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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

Q.A.No.496/93

Dt. of order: 30.11.93

G.V.Aswani : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.J.K.Kaushik : Counsel for applicant

Mr.U.D.Sharma : Counsel for respondents

CORAM:

Hon'ble Mr.O.P.Sharma, Administrative Member

Hon'ble Mr.Ratan Prakash, Judicial Member.

PEP HON'BLE MR.O.P.SHAFMA, MEMBER(ADM.)

In this application under Sec.19 of the Administrative Tribunals Act, 1985, Shri G.V.Aswani has prayed that order dated 28.7.93 (Annx.A1) by which the applicant was asked to submit his explanation regarding unauthorised absence from duty w.e.f. 1.7.1993 and was informed that his notice for voluntary retirement has not been accepted by the competent authority may be quashed and the respondents may be directed to make payment of pensionary/retirement benefits to the applicant w.e.f. 18.6.93. He has further prayed that the amount of arrears on this account may be paid with reasonable rate of interest.

2. The facts of the case as stated by the applicant are that the applicant was initially appointed on the post of Postman on 26.9.1959 at Indore Head Office and thereafter he got promotion to the post of Postal Clerk on 12.5.1966. While functioning on the post of Postal Clerk he was convicted under Sec.161 IPC and Sec.5(2) read with Sec.5(1)(d) of the Prevention of Corruption Act, 1947 and was sentenced to rigorous imprisonment for two years with fine of Rs.1000/- by the Special Judge, CBI, Jaipur, vide the judgment dated 24.6.86. The applicant filed an appeal against the said conviction before the Jaipur Bench of the High Court. The High Court suspended the sentence on 18.8.86. The applicant's appeal against the conviction and sentence is

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pending.

3. Further according to the applicant, he submitted 3 month's notice seeking voluntary retirement vide letter dated 17.12.92 stating that he has completed 20 years of qualifying service and his notice for voluntary retirement may be accepted as per Rule 48-A of CCS(Pension) Rules, 1972 (Annex.A2) (for short the Rules). Respondent No.3, vide his letter dated 9.3.93 (Annex.A3) informed the applicant that he was not competent to accept the notice for voluntary retirement as a criminal case was pending against the applicant. Thereafter, the applicant vide his letter dated 18.3.93 (Annex.A4) addressed to respondent No.2, the Post Master General, gave another 3 months' notice for voluntary retirement under Rule 48-A of the Rules. Respondent No.2, thereupon forwarded this communication to respondent No.3, the Sr. Supdt. of Post Offices, Udaipur Division, Udaipur, with a direction that since he is the appointing authority, necessary action is to be taken by him. Forwarding letter dated 7.5.93 is Annex.A5.

4. According to the applicant, the notice of voluntary retirement expired on 18.6.93 but the applicant was not informed about the acceptance or refusal of his notice. As per Rule 48-A, a notice of voluntary retirement under Sub-rule (1) of Rule 48-A requires acceptance by the appointing authority provided that where the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of notice period. Thus, the applicant can be deemed to have retired from govt. service w.e.f. 18.6.92. Vide his representation dated 26.7.93 (Annex.A6) ^{he} /requested the respondents to release his pensionary and other retirement benefits but respondent No.3, the Sr. Supdt of Post Offices vide his memorandum dated 5.7.93 (Annex.A7) issued a show cause notice

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to the applicant under Rule 19(i) of the CCS(CCA) Rules directing the applicant to show cause why an appropriate penalty should not be imposed on the applicant taking into account the gravity of the criminal charges on which he was convicted. The applicant has already filed an O.A.No.425/93 G.V.Aswani Vs. Union of India & Ors, before this Bench of the Tribunal against the show cause notice issued to him and it has already been admitted on 20.1.92 and notices have been issued.

5. The applicant has further stated that his representation dated 26.7.93 (Annx.A6) seeking retirement benefits has been rejected vide letter dated 28.7.93 (Annx.A1) and the applicant has been asked to explain reasons for his absence from duty. This letter contains reference to letters dated 9.3.93, 13.5.93 and 5.7.93 but no letter dated 13.5.93 has ever been issued to the applicant. The respondents seem to have fabricated some letter dated 13.5.93. Hence the applicant's prayer is that since he is deemed to have voluntarily retired w.e.f. 18.6.93, his pensionary and other retirement duties may be released.

6. The respondents in their reply have stated that the applicant has not voluntarily retired from service from 18.6.93. He was in service upto 23.9.93 and was dismissed from service w.e.f. 24.9.93 vide Memo No.8-226 dated 24.9.93 (Annx.P1). As per departmental instructions, the approval of the Head of the Department was required to be obtained in a case where prosecution has been launched against a government servant and therefore, the applicant had been informed vide letter dated 9.3.93 (Annx.A3) that his notice for voluntary retirement cannot be accepted without the approval of the Head of the Circle. Notice of voluntary retirement dated 18.3.93 (Annx.A4) had not been addressed to the competent authority as contemplated in Rule 48-A of the Rules. The said notice was, therefore, forwarded to respondent No.2 for necessary action. However, by this act of

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forwarding the said notice to respondent No.2 the deficiency of the applicant's not having submitted the notice to the competent appointing authority cannot be said to have been cured. Hence, this notice was *ab initio* void. Therefore, the question of its acceptance on expiry of 3 months' notice period did not arise. The applicant had also been informed vide letter dated 13.5.93 (Annx.R2) that since criminal proceedings were pending against him, the Sr. Supdt. of Post Offices was not competent to accept the notice and the matter was under correspondence with the Circle Office, Ajmer. This letter did not convey acceptance of the notice and in effect it amounted to declining the acceptance of the notice of voluntary retirement. The applicant had also vide his letter dated 24.6.93 stated that he shall treat himself as voluntarily retired w.e.f. 1.7.93 finally (Annx.R3). Thus, by his conduct the applicant had waived his earlier notice dated 18.3.93 and the said notice was no more operative in view of the subsequent letter dated 24.6.93 (Annx.R3). If the applicant desired to retire voluntarily under Rule 48-A of the Rules, he should have given a fresh notice for retirement. Further according to the respondents, the applicant had submitted Sick Certificate from 1.6.93 to 30.6.93 without any application for leave. This also indicated his conduct that he had waived the said notice of retirement. Also he had been informed vide letters dated 9.3.93 (Annx.A3) and 13.3.93 that his notice of voluntary retirement could not be accepted as a criminal case was pending against him and that the matter was under correspondence with the Post Master General. Therefore, it was surprising how he could himself be treated as voluntarily retired w.e.f. 1.7.93. O.A.No.425/93 filed by the applicant is pending adjudication before the Tribunal. On the date on which notice under Rule 19 (i) of the CCS(CCA) Rules was issued to the applicant i.e. on 5.7.93, he was still in service. Therefore, he

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had been treated as absent from duty unauthorisedly. Letter dated 13.5.93 (Annex. El) alleged by the applicant to be a fabricated document was sent to him by registered post and therefore his contention that he had not received it is not correct. The allegation regarding fabrication, etc. have been denied. Since the applicant cannot be said to have retired voluntarily w.e.f. 18.6.93, he is not entitled to any pensionary /retirement benefits.

6. During the arguments, the learned counsel for the applicant stated that no communication categorically rejecting the notice of voluntary retirement given under Rule 48-A of the Rules had been sent to the applicant. In the absence of such a communication the notice of voluntary retirement stood accepted in view of the proviso to sub-rule (ii) of Rule 48-A of the Rules which provides that where the appointing authority does not refuse to grant 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. He also relied upon an order of Bombay Bench of the Tribunal in K.W. Majumdar Vs. Union of India & Ors, ATR 1993(1)CAT 97, wherein the Tribunal held that under Rule 48 of the Rules, there is no question of acceptance of the request by a govt. servant for voluntary retirement by the Govt. Therefore, the applicant stood automatically retired from service on expiry of the notice period of 3 months, from 18.6.93, as there was no refusal to accept the said notice. Therefore, since the applicant stood retired voluntarily from service w.e.f. 18.6.93, he was entitled to all pensionary benefits as a consequence of retirement from service.

7. The learned counsel for the respondents stated during the arguments that in none of the communications addressed to the applicant after the applicant gave his notice for voluntary

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retirement (Annex.A2) dated 17.12.92 had it been suggested even indirectly that his notice of voluntary retirement was being accepted. On the other hand the sum and substance and the intention expressed in all the communications to the applicant was that his notice was not liable to be accepted because a criminal case is going on against him. In this connection he invited our attention to communications dated 9.3.93 (Annex.A3) and that dated 13.5.93 (Annex.B2). Further, the applicant himself by his letter dated 24.6.93 (Annex.B3) had stated that he was giving a fresh notice of voluntary retirement and seeking to retire from service w.e.f. 1.7.93. Since the applicant had given a fresh notice of voluntary retirement on 24.6.93, he could retire only on expiry of the said notice period on 24.9.93 and not from an earlier date. Since by order dated 24.9.93 (Annex.B1) the applicant had been dismissed from service on the ground which led to his conviction in a Court of law, there was no question of his having been allowed to retire voluntarily. Hence, the applicant was not entitled to any pensionary dues.

8. We have heard the learned counsel for the parties and have gone through the records as also the order cited before us. The order of the Bombay Bench of the Tribunal cited before us has no applicability to the facts of the present case because in that case the notice given for retirement was under Rule 48 of the Rules which required no acceptance and was deemed to become effective on expiry of notice period of 3 months. In fact in that order, the Tribunal had itself brought out the difference between the provisions of Rules 48 and 48-A of the Rules. It is true that there is no communication from the respondents categorically informing the applicant that his notice for voluntary retirement had been rejected. The first notice given by him was Annex.A2 dated 17.12.92 and the second notice given was Annex.A4 dated 18.3.93. It was with reference to 3 months

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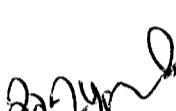
from 18.3.93 that the applicant claimed that he stood voluntarily retired from service since there was no rejection of this letter of notice. But we cannot overlook the fact that in the communications dated 9.3.93 (Annex.A3) and that 13.5.93 (Annex.R2) it was made clear to the applicant that a criminal case is pending against him. By the first communication referred to above, the Sr. Supdt. of Post Offices had informed the applicant that his office was not competent to accept the notice and that it could not be accepted without the permission of the Head of the Circle. By the second communication referred to above, the applicant was informed that since there is a criminal case pending against the applicant, the office of the Sr. Supdt. is not competent to accept the notice and further that correspondence is going on in this regard with the Circle Office Ajmer. It is significant that by communication dated 24.6.93 (Annex.R3) which was received in the office of the Sr. Supdt. of Post Offices on 28.6.93 the applicant stated that he is giving a fresh notice of voluntary retirement with 3 months' notice. Therefore, in terms of this notice, he could be deemed to have retired from service only, if there was no rejection thereof, on 28.9.93. However, before that date the applicant had been dismissed from service by order dated 24.9.93 (Annex.F1) under Rule 19(i) of the CCS(CCA) Rules on the ground which led to his conviction in a Court of law. The applicant had been convicted by a Court of law under Sec.161 of the IPC and Sec.5(2) read with Sec.5(i)(b) of the Prevention of Corruption Act, 1947. Obviously the applicant had submitted his notices of voluntary retirement 3 in all, dated 17.12.92, 18.3.93 and 24.3.93 and only to escape the consequences of such conviction and consequential sentence. Since however there was no acceptance of the applicant's notice of voluntary retirement Annex.A1 dated 17.12.92 or Annex.A4 dated 18.3.93 and further since he had

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submitted a fresh notice of voluntary retirement on 24.6.93, which was received by respondent No.3 on 28.6.93, and further since the applicant had been dismissed from service before the expiry of 3 months' notice period required in terms of fresh notice dated 24.6.93 received on 28.6.93, the respondents had rightly rejected the applicant's prayer for grant of any pensionary benefits to the applicant. In terms of Rule 40(1) of the Rules, a government servant who is dismissed or removed from service shall forfeit his pension and gratuity.

9. In the result, we find no substance in this O.A. It is, therefore, dismissed with no order as to costs.



(Ratan Prakash)

Member (Judl)



(O.P. Sharma)

Member (Adm).