sudan for a period of one year between 18.09.2005 and 17.09.2006. No extension beyond one year was granted, but the applicant did not report to duty on expiry of the term. On 19.04.2010, he forwarded an application seeking voluntary retirement, in terms of relevant All India Service Rules.

2. A notice dated 10.10.2011 was issued by the State of Uttar Pradesh, requiring the applicant to explain as to why he shall not be deemed to have resigned from service, as provided for under rule 7(2)(c) of the All India Services (Leave) Rules, 1955 (for short, Leave Rules). The applicant submitted his explanation dated 17.05.2012. He attained the age of superannuation on 31.10.2012. Through a notification dated 09.09.2015, the 1st respondent, the Union of India, declared that the applicant is deemed to have resigned from service w.e.f. 18.09.2006, i.e., from the date of expiry of the leave period. The same is

challenged in this OA.

3. The applicant contends that he has been making representations for extension of the leave beyond 17.09.2006, but the same were not considered. He submits that on account of the factors, beyond his control and some family problems, he could not join duty in India, and that though he submitted an application for voluntary retirement in accordance with law, it was not considered at all. He contends that the impugned order cannot be supported either on facts or in law.

4. Respondent No.1, on the one hand, and respondents 2 and 3, on the other, filed separate counter affidavits. They contend that though the applicant was granted leave and accorded permission to accept a foreign assignment for a period of one year, he did not return for years together, despite repeated reminders. It is stated that left with no alternative, the State Government issued a notice contemplated under rule 7 (2) (c) of the Leave Rules, and it was one year thereafter, that the applicant responded through an explanation. It is stated that the impugned notification was issued strictly in accordance with law.

5. As regards the application for voluntary retirement, it is stated that the question of dealing with an application of that nature would arise if only the member of the Service is on duty in the cadre, and since the applicant was not even available in the country, let alone in the post, the application was not considered. The various contentions advanced by the applicant are flatly denied.

6. Shri H. K. Gangwani, learned counsel for the applicant advanced extensive arguments. He submits that the applicant was prevented from resuming the duties in India on account of factors beyond his control, and left with no alternative, he submitted an application for voluntary retirement on 19.04.2010, but the same was not considered by the respondents. It is also pleaded that the very invocation of rule 7(2)(c) in the instant case is totally unwarranted, and the applicant was entitled to be paid the retirement benefits, once he attained the age of superannuation.

7. Shri Hanu Bhaskar and Shri Nikhil Majithia, learned counsel for the respondents, on the other hand, submit that the applicant has chosen to remain in a foreign country despite the expiry of the permission for one year, and repeated reminders to resume duty did not have any impact upon him. They contend that the very purpose of appointment of an officer in the All India Services is to avail his services to the concerned departments, and in the case of the applicant, he has chosen to remain in a foreign country, than to serve the cadre in which he was appointed. They submit that rule 7(2) is framed to ensure that the members of the Service do not have the luxury of remaining out of the cadre and service beyond five years, and to ensure that the resultant vacancy of such disinterested officers is available to be filled. They submit that the prescribed procedure was followed in the case of the applicant, and no interference with the impugned notification is warranted.

8. The applicant is a member of UP cadre of the IAS of the 1980 batch. By 2005,

he was on Central deputation, holding the post of Joint Secretary in the Department of Disinvestment. On a request made by him, he was repatriated to his parent cadre before completion of the term of deputation, vide order dated 14.09.2005, passed by the Government of India, Ministry of Finance. Thereafter he made efforts to get permission to go on foreign service. He was granted permission for taking up foreign assignment, as Consultant in the World Bank, Sudan, for a period of one year from 18.09.2005 to 17.09.2006. However, he did not report after expiry of the one year term. The request made by him for extension of the term was not acceded to. On the other hand, a letter addressed by the State Government requiring him to resume duty did not have any impact on him. Through a letter dated 16.07.2008, he was informed that disciplinary action would be initiated if he fails to return.

9. The Government of India, in the DoP&T, addressed letter dated 22/23.12.2010 informing the State Government that the case of the applicant is a fit one, for invoking the provision of rule 7(2)(c) of the Leave Rules. The provision reads as under:

7. Maximum period of absence from duty- xxx xxx xxx

(2) A member of the Service shall be deemed to have resigned from the service if he - xxx xxx xxx

(c) continues on foreign service beyond the period approved by the Central Government:

Provided that a reasonable opportunity to explain the reason for such absence or continuation on foreign service shall be given to the member of the Service before the provisions of this sub-rule are invoked.?

In compliance with the same, the State Government issued notice under proviso to rule 7(2)(c) of the Rules on 10.10.2011. It was only on 17.05.2012 that the applicant responded to the notice. Omitting the introductory portion, the relevant part of the reply reads as under:

?I went on foreign deputation on September 15, 2005 on the basis of the DOPT, GOI approval dated 12/38/2005-FA(UN) dated August 22, 2005 ?initially for a period of one year?. The offer from the World Bank was extendable by another year. The World Bank extended the period of foreign deputation till September 18, 2007. Vide my letter dated April 17, 2007 I had requested for approval of the extended term. I was in email contact with the then Secretary Appointments who had assured that the matter was being processed.

I was informed by letter No.1285/Do-8-2007-33/FA(01)/2005 dated July 30, 2007 that approval of the extension was awaiting issue of deputation conditions and requested a copy of the service conditions issued by the World Bank. I sent all the documentation required vide my letter dated October 12, 2007. I was given to understand by the then Secretary Appointments that this request was being processed and had no knowledge that my extension would not be

approved.

My family circumstances compel me to continue with assignments overseas. This is why I had requested voluntary retirement in April 2010.

I would again request that my application for VR may kindly be considered. I would request that the original period of deputation may kindly be extended by an additional year till September 18, 2007. All the documents, relating to deputation term/service conditions etc to facilitate that extension, are available with the government. I would once again point out that this extension was never in doubt and the issue was only the non availability of documents to process the extension.

For the period between September 19, 2007 and April 21, 2010 when I had submitted my request for VR, I would request that I have a considerable amount of Earned Leave to my credit which can be adjusted against the period that I was absent. For the remaining period I would either request grant of Leave without Pay or that the date of the Voluntary Retirement may be pre poned to a suitable date.

I draw your kind attention to my unblemished record of service for the Government of UP of 25 years till the date I went on foreign deputation.

Normally, foreign deputation of five years is allowed by government while my period of foreign deputation is much less than that.

I request your sympathetic consideration in approving Voluntary Retirement on the terms which the Government finds appropriate.?

10. Correspondence ensued in this behalf between the State and the Central Governments. In the meanwhile, the applicant attained the age of superannuation on 31.10.2012. The impugned notification dated 09.09.2015 was issued, and it reads as under:

?The President is pleased to direct that Shri Sanjeev S. Ahluwalia, a member of the Indian Administrative Service, borne on the Cadre of (UP:1980) is deemed to have resigned from the Indian Administrative Service with effect from 18.09.2006 in terms of rule 7(2)(c) of the All India Services (Leave) Rules, 1955.?

11. The unauthorized period of absence of the applicant was six years and one month. Though the applicant claims to have made an application on 09.04.2010 seeking voluntary retirement under rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958, the same was not considered by the Central Government, since by the time it was received, the notice dated 10.10.2011 was issued under rule 7(2)(c) of the Leave Rules. Added to that, the application for voluntary retirement can be processed only when the employee is in service and on duty, and if no proceedings are pending against him. At any rate, the applicant did not pursue the matter pertaining to the voluntary

retirement till he reached the age of superannuation. It is natural that the application for voluntary retirement loses relevance once the employee attains the age of superannuation. Hence, any contention raised in this behalf becomes redundant.

12. Extensive arguments are advanced as regards the legality of the notification dated 09.09.2015. The first contention is that it does not conform to the circular dated 03.11.2015 issued by the DoP&T. The said circular reads as under:

"Subject:- Instructions/guidelines under rule 7(2) of AIS(Leave) Rules 1955 to process deemed resignation for being unauthorisedly absent after expiry of Leave/Study Leave/ Foreign Assignment etc.

Sir/Madam,

The following procedure shall be followed in the cases of unauthorized absence and to initiate proceedings of deemed resignation under rule 7(2) of AIS (Leave) Rules 1955:-

(a) A Member of Service (MoS), if remains unauthorisedly absent after the sanctioned period of leave study leave/tenure of Foreign Assignment as prescribed under rule 7(2) of AIS(Leave)Rules, 1955, there shall be a one month waiting period after the end of leave period/tenure of foreign assignment etc. After that the concerned State Government shall issue a show cause notice, thereby giving an opportunity to the MoS to explain his/her case. Thereafter, if the MoS does not return to duty, the State Government concerned shall initiate proceedings of deemed resignation under rule 7(2) of AIS(Leave) Rules 1955 and forward a complete proposal to the Central Government for effecting deemed resignation within next two months. If the State Government fails to comply with these instructions and does not adhere to the aforesaid timeline, the Central Government shall initiate proceedings of deemed resignation under rule 7(2) of AIS (Leave) Rules 1955 on its own. The term 'Central Government' means the concerned Cadre Controlling Authority, i.e. Department of Personnel & Training for IAS officers, Ministry of Home Affairs for IPS officer and Ministry of Environment, Forest & Climate Change for IFS officers respectively.

(b) However, there is no bar in issuing show cause notice and seek clarification from MoS for being unauthorisedly absent any time during one year period of unauthorised absence or as otherwise provided under rule 7(2)(a) & (b) respectively. But after period of one year of unauthorised absence or as otherwise provided under rule 7(2)(a) & (b) respectively, the whole process of deemed resignation shall be completed within three months as prescribed above.

2. The above instructions/guidelines may please be brought to the notice of all the concerned authorities under your administrative control for strict compliance.

3. This issues with the approval of Competent Authority.?

From a perusal of this, it becomes evident that if a member of the Service does

not return to duty, the State Government shall initiate proceedings of deemed resignation under rule 7 of the Leave Rules, and in case the State Government fails to comply with the instructions for initiation of proceedings, the Central Government can initiate such proceedings by itself. As observed earlier, the State of UP promptly issued notice under rule 7(2) to the applicant, once it was required by the Central Government, to take steps in that direction. The protection given to a member of an All India Service in the context of deemed resignation is in the form of notice under proviso to sub-rule (2) (c) of rule 7. Though the applicant stated in the OA that he has not been issued a notice, the record belies that contention. As a matter of fact, the applicant has responded to the same belatedly on 17.05.2012.

13. It is stated that there was non-application of mind to the entire issue. The basis for this plea is that the impugned notification does not furnish any reasons. It is true that an order passed by an authority is required to furnish reasons in support of its conclusions. Those, however, are cases where the decision arrived at by the authority involves a semblance of adjudication of disputed facts, or invocation of a punitive provision. The applicant was a very senior officer in the IAS, and held very high positions. He was expected to know the purport of the service rules, and to have a semblance of desire and attachment to serve the Nation. Once, he was deep into foreign assignment, he did not feel like coming back. The record discloses that the emoluments extended to him by the World Bank were relatively high, and were exempted from domestic taxes.

14. Being an administrator himself, the applicant was supposed to bring about discipline in the various establishments. However, he did not introspect whether his acts and omissions were leading to violation of any provision of law. The notification that is issued under rule 7(2) of the Leave Rules is the one of declaration, and hardly an element of adjudication or determination arises therein. The very wording of the rule, i.e., absence with or without leave, makes the intention of the rule-making authority manifest. If a member of the Service who is on a valid leave for a period exceeding five years, can be deemed to have resigned, the applicant, who remained unauthorisedly absent for six years, cannot keep himself on a higher pedestal.

15. Reliance is placed upon a judgment of the Delhi High Court in Dinesh Kumar Upadhyay v Union of India [(2016) 229 DLT (CN) 26 (DB) : 2016 SCC OnLine Del 1428]. An observation was made therein to the effect that a reasonable opportunity to explain the reasons for absence mentioned in rule 7(2)(c) must be given. It is not clear as to whether a notice contemplated under the proviso to sub-rule (2)(c) was issued to the officer in that case. However, after referring to the various decisions of the Hon'ble Supreme Court, which dealt with the adequacy or otherwise of the compliance with the principles of natural justice, the High Court held as under:

?25. When we apply the legal ratio to the factual matrix, it is apparent that the respondents have fully complied with the principles of natural justice and the

petitioner was given ample and fair opportunity to submit a reply. The petitioner had pleaded that he wants to join work vide letter dated 6th October 2007 but had failed to report and join till 9th April 2008, when the order of deemed resignation was passed. In fact, the respondents were indulgent and the petitioner was persistent and obdurate for he did not join duty and work at Tripura.?

In the instant case, a notice was issued by the State Government, and in fact, the applicant has also replied to it.

16. The judgment in *Khem Chand v Union of India & others* [1958 SCR 1080 : AIR 1958 SC 300], relied upon by the learned counsel for the applicant, is on general principles, and not with reference to rule 7(2)(c) or an analogous provision. Similarly, the judgment in *State of Uttar Pradesh v Om Prakash Gupta* [(1969) 3 SCC 775], is on the purport of Article 311 (2) of the Constitution of India, but not a specific provision dealing with absence exceeding five years. So is the judgment of the Hon'ble Supreme Court in the case of *Deokinandan Prasad v State of Bihar & others* [(1971) 2 SCC 330]. Though a set of complicated set of facts were discussed therein, what becomes relevant for the purpose of this case, is para 19, which reads as under:

?19. We will now proceed on the basis that the order, dated August 5, 1966, should be read in such a manner that the petitioner was not on his duty continuously for more than five years from March 11, 1960, till August 5, 1966. If the respondents are able to establish this circumstance, it is needless to state that Rule 76 of the Service Code will come into operation irrespective of the fact whether the petitioner was absent with or without leave. According to the petitioner, he has not been continuously absent for over five years even during the above period as stated by the respondents.?

In the instant case, it is not in dispute that the applicant remained absent for a period of fix years.

17. It is also argued that in case there was any indiscipline on the part of the applicant, disciplinary proceedings ought to have been initiated. When the case is squarely covered by a specific provision of law, the respondents cannot be required or compelled to take recourse to disciplinary proceedings.

18. We do not find any merit in the OA. The same is accordingly dismissed. There shall be no order as to costs.