

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 675/2013.

ORDER RESERVED ON : 11.02.2015

DATE OF ORDER : 31.3.2015

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER.
HON'BLE MRS. CHAMELI MAJUMDAR, JUDICIAL MEMBER.

Dr. Awadesh Kumar s/o. Sh. Sundal Lal aged about 64 years resident of A-404, Anukampa Apartments, Malviya Nagar, Jaipur.

.... Applicant.

(By Advocate Mr. Sunil Samdariya)

VERSUS

1. Union of India through its Secretary, Ministry of Information and Broadcasting, Shastri Bhawan, New Delhi.
2. Prasar Bharti through its Chief Executive Officer, Press Trust of India (P.T.I.) Building, Parliament Street, New Delhi.

.... Respondents

(By Advocate Mr. Mukesh Agarwal)

ORDER

Per : Smt. Chameli Majumdar, Member (J).

The applicant filed this O.A. challenging the validity and legality of disciplinary proceedings pending against him. The applicant has prayed for the following reliefs :

"(i) To issue an appropriate order/direction quashing the pending departmental proceedings which are pending for last 10 years for no good and valid reason, which stood initiated vide charge sheet 3.6.2003 (Annexure A/1) and which hitherto have reached to the stage of report dated 14.5.2008 (Annexure A/2) submitted by Inquiring Authority 5 years ago and thereafter no action whatsoever has been taken thus prejudicing the applicant and so also quash and set aside the order preceding order dated 12.1.2001 (Annexure A/1) whereby leaves which had been sanctioned in the year 1991 and 1995 had been unilaterally withdrawn resulting into initiation of impugned departmental proceedings.

(ii) To issue an appropriate order/direction directing the respondent to release all unpaid dues such as increments which were withheld due to pendency of departmental proceedings, retirement dues such as gratuity, commutation of pension, leave encashment and all other increments and other benefits which had not been paid due to pendency of departmental proceedings and that too with interest @ 18% p.a.

(iii) Any other order/direction which this Hon'ble Court deem fit and proper in facts and circumstances of the case may be passed in favour of the applicant.

(iv) Award cost of the application.

2. The facts of the case, as stated by the applicant, are as follows :

The applicant was appointed as Class-I Engineering Officer with All India Radio in the year 1973. The applicant was felicitated for his outstanding contribution made during his service career. He was awarded for 'Technical Innovation' in the year 1974-1975. He was awarded for 'Best

Maintained Doordarshan Kendra in the country in the year 2005. From 1990 onwards he was remaining ill due to chronic Asthma, as such he had to stay away from his official duty for a considerable period.

The applicant sent proper leave applications at appropriate time. His leave was sanctioned vide orders dated 03.12.1991, 13.09.1995 and 01.11.1995 issued by Deputy Director, Administrator on behalf of Chief Engineer, All India Radio & Television. Before the leave was sanctioned, the applicant made an application dated 09.02.1995 seeking voluntary retirement from the service of the Respondent No. 1 w.e.f. 08.05.1995 as the applicant completed more than 20 years of service from the date of initial appointment. The said application for voluntary retirement was neither accepted nor refused by the department within statutory period of three months, therefore, the voluntary retirement took effect automatically in view of the proviso to Rule 48-A(2) of CCS (Pension) Rules, 1972. Much after the expiry of three months period, the Directorate, vide order dated 14.11.1996, rejected the application for voluntary retirement on erroneous premise that the applicant did not complete 20 years of qualifying

service. However, due to ill health the applicant did not challenge such non-acceptance of voluntary retirement. Instead, he chose to remain on leave for getting himself treated and sending appropriate leave applications. In the year 1998, the applicant again made one application on 12.10.1998 seeking voluntary retirement w.e.f. 30.04.1999. The same was rejected on 10.02.1999 on the ground that the period of absence from 09.05.1995 to 13.09.1998 was to be regularized and that the same was pending before the competent authority. The other reason assigned was that the applicant did not complete 20 years of qualifying service. Thirdly, there were outstanding dues against House Building Advance.

3. The applicant has contended that the applicant, being an appointee of 1973, completed 26 years of service on the date of rejection of application and if there was any outstanding due of House Building Advance that could have been adjusted against retirement benefits. He further contended that regularisation of period after completion of 20 years of service was not at all relevant. However, the applicant did not challenge such order of rejection of his application for voluntary retirement because

of his continuous ill health.

4. The applicant has further contended that on 12.01.2001 the order/memo dated 03.12.1991 and 13.09.1995 were issued by the Deputy Director Administration on behalf of Director General, All India Radio, Calcutta whereby the leave for the period between 01.07.1991 to 08.02.1995 was withdrawn holding that the aforesaid period was unauthorized absence. The applicant has alleged that this order was issued unilaterally after ten years and six years from the issuance of the order sanctioning the leave for the period of absence dated 03.12.1991 and 13.09.1995.

5. Thereafter, the departmental proceeding was initiated on the basis of the charge sheet dated 03.06.2003 levelling two articles of charge of unauthorized absence for different spells. The applicant replied to the said charge sheet on 04.07.2003. The applicant has alleged that the enquiry proceeding was protracted for no good and valid reasons, as such, the applicant was constrained to write a letter to the Government of India on 05.02.2007 for expeditious conclusion of enquiry.

6. On 14.02.2007, the applicant, for the third

time made an application seeking voluntary retirement. The said application for voluntary retirement was accepted by order dated 10.07.2007. In the meantime, since the enquiry proceeding was protracted, the applicant filed an O.A. No. 47/2007 before the Tribunal challenging the legality and validity of the departmental proceedings and the preceding orders which were made the basis of initiation of departmental proceedings. The Tribunal issued notices by recording the order dated 01.03.2007. During the pendency of the O.A., on 26.02.2009, it was informed to the Tribunal that the Inquiry Officer concluded the proceedings and the copy of the enquiry report was given to the applicant. The Tribunal disposed of the O.A. vide order dated 26.02.2009 granting liberty to the applicant to challenge the enquiry report before the disciplinary authority. The applicant was supplied with a copy of enquiry report dated 14.05.2008 on 29.07.2008. Soon after receipt of the copy of the enquiry report, he submitted his reply to the enquiry report on 08.09.2008. The applicant has submitted that despite submission of the enquiry report and reply to the enquiry report by the applicant five

years ago, no action whatsoever had been taken by the Respondents. Due to pendency of the departmental proceedings, the applicant has been deprived of his complete retiral benefits although he stood voluntarily retired six years ago in the year 2007. The applicant had not been paid gratuity, leave encashment, commutation of pension and all other admissible dues because of protraction of departmental proceedings without any lawful and valid reason. Hence the applicant has filed this O.A.

7. We find from the order passed by this Tribunal that the instant O.A. was moved on 25.09.2013. This Tribunal sought for a clarification from the respondents as to how the respondents granted voluntary retirement to the applicant when disciplinary enquiry was in progress against him. The Tribunal passed an order on the same day restraining the Disciplinary Authority to pass no further order until this O.A. was disposed of. The relevant part of the order is set out herein below :

"The respondents shall specifically clarify as to why they have granted the voluntary retirement to the applicant, if some disciplinary enquiry was in progress against him.

List the matter on 09.10.2013 for further hearing. Since no order has been

passed on the disciplinary enquiry, no further order shall also be passed in the disciplinary enquiry against the applicant till it is clear by the Tribunal."

8. The respondents have filed a short reply in answer to the query raised by the Tribunal and reserving their right to file detailed reply. The respondents' contention, inter alia, are as follows :

8.1 That the applicant was charge sheeted for unauthorized absence from duty in different spells i.e. 1.7.91 to 8.2.1995, 13.2.95 to 11.9.1998 and 15.02.1999 to 13.02.2001 vide Ministry of Information and Broadcasting Memorandum dated 03.06.2003 asking him to submit his reply to the charge sheet within ten days of the receipt of the said memorandum. The applicant submitted his written statement of defence in spells. An Inquiry Officer was appointed on 02.07.2007 to proceed with the inquiry. The enquiry report was submitted on 14.05.2008. However, during the pendency of the inquiry the applicant submitted an application for voluntary retirement on 14.02.2007 under Rule 48-A (3-a) of the CCS (Pension) Rules, 1972, seeking voluntary retirement from service w.e.f. 14.05.2007. That the request of voluntary retirement of the applicant dated 14.05.2007 was

examined under the proviso to Rule 48-A and 3(-A(a) of CCS (Pension) Rules.

8.2 It is further contended by the respondents that though a charge sheet for imposition of major penalty on the applicant has already been served for unauthorized absence from duty since July 1991 to February, 2001 but in the absence of findings of the inquiry report it was not possible to form a view whether penalty of removal or dismissal from service would be warranted. As such, it was decided with the approval of the then Minister for Information and Broadcasting to accept the voluntary retirement request of the applicant from service vide Office Order dated 10.07.2007 with the condition that he will be entitled only for provisional pension and no gratuity, commutation of pension, encashment of leave shall be allowed until conclusion of the proceedings. The applicant will also be required to get prior permission of the Government, if he wishes to undertake any commercial employment within a period of one year of the voluntary retirement.

8.3 That on the basis of findings of the Inquiry Officer and after following the laid down procedure for consultation with UPSC, the disciplinary

authority on the advice of the Union Public Service Commission decided on 21.10.2003 to impose penalty of withholding of 20% cut of the monthly pension, otherwise admissible to applicant for a period of three years. The respondents further contend that in deference to the order of this Tribunal dated 25.09.2013 (received by Respondent No. 2 through Prasar Bharati on 06.11.2003) the Respondent No. 1 have not yet acted upon the advice of the Commission and has been kept in abeyance till further direction for the Tribunal.

9. The respondents have given the justification for accepting the application for voluntary retirement of the applicant by stating, inter alia, that though a charge sheet for imposition of major penalty on the applicant had already been served for unauthorized absence from duty since July, 1991 to February 1995 but in the absence of finding of the enquiry report it was not possible to form a view whether penalty of removal or dismissal from service would be warranted. As such, it was decided with the approval of the then Minister for Information and Broadcasting to accept the voluntary retirement request of the applicant from service vide order

dated 10.07.2007 with the condition that he will be entitled only for provisional pension and no gratuity, commutation of pension, encashment of leave until conclusion of the proceeding.

10. The respondents have further contended that on the basis of the finding of the Inquiry Officer and after following the laid down procedure for consultation with UPSC, the disciplinary authority on the advice of the UPSC had taken a decision on 21.10.2003 to impose penalty of withholding of 20% cut of the monthly pension otherwise admissible to the applicant for a period of three years.

10.1 But in compliance with the order of this Tribunal dated 25.09.2015 received by Respondent No. 2 through Prasar Bharati on 06.11.2013, Respondent No. 1 did not act upon the advice of the Commission and the order has been kept in abeyance till the final decision of the O.A.

11. The learned counsel for the respondents have submitted that since the mandatory advice of the UPSC was received and the Commission agreed to the tentative decision of the disciplinary authority for imposition of withholding of 20% cut of the monthly pension otherwise admissible to the applicant for a

period of three years, the Disciplinary Authority may be allowed to pass orders in accordance with the provision of Rule 9 of CCS (Pension) Rules, 1972 and the Government of India Decision No. 6 thereunder kept in abeyance. The respondents have annexed the advice of the UPSC dated 12.08.2012.

12. Heard Shri Sunil Samdariya, Learned Counsel for the applicant and Shri Mukesh Agarwal, learned Counsel for the respondents. We have also gone through the pleadings along with documents annexed thereto.

13. The learned counsel for the applicant submits that when the leave for the period 1991 to 1995 had been sanctioned in the year 1995, no departmental proceedings could have been drawn for the alleged absence for the aforesaid period after unilaterally withdrawing the sanction orders dated 03.12.1991 and 13.09.1995. The impugned proceedings suffer from arbitrariness, bad faith and malice in law. The impugned proceeding ought not to have been drawn when the applicant had submitted an application for voluntary retirement on two occasions before initiation of departmental proceeding. The rejection orders passed on his application for voluntary

retirement were also untenable. The charge sheet contained the allegations of absence for the period from 1991 to 1995, for the period from 1995 to 1998 and for the period between 1999 to 2001. Therefore, there was an inexplicable delay in initiation of the departmental proceedings. That apart, there is delay in concluding the departmental proceedings because the proceedings is pending for more than ten years causing serious prejudice to the applicant.

14. The Learned Counsel for the applicant, at the time of arguments submits that there are two issues which are to be adjudicated by this Tribunal - (i) Whether any proceeding could be initiated against a retired person and secondly whether the proceeding is liable to be interdicted because of inordinate delay in initiating the proceedings as well as concluding the proceedings.

15. Admittedly, the applicant did not challenge the order of rejection or non-acceptance of his application for voluntary retirement on two occasions, one in 1995 and other in 1999. The applicant also chose not to challenge the office order passed on 12.01.2001 withdrawing the sanction order of his leave period passed by the Deputy

Director of Administration (E) on behalf of Directorate General, All India Radio, Prasar Bharati, immediately with right earnest. The contents of the said order is set out herein below :

"The memo No.1(1446)E dated 3.12.91 & 13.9.95 issued by O/o. CE(EZ), AIR & TV, Calcutta regarding grant of leave to Dr. Awadhesh Kumar, Director (Engg), O/o. CE (EZ), AIR & TV, Calcutta from 1.7.91 to 8.2.95 are hereby withdrawn and this period will be treated as unauthorized absence as O/o. CE (EZ), Calcutta was not competent to sanction leave more than 30 days. The medical/fitness certificates submitted by Dr. Awadhesh Kumar, Dir (E) were also not in order."

16. We have gone through the charge sheet. On that basis departmental proceeding was initiated. The relevant extract from Article and Statement of Imputations of misconduct are set out herein below :

"That the said Dr. Awadesh Kumar, while posted and functioning as Director of Engineering, Office of Chief Engineer (East Zone), AIR & TV, Kolkata, proceeded on leave for 15 days w.e.f. 1.7.91 to 15.7.91 after submitting an unsigned application dated nil and without getting it sanctioned from competent authority. Dr. Awadesh Kumar neither mentioned nature or ground for taking such leave nor his leave address in the said application. Thereafter, he submitted applications for extension of his leave from an address at H-115, M.I. Area, Malviya Nagar, Jaipur -302017 on medical grounds till 16.10.1991. He was asked to resume his duties vide a telegram dtd. 12.11.91 followed by a letter dated 9.12.91. However, Dr. Awadesh Kumar kept extending his leave and finally resumed his

duties on 09.02.1995. soon thereafter, Dr. Awadesh Kumar again proceeded on extraordinary leave for 26 days on the ground of domestic affairs w.e.f. 13.2.95 to 10.3.95 and further extended his leave on medical grounds till 11.09.98 and resumed his duties on 14.09.98. Subsequently, he again left the station and went on leave w.e.f. 15.02.99 to 13.02.2001 without any information to his office and resumed his duties on 14.02.2001."

".....After remaining absent from duty for more than 3½ years, Dr. Awadesh Kumar joined his duties, vide his application dated 14.09.98. Dr. Awadesh Kumar also submitted the leave application dated 14.9.98 for the period of his absence from 9.5.95 to 11.9.98 enclosing a medical fitness certificate. This was not accepted by the competent authority and he was asked to submit proper medical certificate and fitness certificate from an authorized medical Attendant vide DG: AIR's I.D. Note No. 9/68/73-S.III dt. 29.7.99 followed by reminders dated 16.9.99 and 14.10.99. He was also cautioned about initiation of disciplinary proceedings in case he failed to submit proper medical certificates."

17. We find from the records that the applicant came before this Tribunal for the first time in 2007 by filing O.A. No. 47/2007. In the said O.A. filed in 2007, the applicant for the first time prayed for a direction to declare that the charge sheet dated 03.06.2003 as well as the order of withdrawal dated 12.01.2001 withdrawing the order dated 03.12.1991 sanctioning the leave from 01.07.1991 to 14.10.1991 and the order dated 13/15.09.1995 sanctioning the

leave from 15.10.1991 to 25.05.1992, 26.05.1992 to 05.12.1994 and 06.12.1995 to 08.02.1995 as null and void. He also prayed for the following reliefs :-

"(i) To call for the records of the case.

(ii) By an appropriate order or direction the impugned charge sheet dated 03.06.2003 Annexure A/1 and the rejection order 12.01.2001 Annexure A/2 may kindly be declared as null and void and may kindly be quashed and set aside and further the respondent may be directed to act in accordance with their own orders Annexure A/5 and A/6 and further settle the remaining leave of the applicant which still requires formal order.

(iii) By an appropriate order or direction the respondent may be directed to pay to the applicant all benefits like arrears of salary and pending annual grade increments.

(iv) The Hon'ble Tribunal may grant costs of the application.

(v) The Hon'ble Tribunal may grant any other relief as may be deemed fit and proper under the circumstances of the case."

18. This Tribunal disposed of the O.A. on 26.02.2009 with the following order :

"3. In view of this subsequent development, we are of the view that the present OA does not survive, which is accordingly disposed of. It is, however, clarified that it will be permissible for the applicant to raise all objections in the substantive O.A. which have been raised by him in this O.A. including the objection noticed by this Tribunal in its order dated 01.08.2007 in case the applicant is aggrieved by the action, if any, to be

taken by the respondents on the inquiry report so submitted by the Inquiry Officer."

19. Pursuant to the said order, the Applicant submitted his representation on 08.09.2008 against the report of the Inquiry Officer. From the inquiry report it appears that the applicant admitted that he did not attend office for the period from 1991 to 1998 but since the admission of charge was partial and not unconditional, enquiry proceedings continued. It appears that he was given full opportunity. The applicant participated in the enquiry. The Inquiry Officer, after detailed discussion of the prosecution as well as defence case held that the two charges were proved. Relevant extract from the Inquiry Officer's report is set out herein below :

"In view of the documentary evidence placed before the IO, it is established that the CO had proceeded on leave without proper sanction, had not obeyed the orders sent to him by the Department and has shown utter lack of devotion to duty in a manner which is unbecoming of a Government Servant.

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The CO has been on leave for various spells of leave over a period extending from 1991 to 2001. The Department has on 11.9.1995 granted him the leave as per the break-up shown below :

(a) Earned Leave for 224 days from

15.10.2001 to 25.5.1992.

(b) Commuted Leave for 924 days from 26.5.92 to 5.12.94.

(c) EOL without pay for 65 days from 6.12.94 to 8.2.94.

It is apparent from the leave which has been sanctioned to him over this lengthy period that the CO has derived the maximum benefit from the inherent inefficiencies in the system in respect of proper check of leave account and administrative procedures. It is not clear how such a situation was allowed to continue for this length of time without any monitoring. The officer has submitted certificates in respect of various ailments and these have also been given by private practitioners. The Department should have taken up the case of having the Medical Certificates checked if they were not found satisfactory or there was a sense of doubt about the genuineness of these certificates. However, from the records placed before the IO it is clear that this has not been done. The CO has taken full advantage of this and has ignored all instructions for medical examination by the CMO. If the CO was sincere and genuinely unwell, he would have no hesitation in presenting himself before the CMO since he was aware of this fact that the Department was asking him to do so. By his behaviour of ignoring the prescribed rules and procedures which he was fully conversant with, given the senior position that he held in this Department, it is clear that the CO was unwilling to follow the due procedures on the subject.

Therefore, it is established that his absence was unauthorized from 1.7.91 to 8.2.95, 13.2.95 to 11.9.98 and 15.2.99 to 13.2.2001. Hence, it is established that the CO has shown utter dereliction of duty and has flouted the instructions of the higher authority. Consequently, the Article

of charge is held as proven."

20. In the meantime, the applicant applied for voluntary retirement. The said application for voluntary retirement was accepted on 10.07.2007 by passing the following order :

"Dr. Awadesh Kumar will be entitled only for provisional pension and no gratuity commutation of pension, encashment of leave shall be allowed until conclusion of the pending departmental proceedings. Shri Awadesh Kumar will also be required to get prior permission of the Government if he wishes to undertake any commercial employment within a period of one year of his voluntary retirement."

21. From the calculation sheet annexed to the said order of acceptance of his application for voluntary retirement, it appears that the applicant was unauthorizedly absent for 8 years 11 months and 22 days. The applicant accepted the said position that he was unauthorizedly absent for 8 years 11 months and 22 days. Either in the earlier O.A., i.e. 47/2007, or in the present O.A. the applicant has not thrown any challenge to the order of acceptance of his voluntary retirement dated 10.07.2007 along with the aforesaid statement regarding period of unauthorized absence of 8 years 11 months and 22 days.

22. Having accepted the order of acceptance of his application for voluntary retirement as well as having not challenged the order passed in 2007 withdrawing the order of sanction of his leave for the aforesaid period of unauthorized absence of 8 years 11 months and 23 days within reasonable time, it was not open to the applicant to turn around and challenge either the order of withdrawal of leave or the statement annexed to the order accepting his voluntary retirement given by the authorities as illegal or improper. He cannot raise any grievance with regard to the charge of unauthorized absence in the present O.A.

23. With regard to allegation of delay certain dates are important to be noted. The applicant challenged the legality, validity of the order dated 12.01.2001 and the charge sheet dated 03.06.2003 by filing the O.A. in 2007. We do not find inordinate delay in initiating disciplinary proceedings since after withdrawal of leave by order dated 12.01.2001 a charge sheet was issued on 03.06.2003. A preliminary enquiry was held on 29.03.2005. The applicant did not raise any issue regarding delay in initiating the proceeding before any authorities at the relevant

time. The enquiry was held thereafter on several dates like 22.03.2006, 19.03.2007, 03.04.2007, 09.04.2007, 16.04.2007 and 01.05.2007. An order was passed by appointing third Presenting Officer on 17.10.2007. Enquiry was concluded on 19.11.2007 asking the Presenting Officer to submit his written brief on 15.12.2007. The Presenting Officer submitted his written brief on 14.02.2008 and the applicant submitted his written brief on 27.03.2008.

24. Before conclusion of the enquiry, the applicant filed the earlier O.A. No. 47/2007. During the pendency of the Original Application, the Inquiry Officer submitted his report on 14.05.2008. The Original Application No. 47/2007 was disposed of by the order which is set out in para 18 herein above. It is also evident that during the pendency of the enquiry proceedings the applicant again filed an application for voluntary retirement on 14.02.2007, which was accepted on 10.07.2007.

25. Therefore, we do not find an inordinate or unreasonable delay in initiating the enquiry proceedings. It is the applicant, on the contrary, who remained absent from his office for more than 8 years 11 months.

26. Regarding delay in concluding the enquiry, we find that the respondents, after receiving the inquiry report delayed in taking a final decision. The reason may be the pendency of the present O.A. or else. However, in the absence of a detailed reply by the respondents, we cannot comment on the reason for such delay. The Learned Counsel for the respondents filed a short reply. The Learned Counsel for the applicant insisted on final hearing of the matter.

27. The applicant has filed the present O.A. in 2013 with a prayer which has already been set out in para 1 herein above. The fact remains that there has been some delay in concluding the proceeding but the same does not vitiate the entire enquiry proceeding. In view of the peculiar facts and circumstances involved in this case and as emerged from the pleadings and counter pleadings, we are of the view that simply delay in concluding the proceeding, the enquiry proceeding cannot be interdicted at the final stage. The Disciplinary Authority shall be allowed to arrive on its final decision. In this regard, we may refer to the judgment :

27.1 The Hon'ble Supreme Court in the case of P.D. Agarwal Vs. State Bank of India & Others [AIR 2006 SC 2064] held that

where an employee takes part in a disciplinary proceeding without raising any objection and even cross examines the witnesses, he will not be permitted to advance defence of delay in initiation of departmental proceedings. Para 16 of the said judgment is set out herein below :

"16. The validity of the disciplinary proceeding and/or justifiability thereof on the ground of delay or otherwise had never been raised by the Appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. It may be true that delay itself may be a ground for arriving at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent officer has been prejudiced, but no such case was made out."

27.2 The Hon'ble Supreme Court in the case of Secretary, Forest Department & Others Vs. Abdur Rasul Chowdhury [2009 (2) SCC (L&S) 327]

held that delay in concluding the domestic enquiry proceedings is not fatal to the proceedings.

Paragraphs 16, 18 and 20 of the said judgment is reproduced herein below :

"16. In the present case, while the delinquent employee was in service, the departmental enquiry proceedings had been instituted by the employer by issuing the charge memo and the proceedings could not be completed before the government servant retired from service on attaining the age of superannuation and in view of Rule 10(1) of the Rules, 1971, the employer can proceed with the departmental enquiry proceedings though the government servant has retired from service for

imposing only punishment contemplated under the Rules.

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18. In the present case the Administrative Tribunal after going through the entire record from the date of initiation of the departmental proceedings till the government employee retired from service on attaining the age of superannuation, has observed that since the government employee had left the head quarters without permission of the competent authority, so the proceedings could not be completed. This finding on facts need not be disturbed by us, since the said finding cannot be said a perverse finding.

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20. The disciplinary authority is directed to complete the domestic enquiry proceedings from the stage it was interdicted by the High Court and complete the same as expeditiously as possible and at any rate within three months from the date of receipt of this court's order. The respondent herein is directed to participate in the enquiry without unnecessarily seeking adjournment in the enquiry proceedings."

28. We find from the reply that the acceptance of the voluntary retirement during the disciplinary enquiry is permissible after the approval of Minister-In-Charge. The Disciplinary proceeding also could be continued in such circumstances in accordance with Rule 9 of the CCS (Pension) Rules. Sub-rule (2) of Rule 48-A of CCS (Pension) Rules deals with Voluntary Retirement. The Government of India's decision on the guidelines for acceptance of notice has been laid down below the said rule 48-A.

Para 3 deals with the guidelines for acceptance of notice to regulate the voluntary retirement of Central Government servants. The relevant portion of para (iii) is set out herein below :

"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 the Department in the cases of Group 'C' and Group 'D' Government servants."

29. From perusal of the said guidelines it appears that an exception has been carved out for acceptance of voluntary retirement even during the pendency of proceeding. The same is the approval of the Minister-in-charge which would be obtained to accept the notice of voluntary retirement. The respondents have stated in the reply that in the instant case approval was obtained by the Minister-in-charge, as such the application of the applicant for voluntary retirement was accepted.

30. With regard to the submission of the learned counsel for the applicant that after the government servant has taken voluntary retirement he cannot be further proceeded with, Rule 9 of the CCS (Pension) Rules envisages that in proceedings instituted while

Government servant was in service shall be deemed to be proceedings under Rule 9 of the CCS (Pension) rules and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant continued in service. Sub-para 2(a) of para 9 is set out herein below :

"2(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

31. It also appears from D.G., P & T letter dated 28.02.1984 that under Rule 9(2)(a) of CCS (Pension) Rules, 1972, the disciplinary proceedings instituted against an official during the course of his service automatically becomes Presidential proceedings after retirement of the official and the disciplinary authority, if it is subordinate to the President, is required to submit a report recording its findings to the President. The said letter is reproduced herein below :

"Under Rule 9 (2) (a) of CCS(Pension Rules), 1972, the disciplinary proceedings instituted against an official during the course of his

service automatically becomes Presidential proceedings after retirement of the official and the disciplinary authority, if it is subordinate to the President, is required to submit a report recording its findings to the President. A question has been raised whether the disciplinary authority which instituted the proceedings against the official before his retirement, can drop the proceedings itself after superannuation of the official without submitting its findings to the President, if it, on the basis of the defence of the official or the report of the inquiring authority, comes to the conclusion, to drop such proceedings. The issue was examined in consultation with the Department of Personnel who have advised that if the disciplinary authority comes to the conclusion that action under Rule 9 of the Pension Rules, is not justified and that the proceedings should be dropped, it would be within the competence of the disciplinary authority to drop the proceedings, since the proceedings have been instituted by that authority. In such cases, therefore, there is no need to submit a report regarding the findings of the disciplinary authority to the President.

32. In the instant case it is also evident that the disciplinary authority did not decide to drop the proceedings. On the contrary, the case was sent to UPSC for its advice and the UPSC has already submitted its advice. The respondents, in their reply, has made the following prayer :

"It is prayed that the present O.A. filed by the applicant has no merit. The applicant was unauthorizedly absent from duty without proper permission. He was charge sheeted for the above misconduct for valid reasons. His voluntary retirement notice dated 14.02.2007 was accepted by the disciplinary authority under Rule 48-A (a-3) of CCS (Pension) Rules, referred to in Annexure R-1 to the reply to the said O.A. for reasons explained in para 5 above. Since the mandatory advice of the Union

Public Service Commission has been received and the Commission has also agreed to the tentative decision of the disciplinary authority for imposition of withholding of 20% cut of the monthly pension, otherwise admissible to Shri Awadesh Kumar (applicant) for a period of three years the disciplinary authority may be allowed to operate the statutory penalty in accordance with the provision of Rule 9 of the CCS (Pension) Rules, 1972 and Government of India decision no. 6, thereunder, kept in abeyance and the O.A. dismissed at the admission stage itself with costs in favour of the respondents."

33. From the reply we find that UPSC has already tendered their advice. Therefore, in our view, justice will be made if the respondents are directed to supply the copy of the UPSC advice to the applicant for submission of his reply and thereafter the final order may be passed by the competent authority after considering all materials in accordance with the CCS (CCA) Rules. Ordered accordingly. All these exercise should be completed within twelve weeks from the date of receipt of a copy of this order.

34. The O.A. stands disposed of accordingly. No order as to costs.

Chameli Majumdar
(Smt. Chameli Majumdar)
Member (J)

Anil Kumar
(Anil Kumar)
Member (A)

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