

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.529/2017

Dated : 28.9.2017

**CORAM: HON'BLE SHRI A.J.ROHEE, MEMBER (J)
HON'BLE SHRI R.VIJAYKUMAR, MEMBER (A)**

M.Faneendra Nath,
Working as Executive Engineer
(Civil) Office of Superintending
Engineer, MCC-II
CPWD, E1/2, Type V Qrs,
CGS Colony,
Ghatkopar (W),
Mumbai-400086
R/o C-5, Type IV, Ekta Vihar,
Sector-25, CBD Belapur,
Navi Mumbai-400614.

... Applicant

(By Advocate Ms.Priyanka Mehndiratta)

Versus.

1. The Union of India,
Through the Secretary,
Ministry of Urban Development,
Works Division,
Nirman Bhawan,
New Delhi -110011.

2. The Superintending Engineer,
Mumbai Central Circle-II,
E-1&2, CGS Colony,
Ghatkopar (W),
Mumbai-400086.

....Respondents.

(By Advocate Shri R.R.Shetty)

Reserved on :- 25.9.2017

Pronounced on :- 28.9.2017

ORDER

Per : R.Vijaykumar, Member (A)

This is an application filed on 7.9.2017 seeking the following reliefs :-

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned orders dated 11.08.2017 (A-1) and 21.6.2017 (A-2) with consequential benefits.

b. This Hon'ble Tribunal may further be pleased to direct the Respondents to allow the Applicant to continue in his present post as Executive Engineer (C) upto 30.9.2022, which is his date of retirement on Superannuation.

c. Any other and further order as this Hon'ble Tribunal deems fit in the nature and circumstances of the case be passed".

2. The factual matrix of the case is : Applicant has been served with an order under Rule 56(j) of the Fundamental Rules in an order issued by the Ministry of Urban Development Works Division, Government of India No.28018/5/2017-EW-1 dated 21.6.2017 under the signature of the Under Secretary (EW.1) conveying a notice issued in the name of the President under Rule 56(j) of the Fundamental Rules directing his retirement from service on the forenoon of the date following the date of expiry of three months following the date of service of this notice on him. The notice was served on 30.6.2017 and he would,

therefore, retire on 1.10.2017 in terms of these orders.

3. The applicant has argued that the order does not contain any reasons and the condition precedent to exercise of this absolute right is "satisfaction of the authorities" but the impugned order does not speak to any such satisfaction. He has referred to DOPT OM. NO.25013/1/2013-Estt(A) dt. 21.3.2014 on conditions under which, the employee can be retired as modified/clarified in DOPT OM No.25103/01/2013-Estt.A-IV dt. 11.9.2015 based on the directions of the Hon'ble Apex Court. He has also referred to his excellent APAR gradings from 2009-10 onwards and that his integrity has been judged as "beyond doubt". He has also adverted to other Courts and Tribunals judgments/orders in defence of his case.

4. Learned counsel for the applicant has prayed for interim relief considering that his retirement is imminent.

5. The respondents in their reply have affirmed their rights to issue such orders under Rule 56(j) and the notice concerned had been issued with appropriate approval. In response, the applicant has

filed a representation against the notice of premature retirement and this has been circulated to the Representation Committee formed for this purpose in O.M. No.25013/01/2013-Estt-A-IV dated 16.8.2016 amended vide O.M. No.25013/01/2013-Estt-A-IV dated 10.8.2017. The procedure for considering such representations as mentioned in para 6 of the CCS (Pension) Rules debars reference to the Committee until disposal of any case or stay order issued in a Court. They have, accordingly, opposed the prayer for interim stay on this basis and because the applicant's representation is pending before the Representation Committee and has been made prematurely to this Tribunal.

6. It is needless to say that submission of representation against the order of compulsory retirement passed in pursuance of the provisions of F.R.56(J)(1) is a statutory remedy must be exhausted by the employee before he challenges the order of compulsory retirement. Although a representation is filed, the same is still pending for decision on it. Hence, prima facie the OA is premature since statutory remedy is not finally exhausted.

7. At present there is no material on record

before us for consideration as to on what grounds the respondents have taken a decision to retire the applicant compulsorily after he attained the age of 50 years. The fact that there are no adverse entries/remarks in his APAR or that he has not been punished in any disciplinary proceedings nor any disciplinary proceeding is presently pending against him although are relevant, they have less significance, since there must be other strong grounds to take a harsh decision to retire the applicant compulsorily. It is needless to say that the Representation Committee while deciding the representation will consider all the material and will take a decision on it. As such until any decision is taken, it may be stated that the cause of action in fact, has not arisen for the applicant to approach this Tribunal. The decision taken on the representation can very well be challenged by applicant, along with the impugned order passed by the respondents and at that time, this Tribunal will have an opportunity to consider the grounds on perusal of the original file record, on which a decision is taken by respondents and the Representation Committee. Hence, at this stage, it

cannot be said that any prejudice will be caused to the applicant, except that on expiry of the notice period he will stand compulsorily retired from service unless his representation is favourably decided before 30.9.2017. In case the Representation Committee decides in favour of the applicant or their adverse decision is successfully challenged by the applicant in a fresh O.A., the applicant will be entitled to get all the monetary benefits on reinstatement in service. In the present case, at this interim stage, no relief can be granted to the applicant as such.

8. During the course of arguments the learned Advocate for the applicant cited the interim order passed by Hyderabad Bench in O.A.No.20/629/2017 dated 07.09.2017 for our perusal and submitted that in that case, the order regarding compulsory retirement has been stayed by way of interim order till representation is decided. However, it appears that while doing so it is not considered if representation is a statutory remedy and if not exhausted when will be its effect. Hence, in this OA, applicant is not entitled to relief sought, it being premature.

9. The matter has been carefully considered and

in the interest of the applicant, it would be appropriate to issue directions to the Respondent No.1 to give necessary instructions to the Representation Committee to convene its meeting and to have the representation of the applicant considered prior to his retirement as far as possible and to pass orders on his representation within a period of 2 weeks from the date of receipt of certified copy of this order and to communicate it to applicant. It is further directed that if his representation is accepted and he is reinstated, he shall not be penalized for any loss of service that may have been occasioned by the issue of this notice.

10. In view of the above, the prayer for interim relief is rejected. The OA also stands disposed of with the consent of both the learned Advocates for the parties, with directions as above to the Respondent No.1.

11. The applicant will be at liberty to approach the appropriate forum of R-1/Representation Committee, in which event he will be at liberty to challenge both the orders that are passed by the respondent No.1 and the order passed by the Representation Committee on his representation.

12. In the facts and circumstances of the case, no order as to costs. Registry is directed to expedite issuance of certified copy of this order for both the parties.

(R.Vijaykumar)
Member (A)

(A.J.Rohee)
Member (J)

B.