

(Reserved on 09.01.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD**

Original Application No. 330/00457/2018

This the **06th** day of **February, 2019**

HON'BLE MS. AJANTA DAYALAN, MEMBER (A)
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Dinesh Chandra Gupta, S/o Late M.L. Gupta, R/o 26/1, K.K. Puri Colony, Nandanpura Jhansi, (District Jhansi).

.....Applicant

By Advocate: Shri S.M. Ali

Versus

1. Union of India through General Manager, Head Quarter, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Personnel Officer (DRM-P), North Central Railway, Jhansi.
4. Senior Divisional Commercial Manager, North Central Railway, Jhansi.

.....Respondents

By Advocate : Ms. Shruti Malviya

O R D E R

DELIVERED BY:-

HON'BLE MS. AJANTA DAYALAN, (MEMBER-A)

The present original application has been filed by the applicant for quashing of chargesheet dated 29.01.2018 (Annexure A-1) and consequently payment of all retiral dues including gratuity, GPF, leave encashment, GIC etc and arrears of pension alongwith 12% interest. The applicant has also sought staying the proceedings of chargesheet dated 29.01.2018.

2. The case of the applicant is that he has been working in the respondents' department since 28.11.1980 when he was first appointed

as Junior Clerk. He was promoted finally to the post of Chief Office Superintendent in September 2015. On completion of 37 years of service, he submitted voluntary retirement notice dated 01.11.2017 (Annexure A-2) due to his bad health, which was duly received by the respondent no. 3 and 4 on the same day and was to be effected after 90 days that is on 29.01.2018. Learned counsel for the applicant pleaded that as per the instruction dated 31.008.2016 (Annexure A-3), cases of voluntary retirement notice were to be dealt with five days prior to completion of notice period of 90 days. According to the applicant, the notice period, being of 90 days, was over on 29.01.2018 and hence, he should have stood voluntarily retired on 29.01.2018. The applicant accordingly intimated the department about non receipt of any information about his voluntary retirement notice and payment of his dues on 01.02.2018 (Annexure A-4). He made subsequent representation dated 15.02.2018 (Annexure A-5). On 01.03.2018, he was informed that the department proceedings are pending against him and as such his voluntary retirement notice could not be considered. It was also informed therein that he has already been informed about pendency of disciplinary proceeding vide letter dated 29.01.2018. According to the applicant, letter dated 29.01.2018 was an internal correspondence and was received by him alongwith chargesheet. The applicant submitted reply to this reference vide letter dated 12.03.2018 (Annexure A-7) requesting for settlement of his retiral dues in view of his having already voluntarily retired on 29.01.2018.

3. The learned counsel for the applicant further stated that the disciplinary authority issued a major penalty chargesheet dated 29.01.2018 on the last day of his retirement. But this chargesheet was not served upon the

applicant within 90 days and was in-fact received by him much later in March 2018. He also stated that the chargesheet is on account of prejudice and malafide and hence liable to be quashed. Learned counsel for the applicant has also placed reliance on judgment dated 15.11.2017 of Hon'ble High Court, Allahabad (Lucknow Bench) in the case of Chandra Prakash Verma Vs. Chairman, U.P. Govt Employees Welfare Corp & Another – 2017 Law Suit (All) 2205. Learned counsel for the applicant also stated that no pecuniary loss was caused to the department and the applicant had already served show cause notice to the contractor. Learned counsel for the applicant, therefore, concluded that in view of the long period of service and notice period of voluntary retirement already having expired on 29.01.2018 till which date no chargesheet was issued to him, the applicant needs to be granted reliefs sought in the OA. The counsel for the applicant stated that in any case, the chargesheet is malafide and no pecuniary loss has been caused to the department and as such, there is no reason for withholding the retiral dues.

4. Learned counsel for the respondents stated that it is true that the applicant submitted notice on 01.11.2017. However, as per the Board's Master Circular annexed at Annexure -1 to the counter affidavit (reference para 11.1), notice period is of three months. Para 11.2 further states the authority competent to accept notice. It also states that in case notice is of less than three months, the competent authority may accept the same only in deserving cases in consultation with the associate finance. He also brought to our attention the order dated 15.03.2018 (Annexure-2 to the counter affidavit) whereby all branch officers were directed to correct the mistake in the internal circular dated 31.08.2016

from 90 days notice period to three months notice period. In any case, he stated that the order dated 31.08.2016 was an internal circular by the Jhansi Division and cannot override the Board's orders quoted in the Master Circular. He also stated that it was not within the powers of any authority without consultation of finance to accept any voluntary retirement notice which was less than three months. He also brought to our attention para 11.5 of the said Master Circular wherein it is clearly stated that 'If an officer desires that notice should be accepted before expiry of the stipulated period of 3 months, he should make it clear in the notice itself'.

5. The learned counsel for the respondents further stated that even if the applicant's version is accepted, he had informed the office on 29.01.2018 that on account of sudden illness of self, he could not be present in the office. His application to this effect has been annexed at Annexure -3 to the counter affidavit. Learned counsel for the respondents stated that as he was not available in the office on 29.01.2018, chargesheet dated 29.01.2018 was pasted on his residential address in Jhansi on 30.01.2018. In support of this, certificate by three officers dated 31.01.2018 has been placed at Annexure A-4 to the counter affidavit. Counsel for the respondents further stated that the chargesheet is not malafide and is based on evidence. In any case, it is open for the applicant to defend himself during the inquiry and therefore, there is no reason to quash the chargesheet. He also stated that it is not correct to say that no pecuniary loss was incurred by the department as due to careless working, some contract correspondence got delayed which caused loss of revenue and delay in passenger amenity services. He stated that a minor penalty chargesheet was already served on the

applicant on 03.10.2017 for delay in process of awarding contract of cycle scooter stand. Further, the Master Circular clearly states that 'Acceptance of the notice in all cases by the authorities mentioned above will be subject to clearance by the Vigilance Branch and from DAR angle'. As vigilance case was already pending against the applicant, no clearance from vigilance angle was given to him and hence, his voluntary retirement notice could not have been accepted. He also stated that the applicant was aware that another chargesheet was in process and his absence on 29.01.2018 was to avoid receipt of chargesheet. The respondents' counsel concluded that in view of clear provisions of Master Circular giving period of notice as three months, the notice period expired only on 31.01.2018 before which chargesheet was issued to the applicant as per the procedure by pasting it at his residential address and as such there is no question for treating the applicant as voluntarily retired.

6. We have heard both the counsels for parties and have gone through the pleadings of the case. We have also given our thoughtful consideration to the entire matter.

7. It is not disputed that voluntary retirement notice was given by the applicant on 01.11.2017 and the notice was received by the respondent nos. 3 and 4 on the same day. The crucial point before us is whether the notice period is of 90 days or three months. Here we note that the Master Circular appended by the respondents is very clear and everywhere mentions three months and not 90 days. We also note that the period of 90 days being quoted by the applicant is based on the letter dated 31.08.2016, which is only an internal correspondence from Senior

Divisional Personnel Officer to Branch Officers of Jhansi Division and cannot be said to carry any statutory authority and cannot override the Board's orders. The Board's orders on this matter, as already discussed above, are very clear and are contained in the Master Circular appended at Annexure-1 to the counter affidavit and clearly mentions the period of notice as three months. In fact, it also states that notice period of less than 3 months can be accepted by the competent authority only in deserving cases and that too in consultation with Associate Finance. It also states that if the Govt. servant desires notice of less than 3 months, it has to be specifically mentioned in the notice for voluntary retirement. This was not done by the applicant as we will see in the succeeding paragraph.

8. In addition to all above, we note that the applicant himself in his voluntary retirement notice dated 01.11.2017 has mentioned notice for three months very clearly twice whereas period of 90 days has not been mentioned anywhere in the said notice.

9. In view of the clear provisions of the Master Circular of the Railway Board as well as applicant's own voluntary retirement notice, we come to clear conclusion that notice period was for three months only and not 90 days. Accordingly, having started on 01.11.2017, notice period ends only on 31.01.2018.

10. As regards the disciplinary case, we have a clear report of three officers that chargesheet dated 29.01.2018 was pasted on the residence of the applicant on 30.01.2018. Even the applicant is not denying such pasting and is not disputing the date of such pasting. In fact, during the course of the arguments, learned counsel for the applicant objected only to the chargesheet not having been given to the applicant personally or

not having been sent by post but to use of this unusual method of pasting. We, therefore, have no reason to doubt the fact of pasting of chargesheet on the residence of the applicant on 30.01.2018 and as such, the chargesheet was served on him prior to expiry of the notice period.

11. We also note that the chargesheet dated 29.01.2018 was sent to the applicant by registered post as well. But to ensure delivery of chargesheet before expiry of notice period and the applicant having absented himself on 29.01.2018, we feel that the respondents did not do any unusual by resorting to this method of pasting for ensuring delivery of chargesheet prior to expiry of notice period. In any case, this was not the first chargesheet issued to the applicant - another chargesheet for minor penalty having already been issued to him earlier on 03.10.2017.

12. As regards malafide being alleged by the applicant in issue of chargesheet to him, we note that the applicant has not impleaded any officer by name as party in the OA. Also, no specific allegation has been made against any officer in the OA. As such, we have no reason to accept this plea of the applicant.

13. We also note that according to the respondents, one minor penalty chargesheet was already issued to the applicant in October 2017. Hence, even on this ground, the voluntary retirement notice could not have been accepted by the department.

14. In view of the above discussions, we are clear that the voluntary retirement notice period expired only on 31.01.2018 and the chargesheet was served on the applicant prior to that by pasting the

same at his residence and as such, he cannot be treated as having retired on 29.01.2018. It goes without saying that it shall remain open to the applicant to defend himself in the inquiry proceedings.

15. The OA is accordingly dismissed being devoid of merits. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...