

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 30/09/2019

+ **W.P.(C) No.9540/2019 & CM Nos. 39178-79/2019**

SANJEEV SINGH AHLUWALIA

..... Petitioner

Through : Mr. Samar Bansal, Advocate with Mr.
Devahuti Pathak, Advocate, Mr.
Sachin Mishra, Advocate and Mr.
Manan Shishodia, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through : Mr. Nikhil Goel, CGSC with Mr.
Aniruddha Deshmukh, Advocate.

CORAM:

HON'BLE MR. JUSTICE G.S. SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

J U D G M E N T

ANUP JAIRAM BHAMBHANI, J. (ORAL)

The present petition has been filed by the petitioner being aggrieved by the decision rendered by the Central Administrative Tribunal (hereinafter referred to as 'Tribunal') by order dated 26.03.2019, by which the O.A. filed stands dismissed.

2. Counsel for the respondents enters appearance on advance copy.

3. We have heard the counsel for the parties and with their consent, we are deciding this writ petition at the admission stage itself.

4. Some necessary facts which are required to be noticed for disposal of this writ petition are the following:

- (a) the petitioner belongs to the 1980 batch of the Indian Administrative Service, having joined service on 15.09.1980;
- (b) the petitioner made an application dated 18/22.08.2005 to take-up an assignment as Consultant in the Africa Technical Families, World Bank, Sudan for a period of one year on Foreign Service terms;
- (c) the petitioner thereafter proceeded to Sudan for a period of one year from 18.09.2005 to 17.09.2006, for which leave for the period of one year was sanctioned in the year 2008 retrospectively;
- (d) admittedly, the petitioner over-stayed in Sudan and did not join his parent department after 17.09.2006;
- (e) thereafter, the Central Government issued communication to the State Government on 16.03.2007, and State Government in-turn issued communication to the petitioner on 05.04.2007 to resume his duties;
- (f) *Vide* communication dated 12.10.2007 the petitioner sought extension of leave till 07.10.2009; however, admittedly, no extension was granted to the petitioner;
- (g) following that, respondent No.2 issued a communication to the petitioner on 16.07.2008 calling upon the petitioner to

immediately report for duty in the cadre as the term of his foreign service had ended.

- (h) a show-cause notice was issued by Chief Secretary on 10.10.2011 to which the petitioner sent a reply on 17.05.2012;
- (i) on 19.04.2010 the petitioner submitted an application seeking voluntary retirement under Rule 16(2) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958;
- (j) another show-cause notice was issued to the petitioner on 29.02.2012;
- (k) in the meanwhile, the petitioner superannuated on 31.10.2012;
- (l) on 09.09.2015 the Department of Personnel & Training, of the Government of India declared the petitioner as deemed to have resigned from service w.e.f. 18.09.2006;
- (m) aggrieved by this notification dated 09.09.2015, the petitioner filed the O.A. before the Tribunal.

5. Mr. Samar Bansal, learned counsel appearing for the petitioner submits that once the petitioner had sought voluntary retirement on 19.04.2010, the petitioner would be deemed to have been granted voluntary retirement on the expiry of three months from the date of such application i.e. on 18.07.2010. Strong reliance has been placed by counsel on Rule 16(2) and Rule 16(2A) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 which are reproduced as under:-

“Rule 16(2) A member of the Service may, after giving at least three months’ previous notice in writing, to the State Government concerned, retire from service on the date on which such member completes thirty years of qualifying

service or attains fifty years of age or on any date thereafter to be specified in the notice:

Provided that no member of the Service under suspension shall retire from service except with the specific approval of the Central Government.

Provided further that the State Government concerned on a request made by the member of the service may, if satisfied and for reasons to be recorded in writing, relax the period of notice.

Rule 16(2A) *A member of the service may, after giving three months' previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice:*

Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the Service could have retired from service under sub-rule (2):
..... ”

While relying on the above rules, counsel submits that at the time when the application seeking voluntary retirement was made, there were no proceedings pending against the petitioner. The petitioner had completed the period of qualifying service and had also attained 50 years of age. It is further submitted that the petitioner had not been suspended; and thus the application seeking voluntary retirement must be deemed to have been accepted.

6. To buttress his argument, reliance is placed on two decisions of the Supreme Court of India. Firstly, reliance is placed on the judgment in the case of ***Union of India and Others Vs. Sayed Muzaffar Mir 1995 Supp (1) SCC 76***, more particularly paras 4 and 5, which we reproduce below:-

“4. There are two answers to this submission. The first is that both the provisions relied upon by the learned Counsel would require, according to us, passing of appropriate order, when the government servant is under suspension (as was the respondent), either of withholding permission to retire or retaining of the incumbent in service. It is an admitted fact that no such order had been passed in the present case. So, despite the right given to the appropriate/competent authority in this regard, the same is of no avail in the present case as the right had not come to be exercised. We do not know the reason(s) thereof. May be, for some reason the authority concerned thought that it would be better to see off the respondent by allowing him to retire.

5. The second aspect of the matter is that it has been held by a three-Judge Bench of this Court in Dinesh Chandra Sangma v. State of Assam, which has dealt with a pari materia provision finding place in Rule 56(c) of the Fundamental Rules, that where the government servant seeks premature retirement the same does not require any acceptance and comes into effect on the completion of the notice period. This decision was followed by another three Judge Bench in B.J. Shelat v. State of Gujarat.”

Reliance is also placed on the judgment in the case of **Dinesh Chandra Sangma Vs. State of Assam and Others (1977) 4 SCC 441**, para 17 of which is relied upon and the said para 17 is reproduced below:-

“17. The High Court committed an error of law holding that consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under F.R. 56(c). Since the conditions of F.R. 56(c) are fulfilled in the instant case, the appellant must be held to have lawfully retired as notified by him with effect from August 2, 1976.”

7. Counsel has also relied upon a judgment of the Division Bench of this Court in the case of **U.O.I. & Ors. Vs. Rahul Rai Sur** in W.P.(C)

No.6512/2008 decided on 08.11.2010. This judgment has been relied upon in the backdrop that the respondent in that matter was not served with a show-cause notice and as per the show-cause notice itself, the Government suggested that he had the option to seek voluntary retirement. It is submitted that since show-cause notice was not served upon him, the court had allowed the writ petition. Mr. Bansal submits that from the said decision it is clear that the Government itself is of the view that a person who overstays abroad would have such an option available to him; and the court in that case was of the view that had the respondent received a show-cause notice, he would have exercised the option of seeking voluntary retirement.

8. Counsel has also submitted that this aspect of the matter has not been dealt with by the Tribunal in accordance with law; and thus the order of the Tribunal is liable to be set aside.

9. The second ground which has been urged before us is that the impugned notification is bad in law as it is devoid of any reason, which is evident from reading of the notification by which the petitioner is deemed to have resigned. It has been strongly urged that a bare reading of this notification would show complete non-application of mind, since the respondents have failed to take into consideration the reply to the show-cause notice; and in the absence of any reason, this notification is liable to be quashed and set aside. Counsel submits that the rule of *audi alteram partem* has not been followed and the respondents have therefore failed to follow the principles of natural justice. Thus, in the light of settled law, it is submitted, this notification is to be quashed and the order of the Tribunal is liable to be set aside.

10. Learned counsel appearing for the respondents on the other hand submits, that there is no infirmity or illegality in the order, which requires no interference. He submits that the petitioner has failed to make-out a case for judicial review. He submits that in this case the petitioner, who was a senior IAS Officer, sought leave to proceed to Sudan for a period of one year from 18.09.2005 up to 17.09.2006. The petitioner however remained on unauthorized absence for a period of six years and one month; and thereby showed disregard for all tenets of official responsibility. It is submitted that various communications were addressed to the petitioner, including letters dated 16.03.2007 and 05.04.2007; and two show-cause notices dated 10.10.2011 and 29.02.2012 were also issued to him. There was no cogent explanation or response to any of the communications for over-staying at Sudan and being absent from duty in India. It is submitted that in response to these communications two different stands were taken. One, is family circumstances; and the second, is that respondent had sought voluntary retirement on 19.04.2010. Counsel submits that as far as the first explanation is concerned, the same is completely devoid of any specifics or particulars, and simply using the phrase 'family circumstances' does not explain why the petitioner never reported back after completion of the period of one year. It is contended that even till date there is no explanation as to what were the 'family circumstances' that kept the petitioner away from reporting back to work in India; and merely use of the term 'family circumstances' cannot be ground for extending the petitioner's leave unauthorizedly from one year for an additional period of six years.

11. As far as the second explanation is concerned i.e. seeking voluntary retirement, it is contended that voluntary retirement was sought only as a

means to over-reach disciplinary action which was contemplated against the petitioner. This, it is stated, is evident from the fact that prior to 19.04.2010, that is the date on which the petitioner applied for voluntary retirement, he had already been put to notice of the consequences of his not joining back.

12. Moreover, it is contended, that a reading of the response to the show-cause notice would show that the filing of the application for voluntary retirement was only a ruse and an escape route, as the primary ground taken in response to the overstay throughout was 'family circumstances'.

13. Counsel for the respondents also submits that the application for voluntary retirement stands rejected on 10.01.2013; and accordingly the contention that the application for voluntary retirement must be deemed to have been accepted, is without any force. Counsel for the respondents relies upon O.M. No.8(34)-E.III/57 dated 25.11.1958 in the All India Services Manual, the relevant part of which reads as under:-

“DP & AR Letter No.25011/2/80-AIS (II), dated the 16th October, 1980.-It has been decided to lay down the following guidelines for the acceptance of the notice of retirement under sub-rule(2A) of Rule 16 of the All India Service (Death-cum-retirement Benefits) Rules, 1958 for the information and guidance of the State Governments:-

- (i)*
- (ii) In cases where disciplinary proceedings are pending or contemplated against a member of the Service for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the major penalty of removal or dismissal from service would be warranted, the notice of voluntary retirement given by the officer concerned may not ordinarily be accepted.”*

(Emphasis Supplied)

14. It is submitted before us that, as per the aforesaid O.M. therefore, not only in cases where disciplinary proceedings are pending against an officer but even if the same are contemplated, the request for voluntary retirement given by the officer concerned may not be accepted.

15. Even otherwise, counsel contends that the facts of the case are such that if such a proposition is accepted, the same would lead to complete indiscipline in all government departments, since any person who stays away and is on unauthorized leave would apply for voluntary retirement, with a view only to escape disciplinary proceedings, leading to complete lack of responsibility and anarchy.

16. So far as the judgment relied upon by the petitioner in the case of **Sayed Muzaffar Mir** (*supra*) is concerned, counsel for the respondents submits that this judgment would not be applicable to the facts of the present case, since in the said case, there is no reference to O.M. dated 25.11.1958 which has been relied upon by the respondents ; and the said decision therefore does not proceed on the same footing as the present case. As per this O.M., which is central to the decision of the present case, the application for voluntary retirement is liable to be rejected not only if the action is taken but even if the action is contemplated against an errant officer. Even otherwise, counsel submits, that the plea with regard to voluntary retirement was not placed in the O.A. before the Tribunal and no relief in this regard was sought. It is further submitted that the proposition of law sought to be urged by counsel for the petitioner drawing upon the aforesaid judgments cannot be an absolute rule and it would depend on facts of each case. It is contended that the present case is of such egregious nature that such a rule cannot be extended to apply to such a case.

17. As far as reliance placed by the counsel on a decision rendered by a Division Bench of this Court in the case of **Rahul Rai Sur** (*supra*) is concerned, counsel for the respondents submits that observations made on specific facts of that case would be of no avail to the petitioner; and no benefit can accrue to him for the reason that in that matter admittedly show-cause notice was not served on the officer; and it was the stand taken by the Government that, as an option, the officer could have sought voluntary retirement. This observation, according to counsel for the respondents, is not the uniform stand of the Government and accordingly the same should be rejected. It is further pointed out that in the case of **Rahul Rai Sur** (*supra*), the matter was decided with consent of both parties; and thus cannot be treated as a binding precedent.

18. As far as reliance on the O.M. is concerned, Mr. Bansal contends that other things notwithstanding, the O.M. cannot extend the scope of the Rule itself.

19. We have heard counsel for the parties. While certain specific matters relating to Rules 16(2) and 16(2A) of All India Services (Death-cum-Retirement Benefits) Rules, 1958 as also of O.M. dated 25.11.1958 have been canvassed, certain larger issues of responsibility and discipline in government service also engage us in the matter. Before the petitioner seeks to rely on certain rules or to explain the inapplicability of the O.M., he must first answer as to what justifies the unauthorized absence of the petitioner from government service in India by staying away and devoting his time to a foreign posting, for which he had sought and was granted leave only for one year but stayed away for an extra six years and more. The petitioner must then explain as to how he justifies relying on hypertechnical ruse of deemed

voluntary retirement and lame excuses of family circumstances when faced with a straight and simple question of unauthorized absence from his duties as a senior administrative service officer in India. The sheer callous conduct on the part of the petitioner is disappointing and even worrisome. If this kind of indiscipline and brazenness is to be accepted in the name of technical interpretation of service rules, it would only encourage officials in senior and responsible positions to behave in the same irresponsible manner, with deleterious consequences for the administration and governance of the country. The timing of filing of the application for seeking voluntary retirement is telling and shows how a senior and responsible officer of the administrative services has sought to escape the consequences arising from his own egregious default of unauthorized absence from duties in India, to save himself from the consequences. Had the same officer faced a situation of his subordinate behaving in this manner, we have no doubt that the officer would have sought for and visited such subordinate with the most grave consequences; but when it comes to himself, the petitioner seeks to hide behind the technicality that no acceptance is required for an application for seeking voluntary retirement and that mere expiration of period of notice means that he would be deemed to have been voluntarily retired. Moreover, no explanation is forthcoming in regard to the interpretation of O.M. dated 25.11.1958, whereby even when disciplinary proceedings are contemplated against the officer, an application for voluntary retirement “may not ordinarily be accepted”. If there is a case where this provision is to be invoked against an officer, in our view, this is exactly such a case.

20. In view of the above, we find no merit whatsoever in the petition. Impugned order dated 26.03.2019 made by the Tribunal is fully legal and justified.

C.M. Nos.39178-79/2019

21. Since the main petition is disposed of, these applications are also disposed of accordingly.

ANUP JAIRAM BHAMBHANI, J

G.S.SISTANI, J

SEPTEMBER 30, 2019

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