
(2007) 05 AHC CK 0120
In the Allahabad High Court

Union of India (UOI)

APPELLANT

Vs

Jeevan Shukla and Central Administrative Tribunal Additional
Bench at Allahabad

RESPONDENT

Date of Decision : 18-05-2007

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226

Citation : (2008) 5 AWC 4430 : (2008) 1 CTLJ 106 : (2007) 114 FLR 652

Hon'ble Judges : Sudhir Agarwal, J;Anjani Kumar, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Anjani Kumar and Sudhir Agarwal, JJ.—The present writ petition is directed against the order dated 30th January, 2003, passed by Central Administrative Tribunal, Allahabad (hereinafter referred to as Tribunal"), allowing original application No. 532 of 1996 filed by respondent No. 1, namely, Jeevan Shukla.

2. The brief facts as stated in the writ petition are that Jeevan Shukla was appointed as lower division clerk on 22nd October, 1955 in the office of Controller of Defence Account, Allahabad (In short "CDA Pension"). He was promoted as Auditor. He completed 20 years of qualifying service on 1st November, 1975. The respondent No. 1 consequently submitted an application on 10th September, 1974 requesting the petitioners for accepting his voluntary retirement with effect from 1st November, 1975 with further request to pay his pension and gratuity since he would have completed 20 years of qualifying service on 20th October, 1975. His application for voluntary retirement was accepted by order dated 15th November, 1979 treating it to be a resignation from service holding that he would not be entitled for any pensionary benefits. The respondent No. 1 requested the petitioners to treat his application as voluntary retirement and not resignation and grant him pension. Ultimately by order dated 12/19th November, 1993 his request was accepted directing him to furnish his bank account,

passport size photographs etc. for payment of pension/gratuity. The respondent No. 1 submitted the requisite papers, but no amount was paid to him. Thereafter order dated 10th January, 1996 was passed stating that there is no provision under which his application can be considered for voluntary retirement, hence the request of respondent No. 1 for voluntary retirement cannot be accepted.

3. Aggrieved, the respondent No. 1 approached the Tribunal u/s 19 of the Administrative Tribunal Act, 1985, which has been allowed by order dated 30th January, 2003 impugned in this writ petition directing the petitioners to pay arrears of pension to respondent No. 1 with interest which shall commence from 19th November, 1992 till the date of payment of pension amount.

4. Learned Counsel for the petitioners submitted that the Tribunal has erred in law by holding that Rule 48-A of Central Civil Service Pension Rule, 1972 (hereinafter referred to as "Pension Rule") would apply in the Case of respondent No. 1, inasmuch as the said Rule was inserted with effect from 28th November, 1978, though the respondent No. 1 submitted application on 10th September, 1974 seeking voluntary retirement with effect from 1st November, 1975. The benefit of Rule 48-A could not be extended to the respondent No. 1 and the order passed by the Tribunal is dearly illegal, arbitrary and is unsustainable. He further contended that the request of respondent No. 1 for voluntary retirement could not have been accepted in 1975 since there was" no such provision permitting and entitling a Government servant to seek voluntary retirement and therefore petitioners were right in accepting his application treating it as resignation and the Tribunal has erred in law in not considering this aspect of the matter.

5. On the contrary, learned Counsel for respondent No. 1 contended that he has sought voluntary retirement and not resignation, therefore it was no open to the petitioners to alter his request and terminate him under the garb of accepting resignation though has sought voluntary retirement. He further contended that petitioners accepted his application, with effect from 1975 but in 1979 i.e. after insertion of Rule 48-A and therefore have treated his application of voluntary retirement pending in 1979. In these circumstances, it was liable to be considered and disposed off in accordance with Rule 48-A of Pension Rule. He also contended that in any case his request for payment of pension was accepted by the petitioners vide order dated 12/19th November, 1993 and thereafter it was not open to the petitioners to pass a contrary order on 10th January, 1996 Without giving any opportunity or show cause notice to him and that too without cancelling earlier order dated 12/19th November, 1993. He also pointed out that pursuant to the order dated 12/19th November, 1993, an Office order was issued by the petitioners on 28th March, 1994 informing him that he has been treated to have voluntarily retired with effect from 1st November, 1975. but under the arbitrary and illegal order dated 10th January, 1996 the said office order was cancelled and that too without giving any opportunity to him. It also revive order dated 15th November, 1979 whereby respondent No. 1 was treated

to have resigned from service with effect from 1st November, 1975. The respondent No. 1 further contended that it was not open to the petitioners to accept the request of an employee by altering terms of request and changing the very nature thereof, because either the request of the employee could have been accepted in the same terms or it ought to have been rejected. It was not open to the employer to alter the terms and pass an order purporting to as if accepting the request of the employee but in a wholly distorted and different manner. He, therefore, supported the order of the Tribunal and contended that in the entirety of the facts and circumstances since the order impugned in the present writ petition passed by the Tribunal has done substantial justice to him, therefore under Article 226 of the Constitution of India this Court may not exercise its equitable jurisdiction by interfering with the same.

6. We have heard learned Counsel for the parties and perused the records.

7. The facts of this case are not much in dispute. The respondent No. 1 submitted an application seeking voluntary retirement. It is not disputed that he did not resign from service. Knowing it well that under the existing Rule as existed on 10th September, 1974 while the said application was given by the respondent No. 1 to the petitioners, there was no provision permitting voluntary retirement and therefore he had also requested the authorities to exercise discretionary power by relaxing the provision and granting him benefit for pension and gratuity for 20 years of service, which he has put in. It is evident from the following extract of his application:

Since my case for voluntary retirement is not covered under Rules, I pray Your honour to use your discretionary power and oblige me to avail of benefits for pension and gratuity for twenty years service which I have put in so far.

8. If the petitioners were of the view that in the absence of any provision, request for voluntary retirement could not have been accepted, there was no occasion for them to take any action on the said application of the respondent No. 1. In normal course, the same ought to have been rejected as not maintainable under the Rules. It is true that the respondent No. 1 submitted various reminders requesting the petitioners to accept his request for voluntary retirement. However no order was passed by the competent authority on the application of respondent No. 1 for a long time. On 28th November, 1978 Rule 48-A was inserted in Pension Rules, which reads 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. 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 Co-operation (ITEC)

Programme of the Ministry of External Affairs and other aid Programme.

(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 not less than one year.

(2) ...

(3) ...

(3.A) ...

(3.B) ...

(4) ...

(5) ...

(6) This rule shall not apply to a Government servant who

(a) retires under Rule 29, or

(b) retires from Government service for being absorbed permanently in an autonomous body or a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

9. Thereafter, the competent authority in the office of CDA Pension issued order on 15th November, 1979 stating that it has accepted resignation tendered by the respondent No. 1 with effect from 1st November, 1975. Since it treated the request of respondent No. 1 as resignation obviously it also mention that respondent No. 1 shall not be entitled for any pensionary benefits. Against the aforesaid action of the petitioners accepting the request of respondent No. 1 as resignation instead of voluntary retirement, he made various representations and ultimately the Chief Controller of Accounts vide order dated 12/19th November, 1993 required the respondent No. 1 to complete certain formalities and accepted his request of voluntary retirement with effect from 1st November, 1975 under following terms:

Voluntary retirement w.e.f. 1.11.1975 of Shri Jiwan Shukla, Ex-Auditor A/C No. 8287350 who was serving under you has been accepted by CCDA New Delhi as Special case with the stipulation that the same should not be quoted as a precedent case.

10 The said authorities also issued an office order on 28th March, 1994 consequent to the order dated 12/19th November, 1993 informing the respondent No. 1 that he has voluntarily retired with effect from 1st November, 1975. The petitioners therefore rectified their error and allowed respondent No. 1 to retire voluntarily with effect from 1st November, 1975 entitling him pensionary benefit. Thereafter all of a sudden they pass orders on

1st January, 1996 and 10th January, 1996 cancelling the order dated 28th March, 1994 and also holding that the respondent No. 1 cannot be treated to have voluntarily retired in the absence of any statutory provision and therefore the earlier order accepting his resignation with effect from 1st November, 1975 stood initiated. Before issuing the said orders, admittedly neither any show cause notice was issued to the respondent No. 1, nor any opportunity was afforded to him, though the said orders visit serious civil consequences to respondent No. 1. Therefore two orders being violative of principle of natural justice cannot sustain.

11. The matter in our view would not rest here. The respondent No. 1 sought voluntary retirement and thus it was not open to the petitioners to treat it as resignation instead of voluntary retirement with effect from 1st November, 1975. The offer made by an employee has to be accepted in same terms or not at all, but it was not open to the employer to completely alter the very basis of nature of offer and thereafter accept the same forcing altered conditions upon the employee. This is contrary to the basic principle of Law of Contract and the order of the petitioners issued on 15th November, 1979 for this very reasons was liable to be treated as nonest having no consequence. The competent authority rectified his said error by its order dated 12/19th November, 1993 accepting respondent No. 1 is voluntary retirement with effect from 1st November, 1975. As a result of formal acceptance on the part of the competent authority the order dated 15th November, 1979 render ineffective and honest. Thereafter by subsequent order dated 10th January, 1996 it was not open to the petitioners to revive the same void and illegal order and that too without giving any opportunity to the respondent No. 1. If the application of respondent No. 1 would not have been accepted, the consequence in law would have been that respondent No. 1 can be deemed to have continued in service till he ceased to continue in accordance with law. There is no such order except the order dated 12/19th November, 1973 allowing respondent No. 1 to voluntary retire with effect from 1st November, 1975 with the benefit of pension.

12. We are therefore of the opinion that in substance and in the entirety of the facts and circumstances the Tribunal was justified in directing petitioners to pay retiral benefits to respondent No. 1. The order impugned in the present writ petition passed by the Tribunal warrants no interference though some of the reasons we have given in this judgment to sustain the said order are different from those of the Tribunal. Further the order impugned in the present writ petition has done substantial justice, therefore even otherwise it is not a fit case in which this Court should exercise its discretionary equitable jurisdiction under Article 226 of the Constitution of India.

13. In the result, the writ petition fails and is accordingly dismissed. However, on the facts and circumstances of the case, there shall be no order as to costs.