

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.741/2018

Date of decision: 21.02.2020

CORAM:- R. VIJAYKUMAR, MEMBER (A).
R.N. SINGH, MEMBER (J).

SUBHASHCHANDRA NANDANWAR
(son of Sadashiv Paikuji Nandanwar)
Date of Birth: 05.04.1959,
age 59 years 08 months,
Worked/Retired voluntarily
on 29.02.2018 as **Accounts Officer/
Enforcement Officer** (Group 'B' Post),
from the office of Employees Provident
Fund Organisation, Bhavishya Nidhi Bhavan,
CIDCO, Town Centre, Aurangabad,
Maharashtra-431029, residing at:
Chandranagar, Naik Nagar Road,
Near Bhagwan Nagar, Nagpur,
State of Maharashtra 440 027,
Cell 9767571655.

...Applicant.

(By Advocate Shri R. G. Walia)

VERSUS.

1. Union of India
Through: Secretary,
Ministry of Labour &
Employment, Shram Shakti
Bhawan, New Delhi 110 066.
2. Central Provident Fund Commissioner,
Employees Provident Fund Organization,

Head Office, Bhavishya Nidhi Bhawan,
Bhikaji Cama Place,
New Delhi 110 066.

3. The Additional Central Provident
Fund Commissioner,
Employees' Provident Fund
Organization, Zonal ACC Office
Maharashtra, (Excluding Mumbai),
2nd Floor, Pune Cantonment Board
Building, Near Golibar Maidan,
Camp, Pune (Maharashtra)
Pin Code-411 001.
4. The Regional Provident Fund
Commissioner-I,
Employees' Provident Fund
Organization, Regional Office,
Bhavishya Nidhi Bhawan,
Plot no.2, Town Centre,
Commercial Area, Cidco,
New Aurangabad 431 029.

...Respondents.

(By Advocate Shri R. R. Shetty)

O R D E R

Per: R.N. SINGH, Member (J)

1. When the case is called out, Shri R. G. Walia, learned counsel appeared for the applicant.
2. Shri R. R. Shetty, learned counsel appeared for the respondents.
3. Heard the learned counsels for the parties.
4. The applicant who has been working as

Accounts Officer (Group 'B' Post) under the respondents has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 to challenge the act of the respondents in not passing the orders of his Voluntary Retirement w.e.f. 01.03.2018 inspite of the fact that the applicant has submitted the notice dated 30.11.2017 (Annexure A-2) seeking therein Voluntary Retirement we.f. 01.03.2018 on completion of 33 years of his service under the respondents.

5. In the aforesaid background, the applicant has prayed for the following reliefs:

"(a) This Hon'ble Tribunal will be pleased to call for the records and proceedings of the case which led to the issuance of the impugned letters/orders dated 04.04.2018, 04.04.2018, 27.03.2018 and 28.03.2018 (i.e. Annex 'A1' (Colly)) and after going through the same accordingly quash and set aside the impugned letters/orders dated 04.04.2018, 04.04.2018, 27.03.2018 and 28.03.2018 with all consequential benefits.

(b) This Hon'ble Tribunal may be pleased to order and direct the Respondents to treat the Applicant as retired from service with effect from 28.02.2018 or 28.03.2018 or on any other date as the Hon'ble Tribunal may deem fit and proper.

(c) This Hon'ble Tribunal will be pleased to order and direct the Respondents to release and grant retirement dues i.e. Pension and other Retiral Benefits (DCRG, Leave Encashment, Provident Fund, etc.) to the Applicant with effect from 01.04.2018 or any other date as the Hon'ble Tribunal may deem fit and proper with 18% interest of the arrears.

(d) Any other and further and additional orders as this Hon'ble Tribunal deems fit and necessary in the nature and circumstances of the case may be passed.

(e) Costs of the application be provided for."

6. The brief facts leading to the present OA are that the applicant entered into the employment of the respondents on 05.06.1984. Vide notice dated 30.11.2017 through proper channel (Annexure A-2) the applicant requested the respondents to allow him to retire voluntarily w.e.f. 01.03.2018.

7. The learned counsel for the applicant submits that the aforesaid notice dated 30.11.2017 was forwarded by the officer in-charge with a certificate dated 01.03.2018 to the effect that the applicant was neither kept under

suspension nor he had been charge-sheeted and also that no disciplinary proceedings or judicial proceedings on charges may amount to grave misconduct were contemplated or pending against the applicant (Annexure A-2- page 39).

8. The learned counsel for the applicant argues that once the applicant has submitted a notice dated 30.11.2017 and it was very much verified by the respondents themselves that the applicant was not under suspension and the applicant has completed 33 years of service i.e. more than 30 years, required under Rule 48(A) of the CCS Pension Rules, 1972, the respondents were duty-bound to accept his request for being retired voluntarily on 01.03.2018. However, in place of passing the orders regarding Voluntary Retirement of the applicant w.e.f. 01.03.2018, the respondents issued the letter dated 27.03.2018, 28.03.2018 and 04.04.2018 (Annexure A-1) rejecting the request of the applicant for Voluntary Retirement w.e.f. 01.03.2018.

9. The learned counsel for the applicant submits that the grounds taken by the respondents in the impugned orders are that inspite of the

communication from the respondents the applicant has not submitted the Caste Validity Certificate.

10. The learned counsel for the applicant argues that such ground is not apt in law in as much as the same is contrary to the provisions of Rule 48 (A) of the CCS (CCA) Pension Rules, 1972. He further submits that the impugned orders dated 27.03.2018, 28.03.2018 and 04.04.2018 are well beyond the effective dates from which the applicant has sought for the Voluntary Retirement i.e. 01.03.2018 and therefore the impugned orders are not tenable in the eyes of law. To strengthen his arguments, the learned counsel for the applicant has placed reliance upon the judgment dated 08.10.2018 of this Bench of the Tribunal in OA No.207/2018 titled Kishor Bhaurao Sonkusare Vs. Union of India and Ors. which has been affirmed by the Hon'ble High Court of Bombay Bench at Aurangabad vide order dated 11.09.2019 in WP No.1075/2019.

11. In response to the notice from this Tribunal the respondents have filed detailed reply to oppose the claim of the applicant made therein the OA. With the assistance of the reply

filed on behalf of the respondents, Shri R. R. Shetty, learned counsel vehemently argues and opposes the claim of the applicant. He submits that the respondents rejected the request of the applicant seeking voluntary retirement from services keeping in view the fact that the applicant was called upon to produce the caste validity certificate since he was appointed in the office of the respondents keeping in view his claim to be belonging to Reserved Category candidates 'ST'. He submits that the applicant was called upon to produce the caste validity certificate as per the directions of the respondents Regional Office, Bandra vide their letter dated 15.09.2017 (Annexure R-1).

12. The learned counsel for the Respondents further submits that the applicant was further directed to submit a fresh applications for voluntary retirement in as much as the applicant has failed to comply with the respondent's earlier directions to submit the caste validity certificate. He also brings to our notice that in response to such communication of the respondents the applicant submitted an applications dated

28.02.2018 (Annexure A-5) and therein the applicant has sought the Voluntary Retirement at least w.e.f. 28.03.2018 and therefore the rejection of the claim of the applicant for Voluntary Retirement vide communication dated 27.03.2018, 28.03.2018 are within three months i.e. period as prescribed under Rule-48 CCS (CCA) Pension Rules, 1972.

13. We have perused the pleadings on record and have also considered the submissions made by the learned counsels for the parties carefully.

14. It is not in dispute that the applicant entered into service of the respondents on 15.06.1984 and it is also not in dispute that when the applicant has submitted his letter/notice dated 30.11.2017 for voluntary retirement, he has completed more than 33 years of service under the respondents. It is also not in dispute that at the time of submitting his notice seeking voluntary retirement or even on the effective date from which the applicant has sought voluntary retirement, he was not under suspension. Rather the respondents communications dated 01.03.2018 (Annexure A-3) indicates that

the applicant was neither under suspension nor he was facing any disciplinary or criminal proceedings with any grave charge nor any proceedings as such was contemplated against the applicant.

15. In view of the aforesaid, the issue before this Tribunal in the present OA the issue raised in the present OA is as to whether after completed more than 30 years of service the applicant can be refused voluntary retirement from the services of the respondents unless he is under suspension. The issues in hand is no more res integra in view of the judgment of this Tribunal dated 06.10.2018 in the case of **Kishor Bhaurao (supra)** which has been upheld by the Hon'ble High Court vide order/judgment dated 11.09.2019 in the aforesaid WP No.1075/2000. Paras-12 to 18 of the judgment dated 11.09.2019 of the Hon'ble High Court read as under:

"12.Rules 48 and 48-A of the pension rules read, thus,
"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 retire.

48-A. Retirement on completion of 20 years' qualifying service

(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 that 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 (ITCE) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad Ministries/Departments, foreign based offices 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.

(2) The notice of voluntary retirement given under sub-rule (!) 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) on receipt of a request under Clause (a), the appointing authority subject to the provisions of sub-rule (2), 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, the 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.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted.

(6) This rule shall not apply to a Government servant who,

(a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement of surplus employees, or

(b) retires from Government service for being absorbed permanently in an autonomous body of a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

Explanation. - 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 seeks voluntary retirement."

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 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. 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 service in consonance with rule 48. During the period of notice, under this rule, appointing authority does not appear 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.

15. Rule 48-A as well would show that a government servant who has completed 20 years of qualifying service may retire by giving notice of three months to the appointing authority and in such a case, pursuant to sub-rule (2) of rule 48-A, it would require acceptance. However, the same as well is qualified under proviso which refers to that if the appointing authority does not refuse to grant permission for retirement before expiry of period in the notice, the retirement would become effective from the date of expiry of the period.

16. In this matter, appointing authority had not refused permission to retire to the government servant respondent no.1. In such a case, by operation of rules, respondent no.1 stands retired. It does not appear that such effect would be arrested or stalled for the reasons and grounds as have been referred to in defence taken up by the petitioner.

17. In such a case, taking overall view of the matter, it is difficult to say that appointing authority would still continue with option after the expiry of period of notice. In the circumstances, treatment given to original applicant by the tribunal does not appear to be in any way improper and much less faulty. We find that the petition does not carry substance sufficient to disturb the order passed by the tribunal. In the circumstances, we are not persuaded by submissions advanced on behalf of petitioners.

18. The petition is dismissed. Rule stands discharged. In respect of submissions for fitment benefits, it is for appointing authority to take a proper call."

16. In view of the aforesaid judgment of the

Hon'ble High Court we are of the view that the OA deserved to be allowed. The same is allowed with following directions:

- (I) The impugned orders dated 27.03.2018, 28.03.2018 and 04.04.2018 (Annexure A-1) are quashed and set aside.
- (II) The applicant shall deem to have voluntarily retired on 01.03.2018 or the date when three months notice given by the applicant vide his notice dated 30.11.2017 expired.
- (III) The respondents shall pass necessary orders with regard to (ii) above within four weeks of receipt of a certified copy of this order.
- (IV) The respondents shall also grant the consequential benefits i.e. payment of retiral dues to the applicant within eight weeks of passing of the order as directed at (iii) above.
- (V) The applicant shall be entitled for the interest on the arrears of pension and pensionary benefits at the rate of 6.5% p.a. from the date the same have become due to

him till payment thereof.

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

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

JD
16/03/2020

