

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 57 of 2013

Friday, this the 6th day of November, 2015

CORAM:

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

Joseph Thomas, aged 47 years, S/o. the late P.C. Thomas, Staff No. 829, Former Sports Authority of India Basket Ball Coach, SAI Training Centre, Aquatic Complex, Thrissur, Residing at "Pallickal House", TC 32/1051, St. Pauls Street, Kuriachira, Thrissur 680 006. **Applicant**

(By Advocate : Mr. Shafik M.A.)

V e r s u s

1. Union of India, represented by its Secretary (Sports), Ministry of Youth Affairs & Sports, Department of Sports, C-Wing, Shastry Bhawan, Dr. Rajendra Prasad Road, New Delhi – 110 001.
2. The Director General, Sports Authority of India, Jawaharlal Nehru Stadium Complex (East Gate), Lodhi Road, New Delhi – 110 003.
3. The Principal, Lakshmi Bai National College of Physical Education, Trivandrum. **Respondents**

[By Advocates : Ms. P.K. Latha, ACGSC (R1) – Not present & Mr. Govind Bharathan (R2&3)]

This application having been heard on 29.10.2015, the Tribunal on

06.11.2015 delivered the following:

ORDER

Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member -

This OA has been filed by the applicant seeking the following reliefs:

To declare that A1 memorandum of charges dated 25.9.2012 and A2

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order of suspension dated 21.11.2012 are void and nonest in the eye of law and also to set aside Annexures A1 and A2 mentioned above.

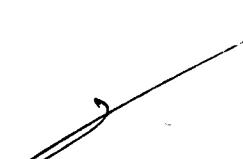
2. The main relief claimed by the applicant is for a declaration that he is deemed to have retired from service on 24.8.2012 in terms of Annexure A5 notice for voluntary retirement given by him under Rule 48-A of CCS (Pension) Rules, 1972. He has also claimed that he is entitled to get all terminal benefits and all other retiral benefits.

3. Shorn of the details the case of the applicant is stated as under:-

The applicant joined the service of the respondents as a Basketball coach on 24.8.1992. He had worked at several places. He was granted the ACP with effect from 24.8.2004. He was informed that he had to attend coaching camp at Trivandrum but however, on 7.4.2012 by playing basketball he had a fall and had severe injury and accordingly he submitted an application for leave. His leave application was not allowed. Thereupon he filed OA 419/2012 seeking his retention at Thrissur. OA 419/2012 filed by him was dismissed by this Tribunal on 6.7.2012. Thereafter, he joined duty at Thrissur. He submitted a letter dated 25.7.2012 to the 2nd respondent seeking voluntary retirement from service with effect from 24.8.2012 by virtue of the provision contained in Rule 48-A of CCS (Pension) Rules, 1972 vide Annexure A5. The applicant had requested to accept his notice of retirement of less than three months notice giving reasons thereof. His request fall under Sub Rule (3-A)(a) of Rule 48-A of CCS (Pension) Rules. The applicant had made it clear that he will not seek commutation of

pension. The applicant was never informed by the appointing authority that there is any administrative inconvenience for relaxing the notice period of three months. Hence, the applicant should have been given relaxation regarding the requirement of notice of three months as mandated by sub Rule (3-A)(b). The proviso to Rule 48-A says 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 be effective from the date of expiry of the said period. The 2nd respondent did not refuse to grant the permission for retirement at any time before the expiry of the period specified in the notice. Hence, the applicant's retirement shall become effective from the date of expiry of the notice period i.e. from 24.8.2012. Hence, the applicant's retirement had taken effect on 24.8.2012. He received a communication dated 14.9.2012 stating that three months notice was not given for voluntary retirement from service and that the competent authority has not accepted the said request. The applicant again sent a representation on 19.9.2012 stating that his retirement has already taken effect in terms of the notice. It was further stated that if three months notice period is still insisted the applicant may be permitted to be relieved from 24.10.2012 reckoning the one month period which he has already sought for.

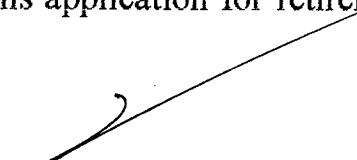
The 2nd respondent issued A1 charge memo to the applicant by registered post. Disciplinary proceedings have been initiated against the applicant but at a belated point of time. Since the applicant had already retired from service, the charge memo issued subsequent to that date cannot



be sustained. Similarly the order of suspension issued against the applicant is also illegal and honest.

4. The respondents filed reply statement contending as follows:-

An inquiry was ordered against the applicant under rule 14 of CCS (CCA) Rules, 1965 subsequent to the issuance of memorandum of charges. It was stated that the applicant was engaged in a business of jewelry in the name and title of the firm M/s. Antony Jewelry Works, Thrissur in violation of the CCS (Conduct) Rules, 1964. That business was registered under the Kerala Value Added Tax Act. Before a Government servant gives notice for voluntary retirement with reference to Rule 48-A he should satisfy himself that he has completed 20 years of qualifying service for pension. A Government servant giving notice for voluntary retirement may also apply, before the expiry of the notice, for the leave standing to his credit which may be granted to him to run concurrently with the period of notice. The request for voluntary retirement was conditional and there was no notice period of three months. The application for leave standing to his credit was not in the format as per rules. The applicant has absented himself from service from 25.7.2007 after he was temporarily transferred to LNCPE, Trivandrum. The applicant should have ensured that he has completed 20 years of qualifying service before seeking voluntary retirement. The applicant joined Sports Authority of India (SAI) on 24.8.1992. Even if he was on duty he would complete 20 years only by 24.8.2012 whereas he applied for voluntary retirements on 25.7.1992. The applicant was informed as per Annexure A6 that his application for retirement was not accepted by



the Director General who is the competent authority. In the meantime an inquiry was conducted by the Principal, Laxmi Bai National College of Physical Education based on various complaints and report appeared in print and visual media. A letter was also received from the office of the Commissioner of Commercial Tax, that the applicant is the partner of a business firm namely St. Antony Jewelry Works, Thrissur. The applicant's request for voluntary retirement was rejected as per Annexure A6 letter dated 14.9.2012. The applicant cannot assume that the voluntary retirement had already taken effect. Even after he was informed that his request was not accepted the applicant absented himself from his duties. No leave application was received from the applicant. He had not reported to his headquarters also. Hence, the respondents contend that this OA is liable to be dismissed.

5. The point for consideration is whether the application for voluntary retirement is legally valid and whether retirement must be deemed to have taken effect with effect from 24.8.2012 or 24.10.2012 as the applicant contends and whether the applicant is entitled to get any other reliefs as stated in this Original Application.

6. Heard the learned counsel for the parties and perused the records of the case.

7. Annexure A5 is the letter dated 25.7.2012 sent by the applicant to the 2nd respondent as per which he requested for voluntary retirement with

effect from 24.8.2012 as per Rule 48 of CCS (Pension) Rules. In that letter he has also stated that the notice of three months period may be waived as per Rule 48(3-A)(b) of CCS (Pension) Rules. Admittedly the applicant joined the service on 24.8.1992. Therefore, he completes 20 years of service only on 24.8.2012. Rule 48-A of the CCS (Pension) Rules which enables retirement on completion of 20 years qualifying service is quoted as under for a better understanding of the issue involved in this case:-

"48-A(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 (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.

(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) Omitted

(3-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 therefore ;

(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) 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."

(underlined to lay emphasis)

The underlined portion in Rule 48-A(1) would make it clear that the primary requisite for seeking application for voluntary retirement is that the Government servant must have completed 20 years of qualifying service. The words "has completed" would make it clear that it should be a past or completed event. Hence, only after completing 20 years he can apply for voluntary retirement. It is a condition precedent.

8. It is submitted by the learned counsel for the applicant that in Annexure A5 it was specifically stated that he will not withdraw from his request for voluntary retirement and that he will not seek commutation of pension and as such he has complied with the conditions required for curtailment of the period of notice of three months and as such the applicant must be deemed to have been retired from service on 24.8.2012. It is further stated that the respondents did not communicate to the applicant any order refusing to grant permission for retirement before the expiry of the period specified in the notice and so the respondents are estopped from contending that the retirement of the applicant did not take effect on 24.8.2012.

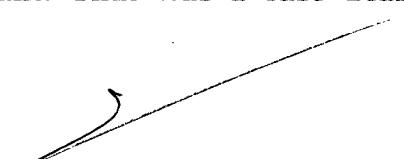
9. Annexure A6 is the letter dated 14.9.2012 as per which the applicant was informed that an employee has the option to retire voluntarily on completion of 20 years of qualifying service by giving three months notice

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which requires acceptance by the appointing authority. The applicant was also told in this letter (referring to Annexure A5) that he has not given three months notice. Further the applicant was informed that the competent authority has not accepted his request for voluntary retirement from SAI service. Therefore, the contention that the respondents did not intimate non-acceptance of the request cannot hold good. It is true that it was not done before 24.8.2012. But considering the facts of this case that makes no difference since the non-acceptance was communicated within the period of three months. It is also clear that the respondents did not allow waiver of the requirement of three months notice as can be seen from Annexure A6.

10. The learned counsel for the applicant has relied upon the decision of the CAT, New Delhi in *Jivan Krishna v. Union of India & Anr. - 1989 (10) ATC 234*. It was held that if notice is not accepted by the appointing authority refusal has to be communicated within the time prescribed in the proviso. The decision of the CAT, New Delhi in *Amrik Singh v. Union of India & Anr. - 1992 (20) ATC 635* has also been relied upon by the learned counsel for the applicant in support of his contention. That was a case where the official respondents did not inform the officer who sought voluntary retirement that the permission for retirement will not be granted under the CCS (Pension) Rules.

11. The decision of the Hon'ble Supreme Court in *Union of India & Ors. v. Sayed Muzaffar Mir - 1995 SCC (L&S) 256* has also been cited by the learned counsel for the applicant. That was a case dealt with under the



Railway Establishment Code. There the suspended Railway servant gave notice of retirement under Rule 1802(b)(i). It was stated that an appropriate order should have been passed by the Government either withholding permission to retire or retaining of the incumbent in service. No such order have been passed in the case dealt with therein. Therefore, the subsequent order of removal passed against the delinquent officer was held to be a nullity. The facts dealt with therein are entirely different, the learned senior counsel appearing for the respondents would submit.

12. The Hon'ble Supreme Court in *State of Haryana & Ors. v. S.K. Singhal - 1999 (4) SCC 293*, where following the earlier decision in *Dinesh Chandra Sangma v. State of Assam & Ors. - 1977 (4) SCC 441* and in *B.J. Shelat v. State of Gujarat & Ors. - 1978 (2) SCC 202*, held that a positive order was to be passed within the notice period withholding permission to retire and the said order was also to be communicated to the employee during the said period. That was a case where Rule 5.32(B) and proviso to Punjab Civil Service Rules was referred to. It is stated that it is *pari materia* with Rule 48-A(2) of the CCS (Pension) Rules. The decision of the CAT, New Delhi in *Durga Prasad Gupta v. Union of India & Ors. - 1992 (21) ATC 69* also has been relied upon by the learned counsel for the applicant. That was a case where there was no disciplinary proceedings or criminal proceedings pending or contemplated against the applicant therein on 31.8.1981 when he submitted his notice for voluntary retirement. The facts of that case are also entirely different.



13. Under sub rule (1) of Rule 48-A, at any time after completion of 20 years of qualifying service a Government servant could give notice of not less than 3 months in writing to the appointing authority for retirement from service. Under sub Rule (2) voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority. In the proviso to Rule 48-A it is clearly stated that in case 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. It is pointed out by the learned counsel for the applicant that the proviso to sub rule (2) is clear and certain that if 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 sought for becomes effective from the date of expiry of the said period. Thus, according to the learned counsel, the respondents should have, if they thought to refuse, issued an order refusing the request for retirement before 24.8.2012 and since that was not done the applicant must be deemed to have retired with effect from 24.8.2012. It is also argued that the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice, though the respondents are empowered to withhold permission to retire in case the employee is under suspension or in a case where the departmental inquiry is pending or is contemplated but mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified, argues the learned counsel for the applicant. Therefore, even if the departmental inquiry was in the

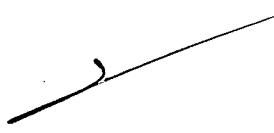
contemplation of the Department that will not preclude the operation of this rule unless the respondents had chosen to intimate the applicant the refusal or rejection of the request made by the applicant, it is further argued. It is stated that the authorities concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as has been held by the Hon'ble Supreme Court in *Shelat's* case (supra) and *Sayed Muzaffar Mir* (supra).

14. Three categories of rule relating to seeking of voluntary retirement have been referred to in the decision of the Apex Court in *Tek Chand v. Dile Ram – (2001) 3 SCC 290*. In the 1st category voluntary retirement automatically comes into force on expiry of notice; in the 2nd category also retirement comes into force unless an order is passed during notice period withholding permission to retire and in the 3rd category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. Therefore, the learned counsel would further submit that it was incumbent on the respondents to communicate the applicant its decision to withhold permission to retire on one of the grounds specified in the proviso. All the aforementioned decisions have no application to the facts of this case, the learned senior counsel for the respondents submit.

15. Annexure A5 would show that he had expressed his wish not to continue in service and he sought permission to retire from service with effect from 24.8.2012 on completion of 20 years of service. As stated earlier that application was admittedly submitted by the applicant on 25.7.2012. As

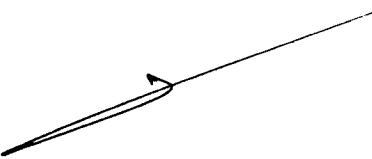
on that date he had not completed 20 years of service. A single sentence was stated that three months period notice may be waived as per Rule 48-A(3-A)(b) of CCS (Pension) Rules. Rule 48-A(3-A)(a) requires that the Government servant seeking voluntary retirement may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor. No reason whatsoever, was stated by him in Annexure A5. That apart, the important aspect which has been highlighted by the learned Senior counsel appearing for the respondents is that the question of entertainment of that application would arise if only the first pre-requisite is satisfied. He can apply for voluntary retirement only on completion of the 20 years of service which admittedly the applicant did not satisfy in this case. He would be completing the service of 20 years only as on 24.8.2012 but he submitted his application about one month prior to that date. Therefore, the question of granting relaxation to the three months notice does not even come up for consideration, because the application seeking voluntary retirement submitted by the applicant did not satisfy the requirement of Rule 48-A(1) of CCS (Pension) Rules. That apart, within the three months period of notice, as per Annexure A6 the applicant was informed that his request for voluntary retirement was not accepted by the respondents. Initiation of disciplinary proceedings was in the contemplation of the respondents. Subsequently articles of charge containing the imputations against him were served on the applicant.

16. It is vehemently argued by the learned counsel for the applicant that



the action was initiated based on an anonymous letter. The question is not whether the initiation was based on an anonymous letter or something else. The question is whether the charge laid against the applicant requires an inquiry. The charge against him is that while in service he was engaged himself in a business of jewelry in the name and title of the firm M/s. St. Antony's Jewelry Works, Thrissur, in violation of Rule 15 of CCS (Conduct) Rules, 1964. Besides other documents, learned senior counsel for the applicant has also referred to the document MA-1 produced along with MA dated 8.10.2015 which was a letter sent by the Commissioner of Commercial Tax, Tax Bhavan, Thiruvananthapuram to the Principal, Lakshmi Bai National College of Physical Education as per which the latter was informed that the applicant was the Managing Partner of M/s. St. Antony's Jewelry work mentioned earlier and his wife was the working partner. The copy of the partnership deed produced before that authority (the former) was also produced which would show that the applicant was the Managing Partner while his wife was the working partner of that firm. It is not necessary to state anything with regard to the merit or demerit of the contentions that can be advanced in the disciplinary proceedings but the learned Senior counsel for the respondents would submit that this has been produced only to controvert the contentions raised by the applicant that there was no merit in the charge at all.

17. Though it was contended by the applicant that he was denied leave though he had a fall that also is countered by the respondents pointing out that the very same ground was raised by the applicant in OA 419 of 2012

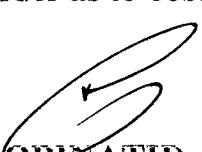


and that OA was dismissed holding that the applicant had no fall as alleged in that OA. We make it clear that we have not made any observations regarding all those aspects but these contentions were referred to only in the light of the contentions raised by the applicant that the respondents were harassing the applicant etc.

18. Again coming to the validity of the request made by the applicant for voluntary retirement it has to be reiterated that his application was liable to be rejected in view of the fact that he had not completed 20 years of service as on 25.7.2012 when he submitted his application. Having realized that fact the applicant would now contend that Annexure A7 can be treated as his application for retirement. That also is found to be bereft of any merit. Annexure A7 was sent by the applicant after he received Annexure A6 dated 14.9.2012. In Annexure A7 also he maintained that his retirement had already taken effect as if his application dated 25.7.2012 was legal and valid. We have already found that Annexure A5 was not a legal and valid application for voluntary retirement in view of the fact that he did not complete 20 years of service as on 25.7.2012 when he submitted that application. In Annexure A7 it is stated that if three months notice period is insisted by the Department then he may be permitted to retire with effect from 24.10.2012 reckoning the one month period he had already sought for as per Annexure A5. That means he wanted to contend that the three months notice period would expire on 24.10.2012 and so his request for voluntary retirement may be accepted. That also cannot help the applicant in any way to contend that his application for voluntary retirement was legal and valid

because even as per Annexure A7 he wanted to reckon the three months period from 24.7.2012, only when he would complete three months by 24.10.2012. Before submitting the application for voluntary retirement he must have completed 20 years. That means he can submit the application seeking voluntary retirement only after 24.8.2012. Therefore, the decisions cited by the learned counsel for the applicant has absolutely no application to the facts of this case. It is pointed out by the learned senior counsel for the respondents that the request for voluntary retirement was not accepted as informed by Annexure A6 in view of the fact that the disciplinary proceedings against the applicant was in contemplation at that time which did materialize by issuing Annexure A1 articles of charge accompanied by the imputations in support of the articles of charge dated 25.9.2012.

19. Therefore, we are of the considered view that the applicant is not entitled to succeed in this OA. In the result this OA is dismissed but without any order as to costs.


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

“SA”