

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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O.A./~~XXXX~~ No. 366 of 1998

Decided on: 22/9/98

Smt. Santosh SareenApplicant(s)

(By Shri A.K. Bhardwaj Advocate)

Versus

NCT Delhi & OthersRespondent(s)


(By Shri None Advocate)

CORAM:

THE HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? yes
2. Whether to be circulated to the other Benches of the Tribunal?


(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 366 of 1998

New Delhi this the 22nd day of September, 1998

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

Smt. Santosh Sareen
R/o Flat No.308,
Type-IV, Laxmi Bai Nagar,
New Delhi.

....Applicant

By Advocate Shri A.K. Bhardwaj.

Versus

1. National Capital Territory of Delhi

Through

The Secretary,
Govt. of NCTD,
Ministry of Education,
Old Secretariate,
New Delhi.

2. The Director of Education,
Old Secretariate,
Delhi.

3. The Deputy Director of Education,
District Central,
Directorate of Education,
District Central,
Bela Road,
New Delhi.

..Respondents

None for the respondents.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Applicant, Head-Mistress of a school, under the respondents is aggrieved that her representation for premature retirement on the grounds of health was not accepted by the respondents. The refusal of her request by the impugned order is under challenge in this application. It is stated by the applicant that she had completed 35 years of service and is entitled to seek voluntary retirement under the provisions of FR 56-(k).

According to her, she sought voluntary retirement by her

letter dated 14.4.1997, Annexure A-5. In that she had sought that her representation for premature retirement with immediate effect might be accepted. Subsequently, by another representation dated 18.6.1997, she again made a similar request. Respondents turned down her request by the impugned letter informing her that pending disciplinary proceedings against her, her request could not be acceded to. It must be pointed out here that even in the letter dated 14.4.1997, she had informed that the memorandum of charges issued against her by the respondents in their letter dated 23.10.1996 which was served on her and also appointing Enquiry Officer for the purpose on the charge of unauthorised absence without intimation, would not be applicable to her as her case does not fall within the purview of the aforesaid Article of Charge and she had explained reasons therefor.

2. The applicant contends that withholding her request for voluntary retirement is violative of the provisions of FR 56-k(1) under which the respondents could have no power to do so. She contends that as per the relevant provisions of Rules, she should be deemed to have voluntarily retired from service on the expiry of the three months' from the date of notice, i.e., 14.4.1997 and, therefore, the impugned order is without any authority of law. She also contends that the charge against her in the disciplinary proceedings are not such as would warrant her dismissal or removal from service and, therefore, the respondents should have allowed her to retire voluntarily.

She also relies on the judgment of the Tribunal in S.K. Jain Vs. U.O.I. and Others, 1993(1) ATJ 588 and J. Jeewan Lal Vs. U.O.I., 1994 (1) ATJ 547 to support her contention.

3. The respondents in their counter-reply have denied all these pleadings and have averred that the applicant had never given any notice for voluntary retirement as required under the rules. Her request in the representation was not accepted due to the fact that disciplinary action was initiated against her under Rule 14 of the CCS (CCA) Rules, 1965 for having remained absent from duty, for failing to comply with the orders of her superiors for handing over charge, for acting in a manner unbecoming of a Government servant and for violating Rule 3 of CCS (Conduct) Rules, 1964 in failing to comply with the transfer order dated 9.1.1996. The respondents also contend that the applicant had not indicated under what rule she wished to seek voluntary retirement. Regarding the contention of the applicant that she had informed the department about her 'paralysis attack', respondents submit that she had not submitted any medical certificate in respect of the same and the certificate she had submitted therefor different illnesses like Bronchial Asthma, Neuropsychiatric and Orthopaedic illness etc. and not paralysis. They also assert that taking into account her prolonged unauthorised absence, disciplinary proceedings were initiated by the order dated 23.10.96. The Enquiry Officer was also appointed and he had been directed to expedite the enquiry in the interest of the

petitioner. They aver that the enquiry had been delayed due to the non-cooperation of the petitioner as she did not attend the enquiry claiming that she was unfit. The respondents further contend that her request for voluntary retirement could not be accepted due to the fact that Rule 48-A of the CCS (Pension) Rules, 1972 provides that pending disciplinary proceedings, permission can be denied, if communicated within the period of notice. However, no such notice under the aforesaid rule was received from the petitioner.

4. We have heard the learned counsel for the parties and have perused the record.

5. Retirement of Government servants is provided under Rule 56 of the FRs and Rules 48 and 48-A of the CCS(Pension) Rules, 1972. Under FR 56(k), it is provided as follows:-

"(k)(1) Any Government servant may by 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, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that-

| | | | |
|-----|-----|--------|------|
| (a) | XXX | XXXXX | XXXX |
| (b) | XXX | XXXXXX | XXXX |

(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.

| | | | |
|----------|-----|-------|------|
| (1-A)(a) | XXX | XXXXX | XXXX |
|----------|-----|-------|------|

(b) XXX

XXXXX

XXXX

(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".

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6. Under Rule 48 of the CCS (Pension) Rules, 1972, a Government servant who has completed 30 years' of qualifying service may retire from service after giving a notice in writing to the appointing authority at least 3 months before the date from which he wishes to retire. Similar provisions exist for the appointing authority also requiring the Government servant to retire in public interest by giving a similar notice. It is provided in the aforesaid rules that where a Government servant giving notice is under suspension, it shall be open to the appointing authority to withhold permission from such Government servant to retire under the aforesaid rules.

The sub-clause (2) provides as follows:-

"(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 may 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."

7. There is yet another provision under Rule 48-A of the CCS (Pension) Rules, 1972 for voluntary retirement on Government servants completing 20 years of qualifying service. This rule also requires Government servant to give notice of not less than 3 months in writing to the

appointing authority. There is a specific provision in this rule that a notice of voluntary retirement shall require acceptance by the appointing authority and it is also provided that where the appointing authority does not refuse to grant the permission, the retirement shall become effective from the date of expiry of the notice period. It is also provided that a Government servant who has elected to retire under this rule and has given initial notice to this effect to the appointing authority, shall be precluded from withdrawing this notice except with the specific approval of that authority provided request for withdrawal shall be made before the intending date of retirement.

8. From the aforesaid rules it is clear that person seeking voluntary retirement has to specify under which provisions of the rules, he seeks voluntary retirement. A person seeking voluntary retirement under Rule 48 of the CCS (Pension) Rules, 1972, i.e., on completion of 30 years of qualifying service can still be less than 55 years of age and, therefore, cannot seek retirement under Rule 56(k). Similarly the provisions of Rules 48 and 48-A are different sets of rules. In view of this matter, it is necessary that Government servant seeking voluntary retirement should specify the rule under which he/she seeks such retirement. From her representation dated 14.4.1997, it cannot be said that it is in the nature of notice for voluntary retirement under any of the aforesaid specific rules. In the light of this, it will not be correct to say that the respondents should have followed

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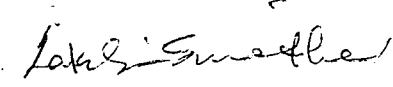
the provisions of FR 56(k). In other words, when there is no valid notice within the provisions of any of the rules aforesaid, it cannot be said that rejection of her representation on the ground of pendency of disciplinary proceedings can be legally faulted.

9. We have seen the cases referred to by the applicant. In S.K. Jain (Supra), the facts and circumstances are different. In that case the Tribunal held that when the material on record that the case of the applicant came within the ambit of Rule 56(k) and respondents sought time to enable them to relieve the applicant on voluntary retirement and he was continuing on duty beyond the original date of vountary retirement and the respondents submitted before the Tribunal that they were under the impression that the applicant had sought voluntary retirement under Rule 48-A of the CCS (Pension) Rules, 1972. The facts and circumstances are not parimateria with those in present case. Therefore, this judgment is not of particular assistance. In the other case relied upon by the applicant viz. J. Jeewan Lal (Supra) also the issue was whether the applicant who had sought voluntary retirement on completion of 30 years of service cannot be compelled to remain in service and the authorities cannot force him to take alternate employment and cannot terminate his service in the event of alternate employment not being available as has been done in that case. The facts and circumstances here also are not parimateria with the facts of this case.

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10. In the conspectus of the above discussion, we are of the considered view that there is no ground to interfere with the impugned order of the respondents. The application lacks in merit and is accordingly dismissed. No order as to costs.


(K. MUTHUKUMAR)
MEMBER (A)


(MRS. LAKSHMI SWAMINATHAN)
MEMBER (J)

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