

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A./100/3836/2017
M.A./100/4367/2017

New Delhi, this the 28th day of September, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Shri Dal Chand Gupta
S/o Late Shri Ram Chand
Aged about 61 years
R/o H.No.279, Sector-21B, Faridabad (Har.) and
Voluntary Retired as Executive Engineer, C.P.W.D.
O/o The ADG (DR), Sewa Bhawan,
R.K. Puram, New Delhi-110066 ... Applicant

(Through Shri D.P. Sharma, Advocate)

Versus

1. Union of India
Ministry of Urban Development
Nirman Bhawan, New Delhi
(Through: The Secretary)
2. The Director General of Works
Central Public Works Department
Ministry of Urban Development
Nirman Bhawan, New Delhi
3. The Under Secretary (EW1)
Ministry of Urban Development
Nirman Bhawan, New Delhi-110001
4. The Inquiry Officer cum Chief Engineer (NDZ-8)
C.P.W.D., East Block-3, Level-5, R.K. Puram
New Delhi-110056 ... Respondents

(Through Shri Piyush Gaur, Advocate)

ORDER (ORAL)

Justice L. Narasimha Reddy, Chairman

The applicant was working as Executive Engineer in the CPWD. He submitted an application dated 7.09.2012 to the appointing authority with a request to permit him to retire on voluntary basis, with effect from 6.12.2012. Complaining that no steps were taken on his application for voluntary retirement, he filed OA No.2171/2013 before this Tribunal. He pleaded that once the period of three months elapsed from the date of submission of application, he is deemed to have retired and that he is entitled to be paid the pensionary benefits. The respondents filed counter affidavit stating that the request of voluntary retirement was rejected vide letter dated 26.11.2012 on the ground that disciplinary proceedings were pending against the applicant. It is stated that OA No.2171/2013 was allowed vide order dated 5.01.2018 taking the view that the applicant is deemed to have retired on 7.09.2012 i.e. the date on which he submitted the application for voluntary retirement.

2. The respondents issued a memorandum dated 28.04.2016 framing two charges against the applicant. It was in relation to his unauthorized absence and failure to file annual immovable property return for the period ending with 2013, despite instructions issued to him.

3. This OA is filed challenging the memorandum dated 28.04.2016. It is pleaded that once the applicant is deemed to

have retired on voluntary basis, there was absolutely no ground for issuing charge sheet after that date. Other contentions are also raised.

4. The respondents filed counter opposing the OA. It is stated that the request of the applicant for voluntary retirement was rejected and the truth or otherwise of the charges needs to be decided in disciplinary inquiry.

5. We heard Shri D.P. Sharma, for the applicant and Shri Piyush Gaur, for the respondents.

6. The applicant has virtually misled this Tribunal and made a successful effort to overcome the effect of disciplinary proceedings and walked away with the voluntary retirement. By the time he made an application on 7.09.2012 for voluntary retirement, he was facing two disciplinary proceedings in which the charges were serious. In one of the cases, criminal case was also pending. No prudent person would accept the request of voluntary retirement when disciplinary proceedings are pending against an employee. In fact, when the request of the applicant was rejected through communication dated 26.11.2012, the plea raised by him was that the order of rejection was served on 11.12.2012 i.e. three days after the notice period of voluntary retirement. This is on the premise that he is deemed to have retired since his request is deemed to have been accepted.

7. This Tribunal allowed OA No.2171/2013 with a declaration that the applicant is deemed to have retired with effect from

7.09.2012 i.e. the date on which the application for voluntary retirement was submitted. We do not propose to deal with the findings recorded therein. We can only observe that had the pendency of disciplinary proceedings been brought to the notice of the Tribunal when OA No.2171/2013 was being heard, there would have been a possibility to examine the matter from a different angle also. We leave the discussion on this aspect, at that.

8. The charge memo was issued to the applicant at a time when he was very much in service. It is not even alleged that the charge memo was issued by an authority not competent to do so. The mere fact that the aforementioned OA was allowed on 5.01.2018, long after the present charge memo was issued, cannot be the basis to set aside the same. Disciplinary proceedings can be initiated against a retired employee also. The so called deemed retirement of the applicant does not have any impact on the impugned charge sheet.

9. We, therefore, dismiss the OA. MA also stands disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/dkm/