

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

OA No. 4414/2012

This the 19th day of September, 2016

Hon'ble Mr. P.K. Basu, Member (A)

Dinesh Kumar Gupta,
S/o Late Sh. P.C. Gupta,
R/o A-58, DDA Flat SFS 318,
Paschim Vihar,
New Delhi-110063

..... Applicant

(By Advocate: Mr. M.K. Bhardwaj)

VERSUS

UOI & Ors. through:

1. The Secretary,
Ministry of Finance,
North Block, New Delhi

2. The Chairman
Central Board of Excise & Customs,
North Block, New Delhi

3. The Commissioner,
Central Excise, Delhi-1
CR Building, IP Estate,
New Delhi Respondents.

(By advocate: Mr. P.K. Singh for Mr. Rajeev Kumar)

ORDER (ORAL)

Heard learned counsel for the applicant as well as learned counsel for the respondents. The applicant applied for voluntary retirement on 29.08.2012. According to him three months period expired on 03.11.2012 and as per Rule 48(A), he should have been deemed to have voluntarily retired, as on date. However, the

respondents issued letter dated 09.11.2012 rejecting his request for voluntary retirement on the ground that the department has initiated a departmental proceeding for major penalty against the applicant. Thereafter vide letter dated 19.12.2012 to the applicant the department again communicated that his request for voluntary retirement cannot be accepted due to departmental proceeding pending against him. It further stated that this was communicated to the applicant vide letter dated 09.11.2012 but the applicant states that he did not receive any communication regarding the departmental proceeding before 30.11.2012 and therefore, since within three months no decision regarding his voluntary retirement was communicated to him he should be deemed to have retired on 30.11.2012, according to Rule 48(A) of CCS Pension Rule 1972 which is reproduced below:-

“At any time after a Govt. Servant has completed twenty year’s 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 Govt. servant, including scientist or technical expert who is-

- (i) On assignment 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 Govt.,*

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.

(3) Deleted.

(3-A) (a) A Govt. servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefore:

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Govt. servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Govt. servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) The pension and [retirement gratuity] of the Govt. Servant retiring under this rule shall be based on the emoluments as defined under Rules 33 & 34 and the increase not exceeding five years in his qualifying service shall not entitle him to any notional fixation of pay for purposes of calculating pension and gratuity.”

2. The applicant also wishes to draw our attention on an order dated 28.12.2012 passed in this matter in which the Member has observed as follows:-

“Looking at the records available on file, I am also satisfied that there was no service of letter dated 2nd November, 2012 upon the applicant who was working at that time in the office. As per rules, after the period of three months is over, voluntary retirement comes into effect and therefore, the applicant is to be treated as voluntarily retired from 1st of December, 2012.”

3. It is stated that since the Tribunal vide above said order had held that the applicant is to be treated as voluntary retired from 03.11.2012 there is nothing more to be adjudicated in this matter.

4. The applicant also relied on the judgment of Hon'ble Supreme Court in Tek Chand Vs. Dile Ram dated 24.01.2001 in support of his prayer. The issue in that case was that whether the application for voluntary retirement filed by the applicant, after the period of three months, automatically is deemed to have been approved, as no communication was made to the applicant in that case either accepting or refusing the voluntary retirement application. The Hon'ble Supreme Court had passed an order in favour of the applicant in that case holding that he should be at liberty to take voluntary retirement according to Rule 48(A). The applicant's contention is that the ratio laid down by the Hon'ble Supreme Court in that case squarely applies in this case as well.

5. Learned counsel for the respondents states that the rejection of the applicant's voluntary retirement application was communicated vide letter dated 09.11.2012, that is before the period of three months, and it was also sent to the original address of the applicant. It is, therefore, stated that once Mr. S.C. Awasthi who was the dealing assistant in the Establishment Section had reported that the applicant has refused to take letter dated 09.11.2012 from him and also from Shri Ranvir Singh, LDC, therefore, the letter had to be sent to him by Speed Post.

Obviously, the applicant denied this. Rule 48(A) makes it clear that in case a department proceeding is pending, voluntary retirement cannot be accepted. The only dispute is whether the departments communication of their decision of rejection, as contained in their letter dated 09.11.2012 was received by the applicant before 30.11.2012 or not. The applicant certainly would have known about the letter dated 09.11.2012 issued by the office of Deputy Commissioner where he was working and, therefore, refused to accept the letter from two employees. Normally, such letters are received by the recipient. When the recipient does not receive the letter, it has to be sent by post. The facts and the principle of preponderance of probability are clearly against the applicant and the OA is, therefore, dismissed.

6. At this stage, learned proxy counsel for the applicant states that department have failed to take action against the applicant for refusal to accept letter dated 09.11.2012 from two employees of the department which indicates that this is been argued as an after thought. We reject this argument and direct the respondents to initiate action against the applicant for refusing to receive letter dated 09.11.2012. No costs.

**(P.K. Basu)
Member (A)**

/daya/