
(2019) 08 CAT CK 0040

In the Central Administrative Tribunal

Case No : Original Application No. 4669 Of 2015, Miscellaneous Application No. 1580, 1581 Of 2017

ST Augustine

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 19-08-2019

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 48, 48(1), 48(2), 48A

Citation : (2019) 08 CAT CK 0040

Hon'ble Judges : S.N. Terdal, J;A.K. Bishnoi, Member (A)

Bench : Division Bench

Advocate : Biji Rajesh, Gaurang Kanth, Hanu Bhaskar

Final Decision : Allowed

Judgement

S.N. Terdal, J

1. We have heard Ms. Biji Rajesh for Mr.Gaurang Kanth and Ms. Ishita Baruah, counsel for applicant and Mr. Hanu Bhaskar, counsel for respondents, perused the pleadings and all the documents produced by the parties.

2. In this OA, the applicant has prayed for the following reliefs:

"(a) Allow the present OA and quash and set aside the impugned order dated 14.10.2015 whereby the applicant is deemed to have resigned from Respondent's service from 17.11.2012.

(b) Quash and set aside Respondents letters dated 26.11.2013, 22.12.2014 and 21.08.2015 vide which the Applicant's request for Voluntary Retirement was rejected.

(c) Direct the Respondent to accept the request for his voluntary retirement and grant him Voluntary Retirement w.e.f. 17.11.2012.

(d) Pass any other order(s) or further orders as may be deemed fit in the interest

of justice and equity."

3. The relevant facts of the case are that the applicant was posted to the Permanent Mission of India (PMI), New York from July, 2004 to October, 2007. After completion of his tenure in PMI, he was permitted to take up temporary assignment in United Nations for three months w.e.f. 17.10.2007 and he was relieved from the PMI, New York on 8.10.2007 (FN) with a direction that he would join the Headquarter of the parent Department after termination of his assignment in United Nations. The above said temporary assignment was extended from time to time on year to year basis till 17.10.2012. His request for further extension of his tenure beyond five years was turned down by the respondents and he was asked to report to the Headquarter vide communications dated 26.04.2003, 29.05.2013, 27.06.2013 and 17.07.2013. The said communications were not complied with by the applicant. The applicant requested in October, 2013 and December, 2013 seeking voluntary retirement. As per the DOP&T instructions on 22.12.2014, the applicant was directed to join duties at the headquarter and thereafter seek voluntary retirement after serving further one year in India, in view of the provisions under FR 56 (k) and Rule 48 and Rule 48-A of the CCS (Pension) Rules, 1972 and as the applicant did not report for duty in his parent department, the impugned order-cum-Notification dated 14.10.2015 was issued treating the applicant deemed to have resigned w.e.f 17.11.2012 in terms of the DOP&T OM dated 29.02.2008. The impugned order is extracted below:-

"No.Q/PB-III/6610/06/2007 New Delhi, October 14, 2015

NOTIFICATION

Sh. Scaria T. Augustine, an officer of Principal Private Secretary Grade of the Stenographers' Cadre of Indian Foreign Service (B) deemed to have resigned from Government Service in terms of Department of Personnel and Training Office Memorandum No. Ab-14017/2/07-Estt (RR) dated February 29, 2008 with effect from November 17, 2012."

The counsel for the applicant vehemently and strenuously submitted that the DOP&T OM dated 29.02.2008 regarding consolidated guidelines on deputation/ Foreign Service etc. clearly stipulates that the said provisions are applicable prospectively and they are not applicable to the employees who were on such deputation before 29.02.2008. The counsel for the applicant in ground 'M' of the OA gave instances of several employees who were granted voluntary retirement to show that the said OM dated 29.02.2008 is prospective in nature.

4. The respondents have filed a specific reply with respect to said ground no. 'M', in para 3 of which they have specifically stated with respect to Dr. Atul Khare to the effect that those who were on UN deputation prior to 29.02.2008 even though the said deputation extended beyond 29.02.2008 the terms and conditions of the said OM are not attracted. The said para-3 of the said reply is extracted below:-

"3. The precedent cases mentioned by the Applicant had been examined by the Respondent in view of the DoP&T's aforesaid guidelines as under:-

SNo

Name

&

Date

of

Office/Station

Remarks

Designation

of the

Voluntary

at the time of

Officer.

Retirement

Voluntary

Retirement.

1.

Sh.Mohan

Kumar,

31.8.1997

E/I, Havana

Case is prior to 29.2.2008

PS

2.

Sh. J.S.Doung, PS

17.8.1992

PMI, New York

Case

is

prior

to

29.2.2008.

3.

Sh.N.Ramamoorthy

4.10.1991

PMI, New York

Case

is

prior

to

SS/Stenographer's

29.2.2008.

cadre

4.

Sh.Ramu

30.9.2007

On

deputation

Case

is

prior

to

Damodaran, JS

to UN

29.2.2008.

5.

Sh. Nikhil Seth, JS

22.5.2006

On

deputation

Case

is

prior

to

to UN

29.2.2008.

6.

Dr. Atul Khare, JS

15.12.2009

On deputation

The officer was on UN

to UN

deputation

for

three

years (December 2006

to

15.12.2009).

The

DOPT

provisions

of

29.2.2008

are

not

attracted.

7.

Smt. Lakshmi Puri,

23.3.2011

On

deputation

** see remarks below

IFS Gd.1

to UNCTAD

8.

Sh.G.S.Banjana,

5.8.2015

Headquarters

Not

applicable

as

officer

SO

reported

back

to

the

Ministry

and

took

VRS

from Hqrs.

**Remarks: Smt. Lakshmi Puri, formerly Secretary in the Ministry of External Affairs was holding a very high office in UNCTAD. She sought voluntary retirement on her own which was agreed to by the competent authority in public interest."

(Emphasis supplied)

As stated above, the applicant was also permitted to take up the assignment w.e.f. 17.10.2007 which is before 29.0.2008, as such, as in the case of Dr. Atul Khare the terms and conditions of OM dated 29.02.2008 are not attracted to the case of the applicant.

5. The counsel for the respondents vehemently and strenuously contended that the request of the applicant for voluntary retirement cannot be acceded to in view of the provisions of FR 56 (K) and Rule 48 and Rule 48-A of CCS (Pension) Rules, 1972 as he did not report in his parent department in India and served at least one year, as informed to him vide e-mail dated 26.11.2013. In support of his contention he took us through the above stated provisions which are extracted below:-

"F.R. 56 (a) to (j) xxx xxx xx

(k) (1) Any Government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group 'A' or Group 'B' service or post, (and had entered Government service before attaining the age of fifty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that-

(a) Not printed (Since Clause (e) has been Deleted)

(b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign-based office of a Ministry/ Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and

xxx xxx xxx

Rule 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:

Provided further that the provisions of clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(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 reasons 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 commutation of a part of his pension before the expiry of the period of notice of three months.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

(3) For the purpose of this rule the expression 'appointing authority' shall mean the authority which is competent to make appointments to the service or post from which the Government servant retires.

.... ..

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.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(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.

(3) - Omitted

(3-A)(a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) on receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), 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, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

xxx xx xxx."

6. As rightly submitted by the counsel for the applicant, from the perusal of proviso to the above said FR 56(k)(1) and 3rd proviso to Rule 48 (1) it is clear that the applicant do not fall under any of the category of the Government servant stated in the proviso, as such the said impugned communication dated 26.11.2013 and the one dated 22.12.2014 are arbitrary and require to be set aside. In support of her contention, the counsel for the applicant relied on the order dated 18.01.2019 passed by this Tribunal in the case of Vijay Kumar Trivedi Vs. UOI through its Secretary, Ministry of External Affairs and Ors. (OA No.1631/2017). As submitted by the counsel for respondents though the said

order dated 18.01.2019 not passed in an identical case yet in view of the facts and circumstances of the case narrated above and in view of the analysis made above, with respect to the above referred Dr. Atul Khare and in view of the reasoning given with respect to some of the aspects applicable to this case in the above order dated 18.01.2019 passed in OA 1631/2017, the impugned E-mail dated 26.11.2013, Fax-message dated 22.12.2014, OM dated 21.08.2015 and notification dated 14.10.2015 are set aside with all consequential benefits including granting of voluntary retirement as requested by the applicant. The respondents are directed to pass order granting voluntary retirement and consequential benefits within two months from the receipt of the copy of this order.

7. Accordingly, the OA is allowed. MAs pending, if any, stand disposed of. No order as to costs.