

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
O.A. NO.604/2011

Dated this the 11th day of November, 2011

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

V.Prakash, S/o Velayudhan, Watchman,
Army Recruiting Office, Trivandrum,
R/o Ambika Bhavan, TC 19/1431(3),
Thamalam, Poojappura, Trivandrum.

Applicant

(By Advocate Mr.M.R.Hariraj)

Vs.

- 1 Union of India represented by the Secretary
to the Govt of India, Ministry of Defence, New Delhi.
- 2 The Deputy Director General Recruiting (States), H.Q
Recruiting Zone, 148 KM Cariappa Road, Bangaluru-900493
C/o 56 APO.
- 3 The Director, Recruiting, Army Recruiting Office,
Trivandrum-695006.

...Respondents

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

The application having been heard on 13.10.2011 and this Tribunal delivered the following:

ORDER

HON'BLE Mrs K NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant is aggrieved by the rejection of his request for voluntary retirement on the ground of shortage of civilian staff with the organisation.

- 2 Brief facts of the case as stated by the applicant are that he a Watchman in the Army Recruiting Office, Trivandrum was transferred to the Head Quarter Recruiting Zone, Bangaluru by order dated 27.10.2010 (Annx.A2). On receipt of the order of transfer he represented to the respondents requesting to retain him at Trivandrum. He pointed out that his wife is suffering from severe health problems and both his sons serving in the Army are posted in Punjab and Assam. Further his daughter-in-law had given birth to a baby girl and thus the transfer caused undue hardship to him and his family in the absence of any other male member in the family.

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This request was turned down by the 2nd respondent upon which he sought permission to retire voluntarily as per CCS (Pension) Rules. It is averred that on this background he filed OA 12/2011 before this Tribunal. By order dated 12th April 2011 this Tribunal allowed the OA. The order of the Tribunal was under challenge in OP (CAT) No1655 of 2011(Z) before the Hon'ble High Court of Kerala, Ernakulam. By an interim order dated 6.7.2011 the respondents were directed to allow the applicant to continue at Trivandrum. In its judgment dated 23.6.2011 the Hon'ble High Court set aside the Tribunal's order and disposed of the OP with liberty to the respondent to seek other appropriate remedies available to him in accordance with law. The Hon'ble High Court directed the petitioners to consider the respondent's request for voluntary retirement and pass appropriate order.

3 The applicant's request for voluntary retirement was rejected vide the impugned order Annx.A1 citing shortage of staff and non-availability of a replacement for the applicant as reasons.

4 The contention of the applicant in this OA is that acceptance of notice of voluntary retirement may be generally given in all cases except those in which disciplinary proceedings are pending or in which the prosecution is contemplated or may have been launched in a Court of Law against the Govt servant. No such disciplinary proceedings are pending against the applicant neither is any prosecution launched against the applicant in any court of law. Going by the principle of ejusdem generis the application for voluntary retirement can be rejected only in situation similar to that laid down in Rule 48-A of CCS (Pension) Rules, 1972. Reasons given in Annx.A1 are not legal and valid. Hence the impugned action is unjust, unfair, discriminatory and inconsistent with mandates under Articles 14 and 16 of the Constitution of India.

5 The respondents contested the OA by filing their reply. It is submitted that as per Standing Operating Procedure, the tenure of a Group-D employee is four years at a station, after which he has to be rotated. Recruiting Office is a sensitive organisation and there is need to effect periodical posting/transfer and such posting is in the interest of the organisation and personal difficulties cannot have overriding considerations. The applicant forwarded his request for voluntary retirement directly to the 2nd respondent after issuance of the movement order dated 1.1.2011. This should have been sent through proper channel. The application for voluntary

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retirement has not been accepted by the H.Q Recruiting Zone since the replacement is not available as there is shortage of civilian staff which will adversely affect the functioning of the organisation. Therefore, the action taken by the respondents was just and proper in the interest of the organisation.

6 In his rejoinder the applicant averred that the statement of the respondents that his request for voluntary retirement will be considered, once he joins Bangaluru shows that respondents can solve the problem of shortage of staff. He added that his familial commitments are standing in the way of his leaving his family alone at Trivandrum at this juncture and this factor is the compelling reason for his opting for voluntary retirement. Moreover the applicant was working at ARO Trivandrum for 20 years. Therefore, the submission of the respondents that general rotational transfer was effected for Watchman every four years is not true to facts.

7 Heard the learned counsel for the parties and have perused the records.

8 The counsel for the applicant argued vehemently about injustice being meted out to the applicant in refusing his right for voluntary retirement as enjoined in FR 56(k) and Rule 48-A of CCS (Pension) Rules, 1972. The said Rules reproduced below:

"FR 56(k) Any Govt 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 Govt 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) nothing in this clause shall apply to a Government servant referred to in clause (e) who entered Govt service on or before 23rd July, 1966;

(b)

(c) it shall be open to the appropriate authority to withhold permission to a Govt servant under suspension who seeks to retire under this clause.

48-A The notice for 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.

GOI decisions OM No.25013/10/85-Estt.(A), dated the 5th July, 1985, (iii) Guidelines for acceptance of notice.- A notice of voluntary retirement given after completion of twenty years' qualifying service will require acceptance by the appointing authority if the date of retirement on the expiry of the notice would be earlier than the date on which the Govt servant concerned could have retired voluntarily under the existing rules applicable to him. Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Govt servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case. (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Govt servant concerned.

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A perusal of the above rules reveal that the only conditions attendant to rejection of request for voluntary retirement are suspension, as per FR 56(k)(c) or pendency of disciplinary proceedings warranting major penalty or criminal case in a Court as per GOI decisions, on Rule 48-A of CCS (Pension) Rules, 1972. Therefore shortage of staff cannot be passed off as a plausible reason for refusal to grant voluntary retirement. There is no case for the respondents that the applicant is holding a sensitive post, where replacement is hard to come by. The different departments of Central Govt are permitted to use ex-service men for watch and ward duty and the Association of Ex-servicemen make available the services of ex-service personnel to work as Watchman. The rates are fixed and their services are utilised even on a regular measure by a few Central Govt Organisation. When replacement can be easily arranged the service of a Watchman cannot be treated as indispensable by any stretch of imagination. On this issue the applicant has made out a strong case in his favour. I do not find any extenuating circumstances in which the respondents find it necessary to transfer the applicant to Bangaluru and then permit him to proceed on voluntary retirement and allow him to settle at Trivandrum within a short period at Govt cost.

9 Moreover various decisions of the Hon'ble Supreme Court are in favour of the applicant. See Dinesh Chandra Sangma Vs. State of Assam & Ors, 1977(4) SCC 411, State of Haryana & Ors Vs. S.K, Singhal, JT 1999(3) SC 140, Raj Pal Gaindh Vs. UOI, 1987(3) ATC 533 and Dheeraj Lal Mohan Lal Joshi Vs UOI & Ors, 1988(6) ATC 779 are all in this point. In the case of S.K Singhal supra it was held that:

"If the right to voluntary retirement is confirmed in absolute terms as in Dinesh Chandra Sangma's case by the relevant rules and there is no provision in rules to withhold permission in certain contingencies, the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. There is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission"

10 The administrative authority is empowered under FR 56 (j) to retire any govt servant in public interest by giving him 3 months notice. Similarly under FR 56(k) the employees have a right to proceed on voluntary retirement and the acceptance of their request by the competent authority is automatic. Viewed in the light of the law laid down by the Apex Court the respondents cannot exercise their authority to reject a request for voluntary retirement, unless he is under suspension or involved in

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a vigilance case.

11 Therefore, the impugned orders Annx.A1 dated 10.6.2011, Annx.A2 dated 27.10.2010, Annx.A4 dated 25.11.2010 and Annx.A6 dated 1.1.2011 are quashed and set aside. The respondents are directed to permit the applicant to retire from service voluntarily at the earliest. Till then the order dated 7.6.2011 of the Hon'ble High Court of Kerala to retain the applicant at Trivandrum will be in force. They are also directed to draw and disburse pension and pensionary benefits within a time line of four months, from the date of receipt of this order. No costs.


(K.Noorjehan)

Administrative Member.

Kkj