

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1107/2001

New Delhi, this the 14th day of December, 2001

HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (ADMNV.)

Shri K.K.Datta
C/o Shri S.L.Mehta
R/o 69, Bharti Nagar, Delhi - 52.

...Applicant

(By Advocate Shri K.B.S.Rajan)

V E R S U S

UNION OF INDIA : THROUGH

Secretary
Deptt. of Company Affairs
Vth Floor, Shastri Bhawan
New Delhi.

...Respondents

(By Advocate Mrs. P.K.Gupta through
proxy counsel Shri Anil Singhal)

O R D E R (ORAL)

By Shri Govindan S.Tampi,

Challenge in this OA filed by Shri K.K.Datta, the applicant is directed against order dated 7-7-2000 passed by the respondents and three other orders related thereto.

2. Heard S/Shri K.B.S.Rajan and Anil Singhal, Id. counsel for the applicant and the respondents respectively.

3. Facts as brought out in the application are that the applicant, born in August 1942, who joined the respondents' organisation on 18-5-67 as LDC after rendering 6 years of military service from 1961, had completed more than 30 years in Govt. service. He is also to complete 60 years of age in August 2002. On account of personal reasons, he submitted his notice for voluntary retirement in terms of FR 56 (K)

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on 2-6-2000, but the same was not accepted by the respondents by the impugned letter dated 7-7-2000. The applicant informed respondents on 4-9-2000 that the Rule 56 (k) did not provide for any refusal of acceptance of notice except when the individual was under suspension, which was not the position in his case. However, on 1-11-2000, a memorandum was issued to him calling upon him to rejoin duty to explain for his unauthorised absence from 26-9-2000 and indicating that the respondents had a right to deny the permission for retirement if the disciplinary proceedings were pending/contemplated. The applicant replied on 8-11-2000 stating that it was not necessary for him to rejoin duty and /or that there was any unauthorised absence as he had already retired. On 8-12-2000, the applicant sent a letter to the respondents seeking release of his retiral benefits. In the meanwhile on 6-12-2000, a chargesheet has been issued to him proposing penal action against him under Rule 14 of the CCS(CCA) Rules. The above actions of the respondents are challenged by the applicant on the ground that when a person seeks voluntary retirement under Rule FR 56 (k), his right was fettered only if he is under suspension. Rule 56 (k) which gives a right to a Govt. servant, to retire voluntarily corresponds to the right of the Govt. to retire a Govt. servant under Rule 56 (j). As the applicant had fulfilled all the conditions for seeking voluntary retirement, as he was a Govt. servant holding a Group B post, as he was above 50 years of age, and as he had given three months notice and he was not under suspension, there was no reason or ground for the respondents to decline to accept the said notice. The

13

applicant further points out that in terms of Rule 48 of the Civil Service Pension Rules, a Govt. servant who has completed 30 years of qualifying service can retire from service subject to three months notice. This rule also provides for voluntary retirement with reference to qualifying service but, though 56(k) relates to voluntary retirement but with reference to the age of the Govt. servant rather than the qualifying service. There is no provision in Rule 48 also which enables the employer to refuse the notice for retirement. It would appear, states the applicant, that the respondents were acting under a misapprehension as Rule 48 A of the Pension Rules, which deals with the voluntary retirement on completion of the 20 years of the qualifying service, provides for specific acceptance of the notice by the appointing authority. The respondents apparently have adopted ^{by mistake} the condition under Rule 48 A in the instant case. Further once a Govt. servant has retired, initiation of proceedings against him would have to be on a different pedestal and the same would have to be related to CCS (Pension) Rules, though he is still subject to Conduct Rules and CCS (CCA) Rules. Besides, after the retirement has taken place on the completion of the notice, no charge of unauthorised absence in respect of the subsequent period can be raised. The respondents' action in this regard is also incorrect. It is further pointed out by the ld. counsel for the applicant that the retirement having taken place, pensionary benefits also will have to follow and cannot be held back at the pleasure of the controlling authority. The issue of chargesheet, if any, will have to follow the authorised procedures provided for the said purpose.

2

4. Reliefs sought in this OA are as below:-

(i) it be held that issue of order dated 7-7-2000 whereby notice of voluntary retirement given by the applicant was not accepted is illegal as such an order is beyond the authority available under the provisions of CCS (Pension) Rules, 1972 and/or Rule 56 (k) of the Fundamental Rules.

(ii) to declare that charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 is also illegal as the applicant being no longer a serving Govt. servant cannot be proceeded against CCS (CCA) Rules.

(iii) also to declare that order dated 1-11-2000 alleging unauthorised absence of the applicant after 2-9-2000 is also illegal in view of the fact that the applicant stands retired w.e.f. 2-9-2000.

(iv) to direct the respondents to pay to the applicant the terminal benefits consequent to his retirement w.e.f. 2-9-2000 without taking into account the existence of the impugned charge sheet. Terminal benefits would mean monthly pension, gratuity would leave encashments, release of Provident Fund, Central Govt. group insurance and commutation of pensions.

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(v) also to direct the respondent to pay the applicant interest at a rate that may be quantified by the Tribunal, to be applied on the arrears due for the period from 1-10-2000, till the date of payment.

(vi) to hold that the applicant is entitled to drawl of monthly pension as long as he does not fall within the mischief of Rule 8/9 of the CCS (Pension) Rules, 1972.

(vii) to calender a time schedule for appliance of the provision in regard to quashing of the orders and payment of terminal benefits etc. and to award cost.

5. Shri K.B.S.Rajan, Id. counsel forcefully reiterated all the points raised in the OA and sought the immediate intervention of the Tribunal in mitigating the injustice meted out to the applicant. He also brought to my attention the decisions of the Hon'ble Supreme Court in Dinesh Chandra Sangma Vs.State of Assam and Others (1977) 4 SCC 441), State of Haryana and Others Vs.S.K.Singhal (JT 1999(3)SC 140), and of the Tribunal in Dhirajlal Joshi and Others Vs. UOI (1988) 6 ATC 779) and S.A.R.Rizvi Vs.UOI and Others (1998)37 ATC 43), in support of his pleas. 140),

6. Replying on behalf of the respondents and reiterating the pleas, Shri Anil Singhal, Id. proxy counsel states that the action taken by the respondents was entirely proper in the back drop of the case. According to him, the applicant who was

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working as Sr. Technical Assistant in the office of the Official Liquidator, Chandigarh was deputed by his employer on 17.8.1998 to prepare the inventory work of M/s Altos India Ltd.(under provisional liquidation) in their Okhla Factory but instead he went to their factory at Gurgaon, made a forced entry, broke the seal and managed to take out about 150 sealed cartons worth Rs. 1.5 crores on 4-9-1998. The matter was brought to the notice of the Official Liquidator^{or} on 11.9.1998, who in turn informed the Deptt. of Company Affairs on 27-1-1999. As a prima facie case had been made out, the matter was referred to Central Vigilance Commission in July and August,2000 from whom the first stage advise was received in November,2000, following which a chargesheet had been issued on 6-12-2000. In between the applicant served notice for voluntary retirement on 2-6-2000 on the presumption that he would be under protection of under FR 56 (k) and immune from any action. The contention of the applicant that once the the 90 days' notice period was over, he was no more in Govt. service and that provision of Rule 14 of CCS (CCA) Rules would not be applicable in his case was incorrect. Department was fully within its rights to initiate disciplinary action against the applicant as well as to refuse his request for voluntary retirement as the disciplinary proceedings were contemplated. FIR relating to the theft case, in which the applicant was involved, could not be lodged as the Hon'ble High Court of Punjab and Haryana was seized of the matter and the CVC had advised the respondents to await the decision of the High Court. The Deptt. had also sought the directions from the High Court as to whether the

12

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applicant's request for voluntary retirement could be permitted. According to the respondents, since disciplinary proceedings were already contemplated, the suspension of the officer was not felt warranted. As the charges against the applicant was of serious nature, the competent authority had no alternative to refusing his request for retirement within the notice period. While Rule 56 (k) does not stipulate a condition under which voluntary retirement sought may be refused, it should be presumed that the Rule is silent in this regard. A view can then be taken that it was in the discretion of the competent authority to refuse the request in public interest. The spirit of the rule is that in normal circumstances where no serious charges are pending or contemplated against a Govt. servant, on his attaining the stipulated age, he may be allowed to retire voluntarily, but in the instant case, the situation is different and the applicant was concerned in a criminal act, which called for stringent action, if proved. Deptt had acted correctly in refusing to accept the request of the applicant for voluntary retirement. Therefore, his plea that he automatically stood retired on the expiry of the 90 days was incorrect, misleading and liable to be rejected. As the notice for the voluntary retirement has not been accepted, his retirement has not come to effect and he should have attended duty. His failure to do so had correctly visited him with disciplinary proceedings for unauthorised absence. It is also pertinent that he had not referred to his voluntary retirement in his reply to the office of the Regional Director, Kanpur. In as much as the disciplinary proceedings initiated

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against him have been initiated and E.O/P.O. had been properly appointed, the respondents should be permitted to go ahead with the proceedings. In a matter like this where a large quantity of articles involving a huge amount of money under the control of the High Court of Punjab and Haryana is involved, the Deptt. has taken a correct view to deny him the voluntary retirement. Further, as the matter is sub-judice before the High Court, the Tribunal would not like take to take any decision and would wait for the disposal of the matter at the end, before dealing with the OA, pleads Sh.Singal.

7. I have carefully considered the matter and perused the documents on record. In this case, the facts are undisputed. Notice for voluntary retirement filed by the applicant under FR 56 (k) has not been accepted by the Respondents -his earlier employers- on the ground that disciplinary proceedings for major penalty were contemplated against him. The respondents have also treated the applicant's absence from office, after the expiry of the notice period, as unauthorised absence and proceeded to chargesheet him. The applicant contests the above on the single legal plea that once the notice period of three months issued in terms of FR 56(k) was over, he was a retired person, as the rule did not at all provide for any acceptance or otherwise, unless he was under suspension. In this contest perusal of the rule-FR 56(K) becomes germane. The said rule reads as below:-

"FR 56 (k) Any Government servant may 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

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19

(and had entered Government service before attaining the age of thirty five years), and in all cases after he has attained the age of fifty-five years :

provided that :

(a) nothing in this clause shall apply to a Govt. servant referred to in clause (e) who entered Government service on or before 23rd July, 1966 ;

(b) nothing in the clause shall also apply to a Govt. servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (TEC) Programme of the Ministry of External Affairs and other aid programmes ; (ii) is posted abroad in a foreign based office of a Ministry/Deptt ; 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

(c) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. (emphasis added)

9. The only possible interpretation which emerges from a pleading of the above rule is that a Group 'A' or Group 'B' Govt. servant, who has attained the age of 50 years can retire from service, by giving notice of not less than three months and that the appropriate authority can withhold permission for exercising this right only if the Govt. servant is under suspension. Exercise of this right is not fettered by any condition, other than that the person should not be under suspension. It is a matter of record that the applicant had completed 50 years of age and had filed the necessary notice of three months, as required under the Rule and that he was not under suspension on the date of the notice or at any time till the date on which the notice period expired. Respondents themselves admit that FR 56 (k) does not contain any provision for refusing acceptance, but urge that when the Rule is silent, it was for the competent authority to refuse the request in public interest. Such an interpretation only exists in the

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air and cannot be upheld. Various decisions of the Hon'ble Supreme Court also are against the interpretation adopted by the respondents. Dinesh Chandra Sangma Vs. State of Assam & Ors. (1977 (4) SCC 411), State of Haryana & Ors. Vs. S.K. Singhal (JT 1999 (3) SC 140), Raj Pal Gaiandh Vs. UOI (1987 (3) ATC 533) and Dheeraj Lal Mohan Lal Joshi Vs. UOI & Ors. (1988 (6) ATC 779) are all on this point. In Singhal's case, the Hon'ble Apex Court has laid down the law successfully as below :-

"If the right to voluntary retirement is confirmed in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in Rules to withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in notice. There is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission"

10. I observe that in this case, the circumstances are rather peculiar as the applicant is involved in a case of theft of materials of high value from a factory which was in the custody of Official Liquidator, Chandigarh under whom he was working. The offence is alleged to have been committed as far back as on 4-9-98 and necessary information has been received by the concerned authorities on 11-9-98. Still ^{no} punitive action has been taken by the respondents to deal with the applicant, till he filed his notice for voluntary retirement under FR 56 (k) on 2-6-2000. The explanation given by the respondents, that they were seeking the advice of the CVC and/or the permission from the Hon'ble High Court of Punjab and Haryana, does not carry any conviction.

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21

There was no reason at all for the respondents to have acted in a totally lackadaisical manner for nearly two years and ^{have held} the view that placing the individual under suspension was not felt necessary as a disciplinary proceedings has already been contemplated. They did not require any one's permission to place the applicant under suspension, as they were the competent authority. Respondents have failed to take action as was expected of them for over two years. They cannot, therefore, come before the Tribunal and pray that the Tribunal should make good their omission or fill the gaps in the procedure. As pointed out above, proviso (c) to FR 56 (k) makes it abundantly clear that only when a Govt. servant is under suspension, can his request for voluntary retirement be refused. Inspite of ^{there} being adequate grounds for placing the individual under suspension, the respondents have, in their judgement and wisdom chosen not to do so and therefore, the notice for voluntary retirement has correctly come to its logical conclusion i.e. retirement of the individual w.e.f 2-9-2000. This is the correct position in law.

11. I also note that the respondents have averred that their action, in refusing the notice was valid in terms of Govt. of India's decision No. 1 (iii) below Rule 48 of the CCS (Pension) Rules. This does not at all come to their rescue as the said Rule deals with those who are seeking voluntary retirement on completion of 20 years of qualifying service, whereunder acceptance of the notice is a condition

12/

precedent for the retirement. The said provision has no connection with FR 56 (k) under which retirement has been indicated by the applicant.

12. In the circumstances, that the voluntary retirement of the individual has taken effect from 2-9-2000, notice calling for explanation ^{of the applicant} for unauthorised absence for the period beyond that date, issued on 1-11-2000 has no legs to stand on. The memorandum issued on 3-11-2000 also follows suit and has to be annulled. I do not, however, record any findings in respect of the legality or otherwise of memorandum dated 6-12-2000 which has been issued proposing to hold the inquiry under Rule 15 of the CCS (CCA) Rules in respect of the theft of goods from the factory at Gurgaon in which the applicant is involved. The respondents are fully free [&] go ahead with the same in accordance with the procedure prescribed for the same in law.

13. Respondents have also made a plea that the Tribunal may not proceed with the disposal of this OA, as the Hon'ble High Court is seized of the matter. However, they have not brought anything on record to show that the Hon'ble High Court has issued any direction in this regard. Even otherwise the present OA is confined to the limited issue of the rejection of the notice of voluntary retirement of the applicant. And the same has not been stayed by the Hon'ble High Court.

14. In the above view of the matter, the OA ^{is} ~~is~~ allowed to a substantial extent. Impugned orders dated 7-7-2000, 1-11-2000 and 3-11-2000 are quashed and set aside and it is declared that the applicant has retired on completion of the requisite period of three months on 2-9-2000, in terms of the notice dated 2-6-2000 filed under Rule FR 56 (k). The respondents may proceed with the disciplinary proceedings initiated under memorandum dated 6-12-2000, as the retirement or otherwise of the applicant does not make him immune from such proceedings, being initiated and proceeded with in accordance with law.

15. Operative portion of this order was pronounced in the open Court on 14-12-2001, at the close of the submissions.

(GOVINDAN S. TAMPI)
MEMBER (A)

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