
(2019) 01 CAT CK 0078

In the Central Administrative Tribunal

Case No : Original Application No. 1080 Of 2015

Sarvesh Saini

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 09-01-2019

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 48A, 48A(1)(iii)

Citation : (2019) 01 CAT CK 0078

Hon'ble Judges : L. Narasimha Reddy, J; Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Ashim Sridhar, Ashok Kumar

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant joined the Indian Defence Estate Service, Group ?A? on 24.08.1985. He was on deputation to the Ministry of Urban Development and Poverty Alleviation from 11.04.2000 onwards. He was accorded approval/permission of the Department of Personnel & Training in the year 2003, to study a Course for a period of one year in United Kingdom. An extension was also granted. It is stated that the applicant sought extension of study leave on 08.07.2005 for completing LLM Course and that the same was rejected by the office of Director General of Defence Establishment through communication dated 21.07.2005.

2. The applicant made an application on 08.10.2009 to the Secretary, Ministry of Defence seeking permission to retire on voluntary basis. A reply was given to him on 16.12.2009 stating that; a) the application was not addressed to the Appointing Authority, i.e., the President of India; b) he did not have the requisite service to seek VRS and that c) he cannot make such an application unless he has served for a period of one year, after completion of the training for which the leave was granted. He is said to have made another application on 10.02.2010.

3. In the meanwhile, disciplinary proceedings were initiated against the applicant, and by stating that he did not participate therein, an order was passed on 23.10.2013 removing him from service. The same is challenged in this OA.

4. The applicant contends that the impugned order is liable to be quashed since it was passed at a time when his application for VRS was very much pending. It is also stated that since no order was passed on his application dated 10.02.2010, he is deemed to have been granted permission to retire on voluntarily basis and that the impugned order cannot be sustained in law. Other contentions are also advanced.

5. The respondents filed counter affidavit opposing the OA. It is stated that the applicant was sanctioned leave for one year for studying diploma course in Law, called

"Common Profession Examination", at University of England, Barmingham, and though it was to be completed by 25.06.2004 and leave was also granted up to that date, he did not come back. It is also stated that the leave was extended once when the applicant sought the same on medical grounds, he did not join the duty on expiry of that also. As regards the application for VRS, it is stated that an order was passed on 16.12.2009 indicating the reasons for rejection, and that the second application, i.e., 10.02.2007 is without any basis and does not entail in any consequences.

6. We heard Shri Ashim Sridhar, learned counsel for the applicant and Shri Ashok Kumar, learned counsel for the respondents.

7. The applicant proceeded to England in the year 2003 to study a course. At that time, he was on deputation to the Ministry of Urban Development. Even according to him, he joined another course after completion of the one, for which, he was accorded sanction. No sanction was either sought or accorded for studying the second course. The extension of leave was sought on medical grounds, and even after expiry of that leave, he did not turn up. Left with no alternative, the department initiated disciplinary proceedings by issuing a Charge Memo dated 18.12.2006. It was served upon the applicant at his England's address. The Inquiry Officer and Presenting Officer were appointed in the year 2007. Though the applicant denied the charges, he did not participate in the inquiry, and ultimately a report was submitted on 09.01.2009 holding that the charges are proved against the applicant. The charge of unauthorized absence and non submission of completion report of the course were held proved. A copy of the report was forwarded to the applicant, and he submitted a representation objecting to the findings.

8. Even while the disciplinary proceedings were in progress, the applicant made an attempt to seek voluntary retirement. The reply was given to him on 16.12.2009. It reads as under:-

"Subject : Application for Voluntary Retirement submitted by Shri Sarvesh Saini-

IDES.

Sir,

I am directed to refer to your fax message dated 8th October, 2009 (received on 13.10.2009) addressed to the Secretary, Ministry of Defence on the above subject and to say that your application for voluntary retirement has been examined in terms Rule 48A of CCS (Pension) Rules, 1972. Your request for grant of voluntary retirement has been rejected by the Competent Authority on the following grounds:-

(i) You have not completed the 20 years of regular service required for acceptance of voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972.

(ii) As per Rule 48 (A) (1) (iii), it was necessary for the Government servant to work minimum one year in the organization after completion of training period. However, you have not served for a period of one year after completing the foreign assignment from 1.10.2002 to 30.09.2003. You have also failed to resume duty after completion of study on 28.06.2005.

(iii) The notice for voluntary retirement dated 8.10.2009 was not properly addressed to the President of India, i.e., the Appointing Authority."

Three grounds, as mentioned above, were indicated for rejection of his request.

9. The applicant contends that in case his service as Lecturer in the Government of Haryana between 30.08.1982 and 24.08.1985 is added to the one in the Ministry of Defence, he would have 20 years of regular service to his credit. He did not contradict the requirement under Rule 48A, which mandated that a Government Servant, who has undergone training, obtaining leave, must serve at least for one year after completion of the course before he seeks VRS. He did not deny that the application was addressed to an authority, not vested with the power to accept. This order was not challenged in any Court of law.

10. Applicant claims that he made another representation dated 10.02.2010 to the President of India seeking VRS. A copy of the same is filed as Annexure P-7. A perusal of the same indicates that it is addressed to the President of India. However, in his covering letter of the same date, addressed to the Secretary, he stated as under:-

"Dear Sir,

Re: Application for Voluntary Retirement

Applicant : Sarvesh Saini - IDES

I refer to your letter dated 16 December 2009 No 5(5)/06-D(Lab) on the above matter (received on 05/02/2010 through the Indian High Commission No MA/11307/MISC/10 Dated 04/02/2010) regarding my application dated 08 October 2009 for Voluntary Retirement and submit the following.

1. The Competent Authority has failed to take into account that before joining the government of India I served as a lecturer with the Government of Haryana. Following my selection in the civil services I tendered my technical resignation, which was accepted by the Governor of Haryana as per the order attached. No decision seems to have been made on my application for crediting my state government service. I would, therefore, request the Competent Authority to make an order with regard to my previous service as per rules to make up for the Short fall.

2. It is submitted that my paid Study Leave after the training may please be counted towards service. Further, I submit that the competent authority is competent authority is competent to use discretion to condone the requirement. I would, therefore, request the competent authority to relax the rules to that extent in favour of my application.

3. I would infer that the Competent Authority has condoned this requirement by going on to make a decision on my application.

However, in continuation of my application, please find enclosed an application addressed to the President of India.

I look forward to sympathetic and favourable consideration please."

From this, it becomes clear that though the application for VRS was addressed to the President of India, he did not overcome the deficiencies pointed out in the letter dated 16.12.2009. It was not even his case that Rule 48A does not apply to him.

11. The question of treating his request for VRS as deemed to have been accepted would arise, if only, it is made in accordance with law and for the first time. The applicant was already informed that he is not entitled to seek VRS because he did not return after completion of course and rendered service at least for a period of one year. Once that information was furnished to him, it is not necessary that it should be repeated, every time he makes an application. Further, an application for VRS cannot be accepted when an employee seeking that benefit is facing disciplinary proceedings. The applicant did not report to duty, even after 10 years from the date of leaving for England, nor did he participate in the disciplinary proceedings.

12. One just cannot imagine the continuance of a person with such an attitude and approach in service. The limited resources in the country are not meant to feed the persons who are enjoying their life for decades together, in foreign countries. No Nation, worth its name, can have the luxury of having such employees on its rolls.

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