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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.210/00307/2019

Dated this Wednesday, the 08th day of January, 2020

**CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N.SINGH, MEMBER (J)**

Shri Arun Vithal Subhedar, Age 58 years, Son of Vithal Subhedar,
Working as Assistant Commissioner of CGST &
Central Excise Divn. III, Bhivandi, Commissionerate,
Residing at: 4, Pandurang Patil Niwas,
Netaji Subhash Chandra Road, Mulund (West),
Mumbai 400 080.

- Applicant

(By Advocate Shri S.V.Marne)

Versus

1. Union of India, Through the Secretary,
Ministry of Finance, North Block, New Delhi 110 001.
2. The Chairman, Central Board of Indirect Taxes & Customs,
North Block, New Delhi 110 001.
3. The Principal Chief Commissioner, CGST & Central Excise,
Mumbai Zone, GST Bhavan, 115, Maharshi Karve Road,
Mumbai 400 020.
4. The Commissioner of CGST & CX,
Bhiwandi Commissionerate, 12th Floor, Lotus Info Centre,
Station Road, Parel (East), Mumbai 400 012. - Respondents

(By Advocate Shri R.R.Shetty)

ORAL ORDER

Per : R.N.Singh, Member (Judicial)

Heard Shri S.V.Marne, learned counsel for
the applicant and Shri R.R.Shetty, learned
counsel for the respondents.

2. The present OA has been filed by the
applicant under Section 19 of the Administrative
Tribunals Act, 1985 for challenging the order
bearing No.A.33025/16/2019.Ad.II dated

25.03.2019 (Annex A-1) by which the applicant's notice dated 13.12.2018 for voluntary retirement under Rule 48 of CCS (Pension) Rules, 1972 on completion of 30 years of service has been rejected by the respondents.

3. The applicant has prayed for the following reliefs:

“8.a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the letter dated 25.03.2019 with all consequential benefits.

8.b. This Hon'ble Tribunal may further be pleased to hold and declare that the Applicant has retired from service under Rule 48 of CCS (Pension) Rules, 1972 with effect from 13.03.2019 and the Applicant be paid all retirement benefits with all consequential benefits along with interest @ 12% p.a.

8.c. This Hon'ble Tribunal may further be pleased to direct the Respondents to pay exemplary costs to the Applicant for illegally directing the Applicant to continue in service after coming into effect of his voluntary retirement on 13.03.2019.

8.d. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed.”

4. The facts arising out of the present case are that the applicant was appointed as Inspector of Central Excise with effect from 13.12.1988 and he was further promoted by the respondents to the post of Superintendent on 23.09.2002 and subsequently as Assistant Commissioner, CGST&CE. The applicant completed 30 years of service on 12.12.2018 and vide his notice dated 13.12.2018 (Annex A-3), he

requested the respondent No.2 to accept his request for voluntary retirement with effect from 13.03.2019. The applicant was advised by the respondents vide their letter dated 27.12.2018 (Annex A-4) to continue on duty till the decision of the Competent Authority in the matter of his request for voluntary retirement is communicated. Again the respondents vide letter dated 06.03.2019 (Annex A-7) directed the applicant to continue on duty till the decision of the Competent Authority in the matter of his request for voluntary retirement is communicated to him.

5. The applicant subsequently preferred another representation dated 07.03.2019 (Annex A-8), explaining his personal difficulties as reasons required/desired by the respondents for seeking the voluntary retirement. However, during the notice period no final decision was communicated by the respondents to the applicant and after expiry of the notice period, the respondents have issued the impugned order dated 25.03.2019 (Annex A-1) informing him that the Competent Authority has rejected his request for seeking voluntary retirement from service under Rule 48 of CCS (Pension) Rules, 1972 vide his notice

dated 13.12.2018.

6. In response to the notice, the respondents have filed reply affidavit and have opposed the claim of the applicant. The applicant has filed rejoinder.

7. The learned counsel for the applicant submits that after completion of 30 years of qualifying service, the applicant was entitled for requesting for acceptance of voluntary retirement after giving statutory notice and the respondents in absence of there being any impediment as provided under the Rule 48 of the CCS (Pension) Rules were duty bound to accept such request of the applicant.

8. The learned counsel for the applicant submits that the only impediment for which the respondents could have refused / rejected the request of the applicant as provided under the relevant Rule 48 of CCS (Pension) Rules of 1972 is if the applicant could have been under suspension. He refers to the Rule 48 of CCS (Pension) Rules, 1972 which reads as under:

"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 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.

(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 therefor.

(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.

For consolidated instructions regarding premature retirement of Government servants and orders issued thereunder see Appendix-5."

9. The learned counsel for the applicant places further reliance on the judgment dated 08.10.2018 of this Tribunal in OA No.207/2018 title **Kishor Bhaurao Sonkusare Vs. Union of India and Others** which has been upheld by the Hon'ble High Court of Bombay Bench at Aurangabad vide order/judgment dated 11.09.2019 in Writ Petition No.1075/2019. The paragraphs Nos.13 and 14 of the judgment of the Hon'ble High Court in the aforesaid Writ Petition No.1075/2019 read as under:

"13. An avenue has been available, for an employee to retire as well as for appointing authority to require a government servant to retire under rule 48 on completion of 30 years of service. It is open after 30 years service for a government servant to invoke said rule and is a facility for retirement voluntarily. Second proviso under rule 48 gives clear indication of that an appointing authority would seldom have option to withhold retirement after receipt of notice by the government servant pursuant to clause (a) thereof before the expiry of period of three months on which the government servant wishes to retire. Sub-rule (2) of rule 48 also gives an indication that so far as government servant is concerned,

specific approval to withdraw from retirement from the government servant under clause (2) would be necessary for him before the period of expiry of notice.

14. Going by provisions of rule 48 and 48-A, it would be seen that application for retirement can be made by government servant after 30 and / or 20 years of service. It emerges that respondent no.1 had applied for retirement after 30 years of service due to old age and ailments. Respondent No.1 had given notice of three months after completion of 33 years of service in consonance with rule 48. During the period of notice, under this rule, appointing authority does not appear to have any option save and except in case of a government servant under suspension when the appointing authority can withhold permission to retire and not otherwise.”

10. Shri R.R.Shetty, learned counsel for the respondents with the assistance of reply filed on behalf of the respondents vehemently opposes the claim of the applicant and he submits that the respondents are proposing to hold the Departmental Proceedings against the applicant. However, he has not disputed the fact that the applicant has neither been suspended nor any charge-sheet has been issued against him. It is also not the case of the respondents that any criminal proceeding is pending against the applicant.

11. We have perused the pleadings on record and have also considered the submissions made on behalf of the parties. We are of the considered view that in view of the provision of the rules referred to herein-above and the principle laid

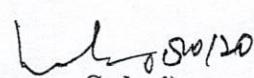
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down by the Hon'ble High Court, the respondents in absence of the impediment as stipulated in the second proviso of Rule 48 of the CCS (Pension) Rules, 1972 have no option but to accept the request of the applicant seeking voluntarily retirement after completion of 30 years of service on completion of the statutory notice period.

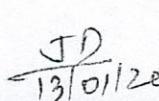
12. In view of the aforesaid facts and law, the OA is partly allowed and the impugned letter / order dated 25.03.2019 is quashed and set aside. The respondents are directed to pass appropriate order regarding acceptance of voluntarily retirement of the applicant with effect from 13.03.2019 (forenoon) as expeditiously as possible and in any case within six weeks from the date of receipt of a certified copy of this order. The applicant is entitled for all the consequential benefits in accordance with the relevant rules and instructions on the subject.

13. However, in the facts and circumstances, no order as to costs.

(R.N.Singh)
Member (Judicial)


(Dr. Bhagwan Sahai)
Member (Adm'ative)

kmg*


JD
13/01/20