

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.3599/2016

**Reserved on :20.12.2016.
Pronounced on:23.12.2016.**

Hon'ble Mr. Shekhar Agarwal, Member (A)

Anil Kumar Tyagi
S/o Chandra Kiran,
Junior Engineer (Civil),
C/o Executive Engineer (South) IV,
OHT, Kalkaji, New Delhi.

... Applicant

(Through : Mr.Suresh Tripathy, Advocate)

VERSUS

1. Chief Executive Officer,
Delhi Jal Board,
Varunalaya, Jhandewalan,
New Delhi.

2. Member (Admn.),
Delhi Jal Board,
Varunalaya, Jhandewalan,
New Delhi.

... Respondents

(Through: Mr. Rajeev Kumar, Advocate)

ORDER

The applicant was appointed as Work Assistant (Civil) in the year 1989 in Delhi Jal Board (DJB). Gradually he got promoted to the post of Junior Engineer (Civil). He got involved in a CBI case in which charge sheet was filed against him. However, vide judgment dated 18.01.2016 passed by Special Judge, CBI, New Delhi in CC No.01/15 he was acquitted. Thereafter, the applicant applied for voluntary retirement on 7.03.2016. He requested that he may be relieved from service as early as possible waiving the notice period of 90 days. This request was, however, rejected by the respondents vide the impugned order dated 1.06.2016 which reads as follows:-

"Kindly refer to your 03 months notice dated 07.03.2016 for voluntary retirement from the services of Delhi Jal Board in this context, it is to inform you that your request has been rejected by the Competent Authority on the ground of not clearance from Vigilance angle."

The applicant made a representation to the respondents on 22.06.2016 to reconsider the decision to deny voluntary retirement to him. However, no reply was received from the respondents. On the contrary, a charge sheet was served on him on 5.10.2016. The applicant has, therefore, approached this Tribunal seeking the following reliefs:-

- "a. Set aside the impugned order dated 1.6.2016 issued by the respondents;
- b. Pass such order or further order as may be deemed fit."

2. According to him, the respondents could not have legally denied voluntary retirement to him on the grounds that he was not clear from vigilance angle. On the date when he made application for voluntary retirement, no enquiry was pending against him. Even on the date when the impugned order was passed no enquiry or judicial proceedings were pending against him. Thus, the action of the authorities was not just or reasonable and was contrary to the provision of CCS (Pension) Rules and in particular Rule 48-A. The authorities have acted in an arbitrary manner without application of mind.

3. In their reply, the respondents have submitted that the applicant was not clear from vigilance angle and this was the reason for rejecting his request for voluntary retirement. This is because a

regular departmental enquiry for major penalty proceedings had been booked against him on 21.03.2016 and issue of charge sheet for major penalty was under process. Thus, under the circumstances, competent authority in terms of DOP&T guideline was empowered to reject his request for voluntary retirement. The respondents have further stated that the applicant had not been honourably acquitted in the criminal case. Relying on the judgment of Hon'ble Supreme Court in case of **R.P.Kapur Vs. Union of India & Another** (AIR 1964 SC 787), the respondents have stated that even after acquittal in criminal proceeding where the acquittal is not honourable, disciplinary proceedings against a public servant can be initiated. The same was reiterated by Hon'ble Supreme Court in the case of **Ajit Kumar Nag Vs. G.M. (PJ), Indian Oil Corporation Ltd.** (2005) 7 SCC 764). The respondents have stated that in this case the acquittal was only on technical grounds. Therefore, the respondents were well within their rights to initiate disciplinary proceedings against the applicant.

4. I have heard both sides and have perused the material on record. Learned counsel for the applicant argued that vide Notification dated 17th January 2014, Fundamental Rule 56 has been amended and in the amended rule it is laid down that voluntary retirement can be denied to a Government servant only when he is under suspension or a charge sheet in disciplinary proceeding has been issued or judicial proceedings on charges which may amount to grave misconduct are pending against him. In the instant case, none of the circumstances existed on the day the impugned order was passed by the respondents. He stated that it is admitted by the respondents that

after acquittal in the criminal case, the respondents issued charge sheet to him only on 5.10.2016. The applicant had given notice of voluntary retirement on 7.03.2016 and the respondents were required to pass an order on the same within 3 months i.e. by 6.06.2016. Since, by that date no charge sheet had been served on the applicant, under rules the respondents were bound to accept his request for voluntary retirement. Moreover, it was incumbent on their part to pass a positive order either withholding or denying voluntary retirement to the applicant. In this regard, he has relied on the judgments of Hon'ble Supreme Court in the case of **State of Haryana and Others Vs. S.K.Singhal** (1999) 4 SCC 293) and **Union of India and Others Vs. Sayed Muzaffar Mir** (1995 Supp (1) SCC 76).

5. Next learned counsel for the applicant argued that the only reason given in the impugned order denying voluntary retirement to the applicant was that he was not clear from vigilance angle. This according to the Fundamental Rule 56 could not have been a ground for denial of voluntary retirement. Relying on the judgment of Hon'ble High Court of Delhi in case of **Banwari Lal Jhunjunwala Vs. Union of India** (1989 (39) E.L.T. 4 (Del.), learned counsel stated that validity of an order passed by Public Authority has to be adjudged on the reasons mentioned therein and fresh reason in the shape of affidavit or otherwise cannot be advanced to supplement the same.

6. I have considered the aforesaid submissions. Rule 48 A of CCS (Pension) Rules reads as follows:-

**"48-A. Retirement on completion of 20 years'
qualifying service.**

(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

- (i) on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.
- (ii) Posted abroad in foreign based offices of the Ministries/Departments,
- (iii) 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.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

The above rule requires that when a Government servant wants to voluntarily retire from service after completion of 20 years of qualifying service, he may do so by giving a notice of not less than 3 months in writing to the appointing authority. Thereafter duty is cast upon the appointing authority to either accept the request of the Government servant or to pass an order refusing the same within the notice period. If no such order is passed within the notice period then the retirement becomes effective on expiry of the said period.

Further Fundamental Rule 56 (k) reads as follows:-

"56(k) (1) 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 Deleted)
- (b) Nothing 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, 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."

Thus, circumstances under which permission to a Government servant for voluntary retirement may be withheld by an appropriate authority are enumerated in clause (1) (c) above. Clearly in the instant case, no such circumstances existed. Admittedly, the applicant was not under suspension. In addition to the above provisions voluntary retirement can also be sought under Rule-48 of CCS (Pension) Rules. Under this Rule, the qualifying service required is of 30 years. Thus, different provisions exist under which voluntary retirement can be sought. On perusal of applicant's application dated 07.03.2016 seeking voluntary retirement, I find that he has not mentioned under which provision he was seeking voluntary retirement. However, from what he has stated

in different places in his OA, it can be inferred that he had sought voluntary retirement under Rule-48(A) of the CCS (Pension) after completing 20 years of qualifying service prescribed under that Rule. This is evident from page-B of his O.A. where in the first paragraph under the caption "Synopsis & List of Dates" following is mentioned:-

"When voluntary retirement, upon completion of qualifying period of 20 years in service was sought for rejection if any must satisfy the test of reasonableness and the order passed rejecting the request must be based on valid reasons."

Again on page-D in 3rd para he has stated as follows:-

"Faced with certain domestic problems, Applicant, who by then has completed more than 20 years of service, vide 7.3.2016 requested the Respondents to allow him to voluntarily retire from service and if possible, waive the statutory period of three months."

In para-5.4 of the O.A. the applicant has stated as follows:-

"Because, power exercised by Respondents in rejecting the request contained in letter dated 7.3.2016 is not proper and contrary to the CCS (Pension) Rules and in particular, Rule 48A thereof. Reading of the impugned order suggests that the same was a product of non application of mind, arbitrary and based on irrelevant consideration. Rejection must be based on valid justifications. Applicant who completed more than 20 years of service was entitled to avail the voluntary retirement and the rejection fails to satisfy the test of reasonableness."

6.1 Thus, it is clear that the applicant was seeking voluntary retirement under Rule-48 (A) of the CCS (Pension) Rules after completion of 20 years of service. It may also be mentioned that under Rule-48 of CCS (Pension) Rules, the qualifying service required for seeking the voluntary retirement was 30 years, which the applicant has not completed having joined service in 1989. Further, under FR-56 (k) a Government servant was entitled to seek voluntary retirement on attaining the age of 55 years. That also was not applicable in this case.

7. I now proceed to examine the conditions under which voluntary retirement under Rule-48(A) could have been granted or could have been refused. In Government of India decision mentioned below the Rule-48(A) in Swamy's Pension Compilation, Edition 2013 in Clause-(iii), guidelines for acceptance of notice for voluntary retirement as issued by DoP&T are provided. According to these guidelines, notice of voluntary retirement given by an employee after 20 years of qualifying service should generally be accepted except in cases in which (a) disciplinary proceedings are pending or contemplated against the Government servant for imposition of a major penalty and the Disciplinary Authority having regard to the circumstances of the case is of the view that imposition of penalty of removal or dismissal from service would be warranted in this case, or (b) in which prosecution is contemplated or may have been launched in the Court of Law against the Government servant. It is further provided in the guidelines that where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant 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.

8. In the instant case, I find that it is true that disciplinary proceedings for major penalty were contemplated against the applicant at the time his request for voluntary retirement was considered. However, there is no record to show that the appointing authority had applied his mind to the charges contemplated against the applicant

and had come to the conclusion that in case those charges were proved, penalty of removal or dismissal from service would be warranted in this case. Moreover, the reason given in the impugned order for refusing the request of voluntary retirement is that applicant was not clear from vigilance angle. This was not any of the conditions mentioned in the DoP&T guidelines for refusing voluntary retirement. Hence, the impugned order does not appear to have been passed in accordance with the guidelines of DoP&T and is, therefore, unsustainable.

9. However, in this case, I notice that the applicant after passing of the impugned order has continued in service. This was admitted by learned counsel for the respondents during course of hearing. Thus, the applicant has not only discharged duties of the post after expiry of notice period but has also drawn salary on his post. He did not presume acceptance of the notice of voluntary retirement from the date of expiry of the notice period, which expired on 06.06.2016. He, therefore, cannot now be retired from the date on which notice period had expired. Thus, in the peculiar circumstances of this case, I come to the conclusion that even after quashing of the impugned order, the applicant cannot be treated to have retired from the date on which notice period expired.

10. I, therefore, dispose of this O.A. by quashing the impugned order dated 01.06.2016. However, no further relief can be granted to the applicant. No costs.

(Shekhar Agarwal)
Member (A)

/Vinita/