

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH.

No. O.A. 533 of 1996.

Present : Hon 'ble Dr. B.C.Sarma, Member(A)

Hon 'ble Mr. Paritosh Dutta, Member(J)

VIJOY BAHADUR SINGH

Vs.

UNION OF INDIA & ORS.

For applicant : In person.

For respondents: Mr. M.S.Banerjee, Counsel.

Heard on: 15.7.96 :: Ordered on: 15.7.96.

O R D E R

B.C.Sarma, AM

The dispute raised in this application is about the chargesheet issued on the applicant on 15.5.95 by the respondents and also about going on voluntary retirement from service.

2. The applicant is a Chargeman Gr.I under the respondents. He gave a notice for voluntary retirement on 4.6.94 which was addressed to the General Manager, Rifle Factory, Ichapur. The applicant contends that no action was taken by the respondents authority on the basis of the alleged notice for voluntary retirement. However, he received a letter dated 10.12.94 from the respondents which intimated to him as follows :

"EOL can not run concurrently with notice period as per rule. So the individual has to give three months clear notice for voluntary retirement without any condition for consideration of his case. Accordingly, the request of the applicant for permission to take voluntary retirement w.e.f. 11.9.94 is not agreed to."

It is the specific contention of the applicant that since the respondents did not take any action on the basis of the alleged notice for voluntary retirement after the expiry of three months from 11.6.94, he shall

be deemed to have retired voluntarily. The applicant contends that instead of accepting the notice for voluntary retirement, the respondents have issued a chargesheet against him on 15.5.95. Being aggrieved thereby, the instant application has been filed with the prayer that the chargesheet be quashed and set aside and a direction be issued on the respondents to allow him to go on voluntary retirement with effect from 11.9.94.

3. The respondents have contested the case by filing a reply at the stage of admission itself. The material averments made by the respondents are as follows : The applicant had filed a representation on 4.6.94 addressed to the General manager, Rifle Factory, Ichapur, inter alia, seeking voluntary retirement. It is further stated that the said notice of voluntary retirement is not a valid notice in the eye of law as the said notice was not given in writing to the appointing authority of the applicant. Appointing authority of the applicant, who is holding the post of Chargemen, Gr.I, in the Rifle Factory, being the Deputy Director General, Ordnance Factories, ~~and~~ the notice of voluntary retirement should have been given in writing by the applicant to the Dy. Director General, O.F. and no such notice has been given by the applicant till date. Since notice of voluntary retirement was not given in writing to the appointing authority of the applicant in terms of rules, he cannot claim that on expiry of the period given in the said notice, he ~~was~~ ^{had} voluntarily retired from service. The applicant was intimated that prior to consideration of his case for voluntary retirement, he should account for his unauthorised absence with effect from 23.5.94 till 27.7.94. By the said letter, he was also directed to report for duty at Rifle Factory, Ichapur. The applicant wilfully and deliberately did not disclose the above facts in para 4 of his application



where he stated the facts of the case. The applicant was directed by a memo dated 23.6.94 to report for duty and was intimated that the prayer for voluntary retirement would be considered only after his joining duty. The respondents aver that there is nothing wrong in issuing the chargesheet against him. Since the notice was not sent to the appointing authority, he cannot claim that the said notice cannot be refused and it is mandatory to accept the same. They have, therefore, prayed that the application be dismissed since it is devoid of merit.

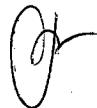
4. During admission hearing of this case, the applicant who appeared in person, submitted that although the notice of voluntary retirement was addressed to the General Manager, Rifle Factory, Ichapur, it cannot be said to be illegal. According to him, all correspondences are required to be made to the General Manager of the concerned Factory, who is head of the office and it would not have been sent to any other authority but to the General Manager. The second contention made by the applicant has been that since he has retired from service, the respondents are debarred from taking any action under the Discipline & Appeal Rules and, therefore, the chargesheet is liable to be quashed. However, Mr. M.S.Banerjee, 1d. counsel for the respondents, submitted that as per rules, the notice for voluntary retirement is required to be addressed only to the appointing authority and no one else and the appointing authority of the applicant in this case is Dy.Director General, Ordnance Factory, and not the General Manager, Rifle Factory, Ichapur. This being the position, the notice given by the applicant was not valid. Mr. Banerjee, in this connection, cited a decision of Allahabad High Court in the case of Nanak Saran Srivastava Vs. State of U.P. & Ors, reported in 1971(1) SLR Vol.5 168 wherein



it has been held that the appointing authority alone is competent to give notice of retirement and authority superior to the appointing authority cannot exercise powers of appointing authority. Mr. Banerjee submitted that although, in this case, the notice in reverse direction was given by the employer to the employee, it was given by the authority which was higher than the appointing authority and that notice was held to be invalid by the said High Court. According to Mr. Banerjee, the same principle is applicable in this case and the impugned notice given by the applicant cannot be said to be valid.

5. The matter has been examined by us carefully after hearing both the parties, perusing records and also considering the facts and circumstances of the case. The applicant is a civilian employee in defence service. Therefore, Rules 48 and 48A of the CCS(Pension)Rules are applicable in this case as regards notice for voluntary retirement. A perusal of these two rules shows that notice for voluntary retirement is required to be given to the appointing authority alone and it requires three months time for consideration. This means that it was the intention of the Legislature to enable the appointing authority to have a period of three months before deciding on the case of voluntary retirement of a particular employee who had made a request in this behalf. In this case, we find that no doubt the applicant had given a notice for voluntary retirement, but he had given the notice to the General Manager, Ichapur Rifle Factory, who was below the level of the appointing authority which was Dy. Director General, O.F. The applicant contends that the respondents were sitting tight over the notice of voluntary retirement given ^{en} to the General Manager and, therefore, he cannot be faulted on this ground. We have given serious consideration to this submission of the applicant, but we are not

at all impressed by it. We find that, first of all, the General Manager is not the authority to consider the notice for voluntary retirement and if any delay was made on the part of the General Manager, he cannot be held accountable on behalf of the appointing authority who was in dark about the notice given by the applicant. We also find that since the General Manager was not competent to deal with the notice of voluntary retirement he had transmitted the said notice to the appointing authority concerned sometime in November, 1994 and the appointing authority had received the same. Therefore, the notice for voluntary retirement reached the appointing authority only in November, 1994. In our view, the period of three months has to be counted only from that date on which the appointing authority received the notice. However, we note that before the expiry of three months, the appointing authority had reacted to the notice and sent some correspondence on 10.12.94 (annexure C) to the effect that EOL cannot run concurrently with notice period as per rules and it was also intimated that his request for voluntary retirement was not agreed to. It, therefore, appears that within a period of three months from the receipt of the said notice by the appropriate authority, a decision was taken on the notice for voluntary retirement and, therefore, it was disposed of. No second notice was given by the applicant seeking voluntary retirement after this. Therefore, we are clearly of the view that the applicant cannot take cover under the argument that since the respondents sat tight over the said notice, he shall be deemed to have gone on voluntary retirement with effect from Sept., 1994. We also find that the allegation that respondents were sat tight over the notice was also not correct



since on 27.6.94 ^{i.e.} some days after the said notice was given by the applicant, a letter was sent by registered post with AD from the end of the General Manager of Rifle Factory, Ichapur directing the applicant to report for duty at the said Rifle Factory immediately and it was also intimated that his prayer for voluntary retirement will be considered only after his joining duty. Therefore, it cannot be said that the respondents were ~~sat~~ tight over the said notice and for their inaction the applicant shall be deemed to have gone on voluntary retirement. It is established principle of law that if a thing is required to be done in a particular manner, it must be done in that manner alone. In this case, the notice for voluntary retirement should have been given to the appointing authority with clear three months time, since that has not been done, the said notice ~~can not be said to be~~ can not be a valid notice, even though the General manager had transmitted the same to the appropriate authority. We are, therefore, clearly of the opinion that the applicant's contention that he shall be deemed to have gone ^{be} on voluntary retirement from September, 1994 can not/accepted and it has to be rejected.

6. We now come to the other point of the applicant. The applicant contends that after retirement he cannot be chargesheeted. He submitted that this prayer is consequential on the fate of his other prayer regarding acceptance of voluntary retirement. We have already held that the applicant cannot be deemed to have gone on voluntary retirement. Therefore, this argument of the applicant cuts no ice. Even if, we presume that the earlier argument of the applicant is correct, we would like to observe that the Government have the right to issue chargesheet even against a retired employee and in this connection Rule 9 of the CCS(Pension) Rules



is relevant. The said rule empowers the Government to institute disciplinary proceeding even against a retired employee subject to certain conditions. We, therefore, of the view that there is nothing wrong on the part of the respondents in issuing the chargesheet against the applicant, who is not retired at all in this case.

7. For the reasons given above, we do not find any merit in this application. It is, therefore, dismissed without passing any order as regards costs.

P.K.B.

Paritosh Dutta
(Paritosh Dutta)
MEMBER (J)



B.C. Sarma
MEMBER (A)