

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

OA NO.1982/2016

Order reserved on 15.02.2017
Order pronounced on 21.02.2017

HON'BLE DR BRAHM AVTAR AGRAWAL, MEMBER (J)

Dr. Dinesh Kumar Paliwal,
Aged about 59 years,
Deputy Educational Advisor,
S/o Shri Rajendra Prasad Paliwal,
Ministry of Human Resource Development,
Government of India, Shastri Bhawan,
New Delhi.

...Applicant

(By Advocate: Mr. Amitesh Kumar)

VERSUS

1. Union of India through
the Secretary,
Ministry of Human Resource
Development, Department of
Higher Education, Shastri Bhawan,
New Delhi.
2. Chief Vigilance Officer,
Ministry of Human Resource
Development, Shastri Bhawan,
New Delhi.
3. The Secretary,
Ministry of Personnel, Public
Grievances and Pension,
Department of personnel and Training,
Government of India, North Block,
New Delhi-110001.

...Respondents

(By Advocate: Mr. Ashok Kumar)

:ORDER:

The applicant, a Deputy Educational Adviser in the Department of Higher Education, Ministry of Human Resource Development, has filed the instant OA praying that the said Ministry's OM dated 26.04.2016 (Annexure A-1) denying him his request for voluntary retirement under rule 48-A, CCS (Pension) Rules 1972, vide his letter dated 01.02.2016 (Annexure A-13), be quashed and that the respondents be directed to allow his request for voluntary retirement from service. The said OM reads as under:-

"The undersigned is directed to refer to notice of voluntary retirement dated 01.02.2016, addressed to Hon'ble Minister for Human Resource Development, tendered by Dr. D.K. Paliwal, Deputy Education Adviser under Rule 48-A of Central Civil Service (Pension) Rules, 1972 seeking retirement from Government Service and to inform that the Competent Authority has denied him the request for voluntary retirement as the fact finding inquiry has recommended Regular Disciplinary Action (RDA) to be initiated against Dr. Paliwal."

2. The "fact finding inquiry" concerns an incident of 1997 when the applicant communicated to the North-Eastern Hill University that its ordinance providing for Hill Area Special Allowance to its employees "has been noted". This is stated to have been done in extreme hurry, i.e., within three days, allegedly without reference to the Ministry's Integrated Finance, UGC and without obtaining Hon'ble Visitor's approval. However, the relevant file is untraceable. The first "Inquiry Report" (vide Annexure A-22) did not conclude whether any irregularity had been committed or not.

This was not accepted and another fact finding inquiry was ordered. The second "Inquiry Report" (vide Annexure R-XXI) concluded that the applicant had violated the set procedure for approval of ordinances.

3. Thus is proposed a Regular Disciplinary Action (RDA) against the applicant and his request for voluntary retirement denied.

4. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

5. The Government's "Guidelines for acceptance of notice" given under rule 48-A in the Swamy's Pension Compilation read, *inter alia*, as under:

"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."

6. Disciplinary proceedings are stated to be contemplated against the applicant, but the other condition that having regard to the circumstances of the case, the disciplinary authority is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, is not fulfilled. That major penalty proceedings are contemplated is not

sufficient, because "major penalty", by definition, is not confined to removal or dismissal.

7. In the light of the above, I am of the view that the instant OA deserves to succeed. Therefore, the impugned OM (Annexure A-1) is set aside. The respondents are directed to allow the applicant's request for voluntary retirement from service w.e.f. the due date.

8. The OA is allowed accordingly. No order as to costs.

(DR BRAHM AVTAR AGRAWAL)
MEMBER (J)

/jk/