

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 17<sup>th</sup> day of August, 2010

Original Application No. 06/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Khilari Ram Meena  
s/o Shri Daya Ram Meena,  
r/o Village and Post Shaharakar,  
Teh. Todabheem,  
District Karuali and presently working as  
Sub-Post Master, Nadoti,  
District Karuali in Sawai Madhopur  
Postal Division, Sawai Mathapur.

... Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. The Union of India  
through its Secretary  
to the Government of India,  
Ministry of Communications and  
Information technology,  
Dak Bhawan, New Delhi.
2. Chief Post Master General,  
Rajasthan Circle,  
Jaipur.
3. Superintendent of Post Offices,  
Dholpur Postal Division,  
Dholpur.

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... Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:

- (i) That the respondents be directed to accept the request of the applicant for voluntary retirement immediately by quashing letter dated 31/08/2009 (Annexure-A/1) by passing suitable orders with all consequential benefits.
- (ii) That respondents be further directed to ignore the minor punishment in acceptance of request of voluntary retirement submitted by the applicant and to accept the same by extending retirement benefits.
- (iii) Any other order/direction of relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- (iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case, so far as relevant for decision of this case, are that the applicant vide his letter dated 12.6.2009 (Ann.A/5) tender a three months' notice for voluntary retirement w.e.f. 15.6.2009 under Rule 48/48-A of CCS (Pension) Rules, 1972. It may be stated that earlier the applicant has also made similar requests in the year 2008 which request of the applicant was rejected by the respondents and the same is not under issue in this OA, as such, the matter is not required to be examined on this point. However, subsequent request of the applicant for voluntary retirement dated 12.6.2009 was rejected vide letter dated 31.8.2009 (Ann.A/1) before expiry of three months' notice on the ground of currency of minor punishment. It is this order which is under

challenge in this OA. According to the applicant, the action of the respondents in not accepting request for voluntary retirement on the ground of currency of penalty is contrary to the provisions as contained in Rule 48-A of CCS (Pension) Rules, 1972 as well as the guidelines issued by the Government under which circumstances, such request can be rejected. Thus, according to the applicant, the impugned order Ann.A/1 is required to be quashed and direction may be given to the respondents to accept request of the applicant for voluntary retirement ignoring the minor punishment.

3. Notice of this application was given to the respondents. The facts, as stated above, have not been disputed by the respondents. According to the respondents, the action of the respondents to reject the request of the applicant for voluntary retirement under Rule 48/48-A is not arbitrary, unjustified and illegal.

4. I have heard the learned counsel for the parties and gone through the material placed on record.

5. The question which requires my consideration is whether rejection of request of the applicant for voluntary retirement on the ground of currency of penalty constitutes a valid reason in terms of the provisions contained under Rule 48-A and instructions issued by the Government in that regard. In the present case, admittedly, it is Rule 48-A of CCS (Pension) Rules, 1972 which is attracted, inasmuch as, the applicant is seeking retirement on completion of 20 years of qualifying service and it is not a case which is covered under Rule 48, where the applicant is seeking retirement on completion of 30 years of qualifying service. In the case of retirement sought under

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Rule 48, the voluntary retirement is automatic and comes into force on the expiry of the notice period, unless the Government servant is under suspension, <sup>etc.</sup> under which circumstances, the appointing authority may withhold permission of the Government servant to retire under this rule. However, Rule 48-A mandates that notice of voluntary retirement given under Sub-rule (1) is required to be accepted by the appointing authority. There is also proviso to this rule, which stipulates that voluntary retirement comes into force on the expiry of the notice period unless an order is passed within the notice period withholding permission to retire. Admittedly, in this case the competent authority has passed the order before expiry of the notice period thereby withholding permission to retire.

6. The question which requires further consideration is whether the reason given by the competent authority to withhold permission constitutes a valid ground. At this stage, it may also be useful to quote Government of India decision No.(iii) under Rule 48-~~2~~ which stipulate guidelines for acceptance of notice and thus reads:-

"GOVERNMENT OF INDIA'S DECISION

(i).....

(ii)....

(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 Government servant concerned could have retired voluntarily under the existing rules applicable to him [e.g., FR 56 (k), Rule 48 of the Pension Rules, Article 459(i) of CSRs or any other similar rule]. Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are

pending or contemplated against the Government 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, or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned. If it is proposed to accept the notice of voluntary retirement even in such cases, approval of the Minister-in-charge should be obtained in regard to Group 'A' and Group 'B' Government servants and that of the Head of Department in the cases of Group 'C' and Group 'D' Government servants. Even where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before the expiry of the period of notice."

Thus, as can be seen from the guidelines as stipulated above, these guidelines stipulate that permission for voluntary retirement may be generally given except in cases where disciplinary proceedings are pending or contemplated and the disciplinary authority is of the view that imposition of penalty of removal or dismissal from service would be warranted in the case or where the prosecution is contemplated or may have been launched in a Court of Law. These are only two contingencies where permission for voluntary retirement can be withheld. Even in such cases where the departmental/judicial proceedings are pending, permission for voluntary retirement can also be granted with the approval of the Minister-in-charge/Head of Department.

7. The fact that permission for voluntary retirement can be refused only on aforesaid two grounds can not be accepted as a

valid ground keeping in view the mandate of Rule 48-A, as according to me, the guidelines so issued by the Government are not exhaustive and has been issued by way of illustration and it is permissible to the competent authority to withhold permission for voluntary retirement if there are some other valid reasons under which the appointing authority may refuse to accept the notice for voluntary retirement in public interest i.e. if in the exigency of service the post manned by the Government servant cannot be kept vacant till alternative arrangement is made in place of such person by making appointment etc.

Be that as it may, as already stated above, the question which requires my consideration is whether currency of penalty is a valid ground for not accepting the notice for voluntary retirement. According to me, such a course was not permissible for the respondents. As can be seen from the impugned order, the applicant was imposed penalty of reduction of his pay by one stage without cumulative effect for one year with effect from 1.9.2009 to 31.8.2010. The applicant was seeking permission for voluntary retirement w.e.f. 16.9.2009 when the pay of the applicant was reduced by one stage. In case the applicant was permitted to retire w.e.f. 16.9.2009, in that eventuality, the applicant would have been entitled for pensionary benefits on the basis of average emoluments of pay drawn by the him during the last 10 month of his service or the pay last drawn by the applicant, whichever is favourable to him. Thus, in view of this specific provision which was in vogue on account of revision of pay scales on the basis of

10/2

recommendation of the Sixth Central Pay Commission, the currency of penalty would not have made any difference if the applicant was permitted to retire voluntarily during the currency of penalty or after the penalty is over. The position would have been different if the applicant would have been permitted to retire w.e.f. 16.9.2010 during the currency of penalty, ~~as~~ according to rules, which were prevalent prior to coming in to force the recommendations of the Sixth Pay Commission, <sup>in O.D. in</sup> the pensionary benefits of the applicant were required to be calculated in terms of Rule 34 of CCS (Pension) Rules which stipulate that pay of the Government servant during last 10 months of his service shall be taken into account for the purpose of emoluments and in that eventuality, if the applicant would have retired from service w.e.f. 16.9.2009, he would have been entitled to retiral benefits as if the penalty of reduction of pay by one stage for one year was not imposed at all. On the contrary, if the applicant is permitted to retire after the currency of penalty which will be over by 31.9.2010, the average emoluments of last 10 months would have been less than the amount where the applicant would have retired w.e.f. 16.9.2009. As already stated above, the situation which was existing prior to coming into force the recommendations of the Sixth Pay Commission was entirely different as pensionary benefits has to be calculated on the basis of average emoluments of last 10 months as against the existing provisions where the pensionary benefits has to be calculated on the basis of average emoluments of last 10 months or the last pay drawn, whichever is beneficial to the Government servant. As such, withholding permission for

voluntary retirement on account of currency of penalty no longer exists a valid reason. Thus, I am of the view that the factum of currency of penalty could not have been made a valid ground for rejecting request of the applicant for voluntary retirement especially in the light of the Government of India decision No. (iii) under Rule 48-A, as reproduced above, which stipulate that notice for voluntary retirement should generally be accepted except in the cases where disciplinary/judicial proceedings are pending or under contemplation.

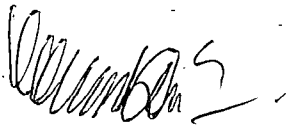
8. Be that at it may, since as per the impugned order dated 31.8.2009 (Ann.A/1) currency of penalty will be over by 31.8.2010 and the fact remains that relation of master and servant still exists and the applicant has not been retired so far, I am of the view that ends of justice will be met if the applicant is permitted to retire from service after the currency of penalty is over. The learned counsel for the applicant further submits that his client is willing to retire from service and is not interested in serving the department, as such, his request for voluntary retirement may be considered from future date on the basis of notice dated 12.6.2009.

9. I have given due consideration to the submissions made by the learned counsel for the applicant. Since the applicant is not interested in serving the department and further that currency of punishment as imposed upon the applicant is also about to over and there is no other disability or ground pleaded by the respondents for not accepting the notice of voluntary retirement of the applicant, it will be in the interest of justice if the applicant is

2

permitted to voluntarily retire from service after 30.9.2010 on the basis of the notice dated 12.6.2009. Ordered accordingly.

10. With these observations, the OA stands disposed of with no order as to costs.



(M.L. CHAUHAN)

Judl. Member

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