

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

19.12.2013

OA No. 536/2013

Mr. C.B. Sharma, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties.

ORDER RESERVED.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

26-12-2013
OA 536/2013

Order pronounced today in the
Open Court by the aforesaid
Bench -

AKW
26/12/13

For - CO

**CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.**

Original Application No. 536/2013

Dated thisthe 26th Day of December, 2013.

Coram: Hon'ble Shri Anil Kumar, Administrative Member

Hari Om Mittal Son of Shri Phool Chand Mittal, aged about 52 years, resident of Mittal Bhawan, Mahukalan, Gangapur City, District Swaimadhopur and presently holding the post of Sub-Post Master, Gudha Chandra Ji Sub-Post Office, (Swaimadhopur) Postal Division Swaimadhopur.

.....**Applicant**

(By Shri C.B. Sharma, Advocate)

V E R S U S

1. Union of India through its Secretary, to the Government of India, Department of Posts Ministry of Communications and Information Technology, Dak Bhawan, New Delhi-110001.
2. Chief Post Master General, Rajasthan Circle, Jaipur-302007.
3. Superintendent of Post Offices, Swaimadhopur Postal Division, Swaimadhopur.

.....**Respondents**

(By Shri Mukesh Agarwal, Advocate)

O R D E R

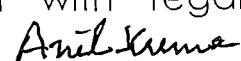
The brief facts of the case as stated by the learned counsel for the applicant are that the applicant was appointed on 02/07/1980. He has completed about 33 years service with the respondent

Anil Kumar

department. His date of birth is 03/03/1961, therefore he is due for superannuation at the age of 60 years on 31/03/2021. But due to the family problems/ circumstances made request of voluntary retirement on 29/04/2013 (Annexure A/2). He requested that his voluntary retirement be accepted w.e.f 01/08/2013, thereby giving three months clear notice as required under the rules.

2. However, the respondent No. 3 on the basis of pendency of work served a charge memo under Rule 16 of CCS (CCA) Rules 1965 on 14/06/2013 (Annexure A/7). Such action was initiated malafidely to deprive the applicant from voluntary retirement.

3. The learned counsel for the applicant further argued that his request for voluntary retirement has been rejected by the respondents No. 3 vide letter dated 28/06/2013 (Annexure A/1) on the ground that a disciplinary proceedings under the rule 16 of CCS (CCA) Rule 1965 is pending against him. He submitted that respondents No. 3 is not competent to reject the request for voluntary retirement as the applicant is working in the cadre of higher selection grade. Therefore, the decision with regard to voluntary



retirement can be taken by the Director Postal Services and not by the respondents No. 3.

4. He further submitted that the charge-sheet has been issued to him without any basis. He referred to a letter dated 25/06/2013 (Annexure A/11) in which it has been clearly mentioned that the Sub Post Office, Railway Colony, Gangapur where the applicant was working earlier to his present place of posting had submitted the required information. Therefore, the charge-sheet is baseless. Moreover, the applicant has submitted reply to the charge-sheet. But the respondents have not taken a final decision in the disciplinary proceedings pending against the applicant so that he may not avail voluntary retirement.

5. The learned counsel for the applicant also submitted that even if disciplinary proceedings under Rule 16 of the CCS (CCA) Rules, 1965 are pending against the applicant, it would not be a bar for accepting the voluntary retirement. In support of averments he referred to the Government of India's decision which have been quoted below Rule 48 of Swamy's Pension Compilation. In Para III of these instructions which relate to guidelines for acceptance

Anil Kumar

of notice, it has been stated that the request for voluntary retirement can be refused only where a disciplinary proceedings for the imposition of major penalty is either contemplated or pending. In the case of the applicant disciplinary proceedings are pending only for minor penalty. Therefore, pendency of the disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965 would not be a bar for acceptance of his request for voluntary retirement. Hence, he submitted that the respondents be directed to accept the request of voluntary retirement of the applicant.

6. On the other hand the learned counsel for the respondents admitted that the applicant made a request for seeking voluntary retirement vide his application dated 29/04/2013 w.e.f. 01/08/2013. However, he submitted that prior to acceptance of the request of applicant for voluntary retirement, disciplinary proceedings were initiated under Rule 16 of the CCS (CCA) Rules, 1965, therefore, his application was rejected vide SPOs SWM letter No. C6/pension/HOM/13-14 dated 28.6.2013.

7. He further submitted that it is pertinent to mention here that, as per provisions under Sub-rule (2)



of rule 48-A of the CCS (Pension) Rules 1972, the notice of voluntary retirement given under sub-rule shall require acceptance by the Appointing Authority. Thus, as the disciplinary proceeding was pending against the applicant, the competent authority rejected the request of applicant for voluntary retirement vide letter dated 28.06.2013.

8. The learned counsel for the respondents denied that there was any malafide intention behind issuing the memo of charges. He further denied that the applicant had submitted all the information in time as was required by the respondents. The applicant was granted second MACP in the pay band of Rs. 9300-34800/- with grade pay of Rs. 4200/-. This is a simple financial upgradation which cannot be treated as promotion in higher selection grade. The applicant is Postal Assistant and the respondent No. 3 being Superintendent of Post Offices is a Competent Authority of the applicant who is competent to accept/not accept, the notice of voluntary retirement as per Rule 48-A of CCS (Pension) Rules, 1972. The notice of voluntary retirement given under Sub-rule 1 shall require acceptance of the Appointing Authority. Since the disciplinary proceedings under Rule 16 of CCS (CCA)

Anil Kumar

Rules 1965 were pending against the applicant, therefore, the respondent No. 3 rightly rejected the request of voluntary retirement. Thus the order dated 28/06/2013 (Annexure A/1) is legal, just and proper. Therefore, the Original Application has no merit and it should be dismissed with costs.

9. Heard the rival submissions of the parties and perused the documents on record.

10. The short controversy in the present Original Application is whether the request of the voluntary retirement of the applicant can be accepted by the respondents pending disciplinary proceedings under Rule 16 CCS (CCA) 1965. The learned counsel for the applicant drew my attention to the guidelines of the acceptance of the notice which are quoted below Rule 48 (A) of CCS Pension Rules 1972. The relevant Para is quoted below :

"GOVERNMENT OF INDIA'S DECISION

Instructions to regulate voluntary retirement.-

(iii) Guidelines for acceptance of notice.-
..... Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or

Amil Kumar

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 cases of Group 'C' and Group 'D' Government servants. Even where the notice of voluntary retirement given by a Government servant require acceptance by the appointing authority, the Government servant giving notice may presume acceptance and 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."

"[G.I. Dept. of Per & A.R. O.M. No. 25013/7/77-Estt. (A), dated the 26th August, 1977, O.M. No. 25013/3/79 Ests. (A), dated the 28th July, 1979, O.M. No. 25013/10/85-Estt. (A), dated the 5th July, 1985 and Dept. of Per & Trg., O.M. No. 25013/3/2003-Estt. (A) dated the 17th June, 2003]"

11. The bare perusal of these guidelines for acceptance of notice for voluntary retirement make it clear that the acceptance for voluntary retirement may be generally given in all cases except those (a) in

Anil Kumar

which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty, which may lead to the penalty of removal or dismissal from service or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned. These guidelines further provide that even in such cases, if it is proposed to accept the notice of voluntary retirement, approval of the Minister-in-charge should be obtained with regard to Group 'A' and Group 'B' Government servants and that of the Head of Department in cases of Group 'C' and Group 'D' Government servants.

12. The learned counsel for respondents agreed with the provisions of these guidelines as these guidelines are matter of record.

13. Thus these guidelines clearly provide that even in case where disciplinary proceedings for major penalty are pending or a prosecution is pending in a Court of Law, even then voluntary retirement can be accepted. On the contrary, in the present case a disciplinary proceeding under Rule 16 of CCS (CCA) Rule 1965 (which is for imposition of a minor penalty) is

Anil Kumar

pending against the applicant. Therefore, in my view, pendency of disciplinary proceedings under Rule 16 of CCS (CCA) Rules 1965 would not be a bar for acceptance of voluntary retirement request of the applicant. Moreover, in the present case the applicant has already submitted his reply to the charge memo. The respondents can easily take a final decision in the disciplinary proceedings at an early date. However, whatever the decision taken by the respondents in the pending disciplinary proceedings, would not be a bar for acceptance of voluntary retirement of the applicant.

14. I am inclined to agree with the averments of the learned counsel for the respondents that respondent No. 3 is the appointing authority of the applicant. A perusal of the request for voluntary retirement given by the applicant dated 29.04.2013 (Annexure A/2) reveals that it is addressed to respondent No. 3. Even the applicant has not stated that his application for voluntary retirement may be forwarded to Director, Postal Services. The respondents have submitted that the applicant was only given MACP and he was not actually promoted. Therefore, he is working as Postal Assistant whose appointing

Anil Kumar

authority is the Superintendent of Post Offices i.e. respondent No. 3.

15. Therefore, on the basis of above discussion, the order dated 28/06/2013 (Annexure A/1) rejecting the request of the applicant for voluntary retirement on the ground that disciplinary proceedings under Rule 16 of CCS (CCA) Rules, 1965 are pending against the applicant is quashed and set aside. The respondents are directed to decide afresh the request of the applicant for voluntary retirement within a period of one month from the date of receipt of a copy of this order.

16. With these directions, Original Application is disposed of with no order as to costs.

Anil Kumar
(Anil Kumar)
Administrative Member

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