

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-2171/2013

New Delhi this the 5th day of January, 2018.

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Praveen Mahajan, Member (A)**

Sh. D.C. Gupta,
S/o Late Sh. Ram Chand,
Aged about 59 years,
R/o H.No: 279, Sector-21B,
Faridabad (Haryana), and
voluntary retired as Executive Engineer,
CPWD,
O/o ADG (DR), Sewa Bhawan,
R.K. Puram, New Delhi-110066.

.... Applicant

(through Sh. S.S. Tiwari, Advocate)

Versus

1. Union of India through
Special Secretary,
M/o Urban Development,
Nirman Bhavan, New Delhi.
2. Director General of Works,
Central Public Works Deptt.,
Nirman Bhawan, New Delhi-1.

....Respondents

(through Sh. R.N. Singh, Advocate)

O R D E R (ORAL)

Ms. Praveen Mahajan, Member (A)

The current application has been filed against the impugned order dated 02.07.2013 and O.M. dated 26.11.2012 of the respondents vide which the request for voluntary retirement of the applicant, has been rejected due to pending disciplinary proceedings against him.

2. Briefly stated, the facts of the case are that the applicant retired from the post of Executive Engineer (CPWD) on 07.12.2012. Having completed more than 35 years of qualifying service, he opted for voluntary retirement under Rule-48 of CCS (Pension) Rules and FR-56K(i), by giving three months notice on 07.09.2012. The applicant avers that his retirement became effective w.e.f. 07.12.2012, i.e. after expiry of 03 months period since the appointing authority did not give any refusal during this period.

3. However, the applicant received a copy of inter Office Memorandum dated 26.11.2012, written by DD(Admn) to SE (Hqrs) stating that:-

"Sub: Voluntary Retirement of Shri Dal Chand Gupta, Executive Engineer (Civil) Regarding.

The undersigned is directed to refer to letter No. 14(64)/Estt/NDZ-3/5000 dated 2-11-2012 received from SE (HQ) O/o CE, NDZ-3, CPWD forwarding therewith Notice Voluntary Retirement in respect of Shri Dal Chand Gupta, EE(C) and to state that Shri Dal Chand Gupta EE(C) is not clear from Vigilance angle, and two cases for major penalty proceedings are pending against him. Hence Notice for Voluntary retirement in r/o Dal Chand Gupta EE(C) may not be Accepted.

2. This has the approval of DDG(P)."

4. This information, forwarded to the applicant on 11.12.2012, was received by him on 14.12.2012. Through various representations (dated 10.12.2012, 24.12.2012 and 06.05.2013 etc.) the applicant contended that the above order has been issued after a lapse of VRS notice period of three months, and has not been rejected by

the competent authority. He contended therein that grounds of rejection cited are not applicable to him. The Service Rules FR 56 & Rule 48 stipulate that "retirement becomes effective on the expiry of notice period without awaiting appointing authorities approval unless the official is under suspension", which was not applicable in his case. Subsequent amendment to FR 56 (k), giving discretion to the competent authority to withhold permission when disciplinary proceedings are pending etc. would apply prospectively not retrospectively. Nevertheless, based on the advice dated 26.11.2012, the competent authority rejected applicant's request for voluntary retirement, vide O.M. dated 02.07.2013.

5. Aggrieved, the applicant has filed the present O.A., claiming the following reliefs:-

- “(a) To set aside and quash the impugned order dt. 02/07/13 and OM dt. 26/11/12.
- (b) To declare the applicant as having retired w.e.f. 7/12/12 in terms of FR 56(k)(1) as it was then & Rule 48 of CCS (Pension) Rules 1972.
- (c) To direct the respondents to further give consequential benefits flowing from relief (a) & (b) like retirement benefits including pension, gratuity, commutation of pension, GPF as well as interest for delayed payment at the rate of 12% p.a.
- (d) Any other relief which Hon'ble Tribunal may deem proper and just keeping in view the facts & circumstances of the case.”

The applicant submits that Rule 56(k)(i) gives an option to a government employee to voluntarily retire from service with 03 months notice and there was no requirement of acceptance by the

appointing authority at the relevant time. He has relied upon the decision of the Apex Court in the case of **State of Haryana & Ors. Vs. S.K. Singhal**, 1999(4)SCC 293 and the decision dated 15.02.2011 of the Hon'ble High Court of Delhi in WP(C) No. 8102/2010(**UOI & Ors. Vs. Ved Prakash Sharma**).

6. In the counter, the respondents state that the voluntary retirement notice of the applicant was not accompanied with the check list in the prescribed proforma, nor was it accompanied with the recommendation of the concerned Chief Engineer. Hence, vide O.M. dated 05.10.2012, the applicant was asked to complete the procedural formalities. The duly completed check list was received back on 15.10.2012 and sent to respondent No.2 on 02.11.2012. At the time of receipt of notice for voluntary retirement of the applicant, two disciplinary proceedings for major penalty, were pending against him. It was intimated by the Vigilance Unit of the respondent department that sanction for prosecution of the applicant had also been issued on 02.07.2007. Keeping in view the guidelines issued by Government of India on the subject, it was decided to reject his request for voluntary retirement. Since the time for communication of refusal/acceptance of notice was approaching, the refusal was communicated to the applicant, with the approval of DDG (P) vide O.M. dated 26.11.2012. Subsequently, the matter was submitted to the disciplinary authority - who ratified

the decision for refusal of acceptance of notice of voluntary retirement, as communicated to the applicant. This decision of the competent authority was communicated to him vide O.M. No. 27-E/G(310)/2012-EC.II/EW.I dated 02.07.2013.

7. The respondents further aver that the applicant has sought voluntary retirement under Rule 48 of the CCS (Pension) Rules, 1972 on the ground that he has rendered 35 years of qualifying service. Had he sought VRS under FR 56(k)(i) alone, he would have mentioned that he has attained the age of retirement prescribed in the rule. Hence, his request for voluntary retirement was rightly dealt in accordance with provisions contained in CCS (Pension) Rules, 1972 and was rejected as provided therein. The averment that there was no provision in the rules to reject the request for VRS is wrong. Though FR 56(k)(i) has been amended by Notification dated 17.01.2014, it does not make a difference to the case of the applicant since his case has been dealt with under Rule 48 of the CCS (Pension) Rules, 1972 and rejected rightly.

8. In his rejoinder, the applicant has reiterated that his case for retirement is covered under Rule 48 of CCS (Pension) Rules, 1972 read with FR 56(k)(i) after completion of 30 years of service and not under Rule 48A of CCS (Pension) Rules, as contended by the respondents.

9. During the course of hearing, the learned counsel for the respondents Sh. R.N. Singh emphasized that the applicant has not sought voluntary retirement under FR 56 (k)(i) alone but has also mentioned Rule 48 of CCS(Pension) Rules, 1972 in his notice. Relying upon the judgment of Hon'ble High Court of Delhi in its judgment dated 15.02.2011 in Writ Petition (C) No. 8102/2010 he forcefully argued that the principles for deciding whether a notice for voluntary retirement will attract provisions of Rule 48 of CCS (Pension) Rules, 1972 or provision of FR 56(k)(i), have been clearly laid down. It has been held that if the voluntary retirement is sought citing attaining of age prescribed under FR 56(k)(i) as the ground for voluntary retirement, the voluntary retirement will be regulated in terms of this rule whereas if the voluntary retirement is sought on the ground of having rendered qualifying service as prescribed in the CCS (Pension) Rules, 1972, the notice for voluntary retirement will be considered in terms of provisions contained in Rule 48 of the CCS (Pension) Rules, 1972. Since the applicant had sought voluntary retirement under Rule 48 of CCS (Pension) Rules and not on the sole ground that he had obtained the age prescribed in FR 56, hence his voluntary retirement request was rightly considered and rejected in terms of provisions of Rule 48 of the CCS (Pension) Rules.

10. We have carefully gone through the facts of the case, and perused the available record. It is relevant to examine the provisions

of pre-amended FR 56(k) (i) before adjudicating the issue. The pre amended FR 56(k)(i) as it existed at the time when VRS notice was submitted by the applicant, stipulated as under:-

“Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years, if he is in Group ‘A’ or Group ‘B’ service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that-

- (a) *Not printed (Since Clause (e) has been Omitted)*
- (b) Noting in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year; and
- (c) ***it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause.”***

Thus, as per proviso (c) of the aforementioned Rule, the permission to retire from service, can only be withheld by the appropriate authority if the Government servant, who seeks retirement, is under suspension. The same is not the case here.

11. The proviso (c) of FR 56(k) was amended by Gazette Notification dated 17.01.2014 as follows:-

“G.S.R.27(E).- In exercise of the powers conferred by the proviso to article 309 of the Constitution, and in consultation with the Comptroller and Auditor General in relation to persons serving in the Indian Audit and

Accounts Department, the President hereby makes the following rule further to amend the Fundamental Rules, 1922, namely:-

1. (1) These rules may be called the Fundamental (First Amendment) Rules, 2014.
 (2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Fundamental Rule, 1922, in rule 56.-

(a) In clause (k), in sub-clause (1), for item (c), the following shall be substituted namely:-

“(c) it shall be open to the Appropriate Authority to withhold permission to a Government servant, who seeks to retire under this clause, if-

- (i) the Government servant is under suspension; or**
- (ii) a charge sheet has been issued and the disciplinary proceedings are pending; or**
- (iii) if judicial proceedings on charges which may amount to grave misconduct, are pending.**

Explanation:- For the purpose of this clause, judicial proceedings shall be deemed to be pending, if a complaint or report of a police officer, of which the Magistrate takes cognizance, has been made or filed in a criminal proceedings”:-

(b) for clause (m), the following shall be substituted, namely:-

“(m) A Government servant in Group ‘C’ post who is not governed by any pension rules, may, by giving notice of not less than three months in writing to the Appropriate Authority, retire from service after he has completed thirty years service:

Provided that it shall be open to the Appropriate Authority to withhold permission to a Government servant, who seeks to retire proceedings.”:

- (i) the Government servant is under suspension; or
- (ii) a charge sheet has been issued and the disciplinary proceedings are pending; or
- (iii) if judicial proceedings on charges which may amount to grave misconduct, are pending.

Explanation:- For the purpose of this clause, judicial proceedings shall be deemed to be pending, if a complaint or report of a police officer, of which the Magistrate takes cognizance, has been made or filed in a criminal proceedings.”

13. The plea of the applicant is that under pre-amended Rule 56(k)(i) no permission or acceptance was required on expiry of 03 months, as he had sought retirement by a notice of more than 03 months on 07.09.2012. Hence, he stood retired on 07.12.2012. It is a fact that the applicant was not under suspension when he gave the notice dated 07.09.2012 for retirement under FR 56(k)(i) nor was he under suspension till expiry of 03 months period on 07.12.2012, the date from which his retirement came into effect. There is no ambiguity in the said notice which is categorically under Rule 56(k)(i) of Fundamental Rules. Mere mention of Rule 48 of CCS (Pension) Rules, 1972 does not reflect that the applicant had sought voluntary retirement under Rule 48 of CCS (Pension) Rules, 1972. Later part of the notice clearly shows that retirement is sought under Rule 56(k)(i). Hence, we have no hesitation in concluding that the respondents have erred in treating the case of the applicant under Rule 48 of CCS (Pension) Rules, 1972. Since the amendment to Rule 56(k) came into effect only on 17.01.2014, the appropriate authority had to deal with the VRS request of the applicant as per the terms and provisions of the pre amended FR 56(k)(i). The case of the applicant for voluntary retirement under Rule 48 and FR 56(k)(i) has to be considered by the respondents when it was open to the appointing authority to withhold or refuse permission to a government servant to retire only if he was under suspension.

14. In view of the above position, the relief sought by the applicant could not be denied to him. The O.A. is allowed and the impugned orders dated 02.07.2013 and OM dated 26.11.2012 are quashed and set aside. The applicant be treated as retired from government service w.e.f. 07.09.2012. He shall thus be entitled for his pensionary and other retiral benefits as per relevant rules on the subject.

15. The respondents may pass appropriate orders as per law within a period of 03 months from the date of receipt of a certified copy of this order. No costs.

(Praveen Mahajan)
Member (A)

(Justice Permod Kohli)
Chairman

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