

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 532 of 2010

Thursday, this the 9th day of February, 2012

CORAM:

Hon'ble Mr. Justice P.R Raman, Judicial Member
Hon'ble Mr. K. George Joseph, Administrative Member

T.V. Vijayakumaran, Retd. Income Tax Officer,
 residing at Thayyakath House, MLA Road,
 Udayamperoor P.O., Ernakulam District.

..... **Applicant**

(By Advocate – Mr. B.V. Joy Sanker)

V e r s u s

1. The Chief Commissioner of Income Tax, (CCA),
 Central Revenue Building, I.S. Press Road, Kochi-18.
2. The Commissioner of Income Tax, Aayakar Bhavan
 Annexe, Kozhikode.
3. Union of India, rep.: by Secretary,
 M/o. Finance, New Delhi.

..... **Respondents**

(By Advocate – Mr. A.D. Raveendraprasad, ACGSC)

This application having been heard on 09.02.2012, the Tribunal on the same day delivered the following:

O R D E R

By Hon'ble Mr. Justice P.R Raman, Judicial Member -

The applicant an Income Tax Officer at the relevant point of time sought for voluntary retirement from service with effect from 29.3.2010 by his notice dated 28.12.2009. The authorities did not refuse or grant permission to voluntarily retire from service at any point of time. They issued a charge sheet on 29.3.2010. There is no dispute that the charge sheet

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having been issued on 29.3.2010. It will not get abated and it will take its own course resulting in its logical conclusions in accordance with law. But the only declaration sought for by the applicant in this case is regarding his voluntary retirement has come into effect on 29.3.2010. According to the respondents no specific permission has been granted to voluntarily retire the applicant from service as the vigilance clearance is yet to receive and as such voluntary retirement is not accepted.

2. The issue that arises for consideration in the factual situation and in the light of the specific provisions contained in the rules is whether voluntary retirement has come into effect or not. Whether or not the voluntary retirement has come into effect will depend upon the language of the relevant rules. In *Venugopal Vs. State of Kerala & Ors. - 2010 (2) KHC 89 (DB)*, the Division Bench of the Hon'ble Kerala High Court after surveying the entire case law on the subject held that in the light of the specific rule contained in the Kerala Service Rules voluntary retirement will come into effect provided it is not refused within the notice period of three months. Let us examine the rule in this case. The relevant rules concerned in this case are Rules 48, 48-A of CCS (Pension) Rules, 1972 and Fundamental Rules 56 which are extracted hereunder:-

“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-

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(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 retires.

F.R. 56(a) Except as otherwise provided in this rule, every Government servant shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years:

Provided that a Government servant whose date of birth is the first of a month shall retire from service on the afternoon of the last day of the preceding month on attaining the age of sixty years.

Provided further that a Government servant who has attained the age of fifty-eight years on or before the first day of May, 1998 and is on extension in service, shall retire from the service on expiry of his extended period of service.

or on the expiry of any further extension in service granted by the Central Government in public interest, provided that no such extension in service shall be granted beyond the age of 60 years.

(b) A workman who is governed by these rules shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years.

(bb) The age of superannuation in respect of specialists included in the Teaching, Non-Teaching and Public Health Sub cadres of Central Health Service shall be 62 years.

Provided that for the specialists included in the Teaching sub-cadres of the Central Health Service who are engaged only in teaching activities and not occupying administrative positions, the age of superannuation shall be sixty-five years:



Provided further that such specialists of the Teaching sub-cadre of Central Health Service who are occupying administrative positions shall have the option of seeking appointment to the teaching positions in case they wish to continue in service up to sixty-five years."

(d) No Government servant shall be granted extension in service beyond the age of retirement of sixty years:

(j) Notwithstanding anything contained in this rule, the Appropriate Authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice;

(i) If he is, in Group A or Group B service or post in a substantive, quasi permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years.

(ii) in any other case after he has attained the age of fifty five years.

(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 -

(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) A Government servant referred to in sub-clause (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 sub-clause (1-A) (a), the Appointing Authority may consider such request for the curtailment

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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 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.

(l) Notwithstanding anything contained in Clause 9j), the Appropriate Authority shall, if it is of the opinion that it is in the public interest to do so, have the absolute right to retire a Government servant in Class III service or post who is not governed by any pension rules, after he has completed thirty years' service by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice.

(m) A Government servant in Class III service or post who is not governed by any pension rules, may, by giving notice of not less than three months in writing to the Appropriate Authority, retire from service after he has completed thirty years' service."

3. Admittedly the applicant was not kept under suspension and as such the proviso to Rule 48 has no application. Further admittedly the applicant has completed more than 30 years of service and as such the relevant rule will be Rule 48 as per which he has given notice in writing to the appointing authority at least three months before the date on which he has to retire, which has been done in this case. Though Rule 48-A provides that notice of voluntary retirement given under Sub Rule (1) thereof shall require acceptance, the proviso to Rule 48-A makes it abundantly clear that even in the case where the voluntary retirement is sought by the applicant who completes 30 years will come into effect if the authority concerned has

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not refused to grant permission within the notice period of three months. There is no case for the respondents that at any point of time they have refused to grant permission sought for within a period of three months or even thereafter. If so, the applicant's request for voluntary retirement effective from 29.3.2010 has come into effect.

4. The applicant has been charge sheeted and an inquiry has already been held in the matter. In the above circumstances we direct the disciplinary authority to pass final orders as early as possible at any rate within a period of three months from today. In case no final orders are passed the applicant shall be paid his provisional pension on the expiry of the said period subject to any orders that may be passed thereafter.

5. Subject to the above the OA is allowed. No order as to costs.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(JUSTICE P.R RAMAN)
JUDICIAL MEMBER

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