

(11)

Central Administrative Tribunal
Principal Bench

O.A. 2212/98

New Delhi this the 10 th day of December, 1999

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hari Kishan Dahiya,
S/o Shri Chandan Singh,
ASI No. 2734/D,
DAP III Battalion,
R/o Village Dhanwapur,
Distt. Gurgaon, Haryana. Applicant.

By Advocate Shri S.C. Sharma.

Versus

1. The Commissioner of Police, Delhi
Police Headquarters, I.P. Estate,
New Delhi.

2. The Dy. Commissioner of Police,
Shri Naresh Kumar,
DAP III Bn.,
Vikaspuri Police Line,
New Delhi. Respondents.

By Advocate Shri Anil Singhal proxy for Shri Anoop
Bagai.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by the respondents dated 22.11.1996 rejecting his request for voluntary retirement w.e.f. 1.12.1996.

2. The applicant was appointed as Constable in Delhi Police on 1.11.1968. Later, he was promoted as Head Constable in 1974 and ASI in 1985. According to the applicant, he has already put in 28 years of service and as he was unwell and could not cope up with the physical strain of his job, he had submitted an application dated 4.9.1996 through proper channel seeking voluntary retirement in accordance with the Rules. The grievance of the applicant is that his request of the

applicant has been summarily rejected without considering his genuine medical problems. Later, he had submitted another application for voluntary retirement addressed to Respondent 2 dated 9.10.1997 which, according to the applicant, was also summarily rejected. Shri S.K. Gupta, learned counsel, has relied on the judgements in A. Sivaraman Vs. Tamil Nadu Water Supply and Drainage (1984(1) SLR 305), Gurdip Singh Vs. State of Haryana and Anr. (1991(3) SLR 692), Dinesh Chandra Sangma Vs. State of Assam & Ors. (1978 (1) SLR 26) and J. Banerjee Vs. State of Orissa & Ors. (1991(8) SLR 319). Learned counsel has contended that according to the respondents a decision to proceed against the applicant in departmental proceedings had been taken only on 14.11.1996 and as the applicant had already submitted his application for voluntary retirement after completing more than 28 years of service, the same ought to have been accepted by the respondents.

3. The respondents have stated in their reply that when the applicant's request for voluntary retirement w.e.f. 1.12.1996 was examined by them, they noticed that the applicant was facing a joint departmental inquiry which had been initiated against him by order dated 14.11.1996. Hence, his request for voluntary retirement was rejected in view of the instructions contained in Rule 48-A of the CCS (Pension) Rules, 1972 (hereinafter referred to as 'the Pension Rules'). They have submitted that by Govt. of India's Decision (iii) under this Rule, such acceptance may be generally given in all cases except those in which disciplinary proceedings are pending or contemplated against the Government servant concerned for imposition of a major penalty. Shri Anil Singhal, learned proxy counsel, has relied on two decisions of the Supreme Court, namely, S.K. Bangia Vs. State Bank of

India (1995(5) SLR 662 and Dr. Baljit Singh Vs. State of Haryana (1997(1) SCC 754).

4. We have carefully considered the pleadings, the submissions made by the learned counsel for the parties and the records submitted by the learned counsel for the respondents.

5. ~~By~~ Notification dated 17.12.1980 issued under Section 5 of the Delhi Police Act, 1978 by the Administrator, the provisions of the Pension Rules apply to employees of the Delhi Police. The relevant portion of Rule 48-A of the Pension Rules which deals with retirement on completion of 20 years' qualifying service, reads as follows:

"(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 x x x x

(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) Deleted.

(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) x x x "

6. In the application dated 4.9.1996 submitted by the applicant to the respondents, he has requested that three months notice for retirement may be accepted as per Rules. This notice period would, therefore, expire on 3.9.1996. The Govt. of India's Decision (iii) under the Pension Rules states that such an acceptance may be generally given except in cases where disciplinary proceedings are pending or contemplated

against the government servant concerned in this case the person working under the Delhi Police Act, for the imposition of a major penalty and also in other circumstances mentioned therein. In this case, it is seen from the records submitted by the respondents that the DE has been ordered against the applicant by order dated 14.11.1996 under Section 21 of the Delhi Police Act, 1978.

7. In Dr. Baljeet Singh's case (supra), the Supreme Court has held that when serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or necessary disciplinary action should be taken under the Law. In that case, it was further held that mere expiry of three months' period of notice did not automatically put an end to the jural relationship of employer and employee between the Government and the delinquent official. Only an acceptance by the employer of resignation or request for voluntary retirement their jural relationship ceases. In the circumstances, it is seen that the respondents had taken a decision to initiated a joint disciplinary inquiry against the applicant and certain other officials on 14.11.1996, i.e. before the expiry of three months' period of notice to accept his request for voluntary retirement. Further, the rejection letter has been sent to the applicant by the impugned order dated 22.11.1996 which is also within the notice period. In these circumstances, there appears to be no illegality in the impugned order. The observations of the Delhi High Court in S.K. Bangia's case (Supra) that in case disciplinary

proceedings are pending against a particular officer, then such notice shall not take effect unless it is accepted by the competent authority, is also relevant to the facts of this case. In the judgement in A. Sivaraman's case (supra) relied upon by the applicant, the Madras High Court has also referred to Explanation IV to FR 56(d) which provides that when a Government servant under suspension or against whom disciplinary action is pending, seeks to voluntarily retire, the specific permission of the appropriate authority for such voluntary retirement is necessary. This case would also not assist the applicant in the present facts as disciplinary proceedings have been initiated against the applicant. The Supreme Court in D.C. Sangma's case (supra) has held that the submission that Rule 119 of the Defence and Internal Security of India (DISI) Rules, 1971 is super-imposed on FR 56(c) has no force in this case and that the High Court committed an error of law in holding that the consent of the Government was necessary to give legal effect to the voluntary retirement of the appellant under FR 56(c). The factual position in that case is different from the present case and this decision will not assist the applicant. The other judgements relied upon by the applicant will also not assist the applicant in the light of the judgement of the Supreme Court in Dr. Baljeet Singh's case (supra).

8. In the facts and circumstances of the case and for the reasons given above, we find no merit in this application. The O.A. accordingly fails and is dismissed. No order as to costs.

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member (J)

S. R. Adige
(S. R. Adige)
Vice Chairman (A)