

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 20th day of August, 2010

Original Application No. 96/2010

CORAM:

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

Ghanshyam Lal Gupta
s/o Shri Ramji Lal Gupta,
r/o Narsingh Colony,
Behind Munsif Court, Kungelewale,
Gangapur City and presently holding
the post of Sub-Post Master,
Kemri Sub-Post Office,
Tehsil Nadoti,
Distt. Karauli in Swaimadhopur
Postal Division.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

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

... Respondents

(By Advocate: Shri Mukesh Agarwal)

ORDER

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 w.e.f. 15/01/2010 by quashing letter dated 29/12/2009 (Annexure-A/1) by passing suitable orders with all consequential benefits.
- ii) That respondents be further directed to drop the further action as initiated after 15/01/2010 by withdrawing charge memo dated 03/02/2010 (Annexure-A/8).
- 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. Brief facts of the case, which are necessary for disposal of this OA, are that the applicant submitted notice for voluntary retirement under Rule 48/48-A of CCS (Pension) Rules, 1972 commencing from 5.10.2009 and to be effective w.e.f. afternoon of 15.1.2010 vide letter dated 5.10.2009 (Ann.A/3). However, vide impugned order dated 29.12.2009 (Ann.A/1) request of the applicant for voluntary retirement was rejected on the ground of currency of disciplinary proceeding against the applicant. It is this order which is under challenge in this OA. The case set up by the applicant is that request for voluntary retirement has not been accepted by respondent No.2 due to currency of disciplinary proceedings

whereas no such disciplinary proceedings were pending against the applicant. It is also stated that further request was made before respondent No.2 on 5.1.2010 (Ann.A/4) against the in action of respondent No.3 and rejection of request for voluntary retirement but the competent authority have never informed regarding request of voluntary retirement and respondent No.3 also not made available copy of letter dated 17.12.2009 issued by respondent No.2, as such, the applicant stood automatically relieved on 15.1.2010. It is further pleaded that thereafter respondent No.3 called for explanation vide letter dated 1.2.2010 from the applicant regarding charge report dated 15.1.2010. It is further stated that voluntary retirement cannot be rejected even on the ground of minor punishment as provided in the instructions below rule 48-A of CCS (Pension) Rules, 1972. It is also stated that minor penalty chargesheet under Rule 16 of CCS (CCA) Rules, 1965 was also issued vide order dated 3.2.2010. Since the applicant stood already relieved w.e.f. 15.1.2010, as such according to the applicant, it is of no consequence.

3. Notice of this application was given to the respondents. The respondents have filed reply. The stand taken by the respondents in the reply is that the applicant locked/closed the Post Office on 16.5.2009 and deserted the postal services without giving any information to this effect to the Superintendent of Post Offices, Sawaimadhopur. It is further stated that thereafter the applicant remained absent from duty and submitted various certificate from different Vedyas/Doctors from different places for different diseases

but he did not resume duty and on 5.10.2009 he submitted notice for voluntary retirement w.e.f. 15.1.2010 under Rule 48/48-A of CCS (Pension) Rules, 1972 which was not accepted by the competent authority and he was informed accordingly. The respondents have given details of the medical certificates issued by various Doctors in Para-1 of the reply, perusal of which reveals that for the period of his absence of 4 1/2 months the applicant has submitted 15 medical certificates from different Vedyas/Doctors from different places for different diseases. It is further stated that since the applicant kept the post office locked intentionally w.e.f. 16.5.2009 to 25.5.2009 and did not submit report to this effect to the higher authority, preliminary enquiry was got conducted through the SDI (P), Hindaun and on receipt of preliminary enquiry report, a prima-facie case for taking disciplinary action against the applicant was found. It is further stated that the Post Office was got opened on 26.05.2009 by sending another man. Thus, it is stated that since disciplinary proceedings against the applicant were contemplated, the applicant has submitted notice for voluntary retirement in order to avoid the disciplinary proceedings, which was not accepted by the competent authority vide letter dated 17.12.2009 and the applicant was informed by respondent No.3 about the decision of the competent authority dated 17.12.2009 vide letter dated 29.12.2009. The respondents have placed on record copy of letter dated 17.12.2009 and letter dated 29.12.2009 at Ann.R/1 and R/2. It is further stated that disciplinary proceedings against the applicant has also been initiated against the applicant by issuing charge

sheet dated 3.2.2010 (Ann.A/8) and the applicant has not filed any reply to the chargesheet and filed the present OA. It is further stated that respondent No.3 has conveyed the decision of the competent authority dated 17.12.2009 to the applicant vide letter dated 29.12.2009 within time but the applicant got relieved himself at his own accord on 15.1.2010 by treating himself as voluntary retired and since then remained continuously absent from duty.

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

5. The learned counsel for the applicant has made two fold submissions. According to the learned counsel for the applicant, case of the applicant was covered under Rule 48 of the CCS (Pension) Rules, 1972 and not under Rule 48-A, as such, the notice for voluntary retirement given by the applicant has automatically become effective after expiry of three months' period w.e.f. 15.1.2010, and refusal to accept voluntary retirement notice as conveyed by the respondents vide impugned order dated 29.12.2009 (Ann.A/1), is of no consequences. The learned counsel for the applicant further submitted that it is not a case covered under Rule 48-A where voluntary retirement does not come into effect unless an order is passed within the notice period withholding permission to retire, as according to the learned counsel for the applicant, he has put in 39 years of qualifying service and not 20 years or more required under Rule 48-A. The second submission made by the learned counsel for the applicant is that the decision of the competent authority was conveyed by the lower authority

whereas such decision should have been conveyed by the competent authority himself. Thus, on this ground also the impugned order dated 29.12.2009 is of no consequence.

6. I have given due consideration to the submissions made by the learned counsel for the applicant. In order to decide the matter in controversy as to whether voluntary retirement notice given by the applicant under Rule 48 is absolute right or the retirement is not automatic especially when express order refusing permission to voluntarily retire was conveyed to the applicant before expiry of three months' notice, it will be useful to quote relevant portion of Rule 48 of CCS (Pension) Rules, which thus reads:-

"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)

Provided that-

- (a)
- (b)

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."

From the provisions as quoted above, it is quite clear that the aforesaid rule does not confer an absolute right with the Government servant to retire from service after completion of 30 years' qualifying service by giving three months' notice but the proviso to the rule as reproduced above makes it clear that it is

open for the appointing authority to withhold permission to Government servant under suspension who seeks to retire under this rule. It may be stated that similar provision also find mention under Fundamental Rule 56 (k)(i) proviso (c). Proviso (b) to sub-rule 56(k) which is para-materia to proviso (c) to sub-rule 56(k) and Rule 48 of the CCS (Pension) Rules was taken note by the Division Bench of the Hon'ble Supreme Court consisting of three Judges in the case of B.J.Shelat Vs. State of Gujarat and Ors., 1978 SCC (L&S) 208 and it was held that under the Fundamental Rules issued by the Government of India right of Government servant to retire is not absolute right but subject to the proviso whereunder the appropriate authority may withhold permission to retire the Government servant under suspension. At this stage, it will be useful to quote para-10 of the judgment which thus reads:-

"10. It will be useful to refer to the analogous provision in the Fundamental Rules issued by the Government of India applicable to the Central Government servants. Fundamental Rule 56(a) provides that 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 fifty eight years. Fundamental Rule 56(j) is similar to Rule 161 (aa)(1) of the Bombay Civil Services Rules conferring an absolute right on the appropriate authority to retire a Government servant by giving not less than three months' notice. Under Fundamental rule 56 (k) the government servant is entitled to retire from service after he has attained the age of fifty-five years by giving notice of not less than three months in writing to the appropriate authority on attaining the age specified. But proviso (b) to sub-rule 56(k) stated that it is open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause. Thus under the Fundamental Rules issued by the Government of India also the right of the Government servant to retire is not an absolute right but is subject to the proviso

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whereunder the appropriate authority may withhold permission to a Government servant under suspension. On a consideration of Rule 161(2)(ii) and the proviso, we are satisfied that it is incumbent on the Government to communicate to the Government servant its decision to withhold permission to retire on one of the grounds specified in the proviso." (emphasis supplied)

Thus, the contention of the learned counsel for the applicant that once notice is served under Rule 48, the voluntary retirement is automatic and comes into force on expiry of notice period cannot be accepted, as the rules are not couched in a language which result in automatic retirement of an employee upon the specified period mention in the employee's notice and permission can also be withheld to such Government servant by the appointing authority in terms of proviso as quoted above.

7. Now the next question which requires my consideration is whether the competent authority can withhold permission to retirement only in a case where the Government employee is under suspension and not in other cases where departmental proceedings are pending or under contemplation. For that purpose, it will be useful to quote Government of India's decision No. (iii) under Rule 48 of the CCS (Pension) Rules, 1972 wherein guidelines for acceptance of notice has been prescribed 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

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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."

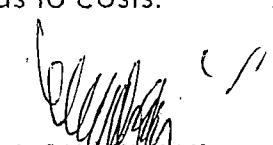
As can be seen from the guidelines/portion as quoted above, it is evident that where a notice of voluntary retirement has been given after completion of 20 years of service under existing rules applicable to him i.e. FR 56(k), Rule 48 of Pension Rules, Article 459(i) of CSRs or any other similar rule, such acceptance can be withheld in which disciplinary/judicial proceedings are pending or contemplated against the Government servant. These guidelines further makes it clear that where notice for voluntary retirement given by the Government servant is required to be accepted by the appointing authority, the retirement shall be effective in terms of the notice unless the competent authority issues an order to the contrary before expiry of the period of notice. Thus, in the light of the

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guidelines so issued by the Government under Rule 48 of CCS (Pension) Rules/FR-56(k), it cannot be said that voluntary retirement notice given by the applicant has automatically become effective after expiry of the period of three months especially when the competent authority before expiry of the period of notice has taken decision and such decision was communicated to the applicant vide Ann.A/1. It is not requirement of the law that the order passed by the competent authority should be served upon the applicant by the competent authority only. Perusal of Ann.A/1 reveals that the order regarding refusal to accept the voluntary retirement notice was passed by the competent authority on 17.12.2009 which according to me is sufficient compliance of the provisions contained under Rule 48 as well as the guidelines issued by the Government of India. In case the contention as raised by the applicant is accepted that Rule 48 should be confined only to the cases where the Government servant is placed under suspension will defeat the very purpose and the person who may be guilty of serious misconduct, such as embezzlement of Government money etc. may tender three months' notice and then can abandon the job after expiry of three months notice period on the pretext that he has not been placed under suspension even if chargesheet for penalty has been issued during the intervening period or the enquiry is under contemplation. Such is not the intention of the legislature while framing the aforesaid rules, more particularly, when the Government has also issued clarificatory order as reproduced above whereby this intention has been made clear that in cases

where disciplinary/judicial proceedings are pending or under contemplation, in such cases, permission to seek voluntary retirement can be refused by the appropriate authority show the intention of the legislature for which the aforesaid provisions have been introduced in the statute book. Since in the instant case refusal of permission to accept the voluntary retirement was conveyed to the applicant before expiry of the notice period, it is not a case of such nature where the voluntary retirement came into force on the expiry of the notice period and it cannot be said to be a case where the applicant ^{is} deemed to have voluntarily retired in the absence of order regarding withholding of permission for voluntary retirement. Thus, according to me, the ratio as laid down in the case of B.J.Shelat (supra) is squarely applicant in the facts and circumstances of this case.

8. For the foregoing reasons, the present OA is bereft of merit, which is accordingly dismissed with no order as to costs.


(M.L.CHAUHAN)
Judl. Member

R/