

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:
NEW DELHI**

O.A. NO.1982 of 2016

Orders reserved on : 02.09.2019

Orders reserved on : 11.09.2019

Hon'ble Ms. Nita Chowdhury, Member (A)

Dr. Dinesh Kumar Paliwal,
Aged about 59 years,
Deputy Educational Advisor,
S/o Shri Rajendra Prasad Paliwal,
Ministry of Human Resource Development,
Government of India, Shastri Bhawan,
New Delhi.

...Applicant
(By Advocate: Mr. Amitesh Kumar)

VERSUS

1. Union of India through
the Secretary,
Ministry of Human Resource Development,
Department of Higher Education,
Shastri Bhawan, New Delhi.
2. Dr. S.S. Sandhu, Chief Vigilance Officer,
Ministry of Human Resource Development,
Shastri Bhawan, New Delhi.
3. The Secretary,
Ministry of Personnel, Public Grievances and Pension,
Department of personnel and Training,
Government of India, North Block,
New Delhi-110001.

...Respondents
(By Advocate: Mr. Ashok Kumar)

O R D E R

By filing this OA, the applicant is seeking the following
reliefs:-

- “(i) Quash and set aside the impugned memorandum dated 26.4.2016 of the Department of Higher Education, MHRD, Government of India whereby the application/notice dated 01.02.2016 submitted by the Applicant seeking voluntary retirement from the Government Service has been denied on the ground that “Fact Finding Enquiry” has recommended Regular Disciplinary Action (RDA) to be initiated against the Applicant; and/or
- (ii) Direct the Respondents to allow his request for voluntary Retirement from Service with all consequential benefits; and/or
- (iii) any other order which is deemed just and proper in the nature of the circumstances of the present case be also passed in favor of the applicant in the interest of justice.”

2. This case was earlier heard by the coordinate Bench of this Tribunal and vide Order dated 21.2.2017 allowed the instant OA, the operative part of the said Order reads as under:-

“7. In the light of the above, I am of the view that the instant OA deserves to succeed. Therefore, the impugned OM (Annexure A-1) is set aside. The respondents are directed to allow the applicant’s request for voluntary retirement from service w.e.f. the due date.

8. The OA is allowed accordingly. No order as to costs.”

3. When the respondents have not complied with the aforesaid Order of this Tribunal, the applicant filed Contempt Petition No.233/2017 on 31.3.2017. Pursuant to notice issued to the respondents in the said CP, they have filed their reply on 31.5.2017 in which they have stated that Writ Petition challenging the said Order dated 21.2.2017 was filed

on 23.5.2017, vide Diary No.260311/2017 but registry of High Court have raised some objections which are being removed it is expected that Writ Petition will be listed shortly.

4. The said CP came up for hearing on 1.6.2017 and this Tribunal passed the following orders:-

“Learned counsel for the respondents while submitting that they have filed a status report vide Diary No. 4901 dated 31.06.2017 stating that they have filed a Writ Petition against the order of this Tribunal vide Diary No. 260311 and the same is yet to come up for admission.

2. Learned counsel for the petitioner while submitting that he is going to retire on attaining the age of superannuation on 30.06.2017 and this Tribunal while allowing the O.A directed the respondents to allow the applicant's request for voluntary retirement from service with effect from the due date. The respondents are trying to avoid implementation of the orders of this Tribunal till 30.06.2017 and hence unless they are compelled to comply with the orders of this Tribunal immediately, the orders of this Tribunal in the O.A itself become infructuous.

3. In the circumstances, list the C.P. on 13.06.2017 for reporting compliance by the respondents however, subject to the result of the Writ Petition filed by them before the Hon'ble High Court.”

5. The Writ Petition (Civil) No.5242/2017 filed by the respondents against the aforesaid Order of this Tribunal passed in the instant OA was considered by the Hon'ble Delhi High Court on 7.6.2017 and the High Court passed the following orders:-

“Learned counsel for respondent seeks an adjournment on the ground that the arguing counsel is not available today.

Mr.Narula, counsel for the petitioners, submits that respondent has filed a petition under the Contempt of Courts Act which is listed on 13.06.2017.

Counsel for the respondent submits that he would seek an adjournment in the contempt proceedings post the date fixed in this writ petition.

Counsel also submits that the inquiry proceedings against the respondent stand stayed by the order dated 05.05.2017 passed in O.A. No.1558/2017.”

6. Finally the Hon’ble Delhi High Court vide Order dated 12.7.2017 disposed of the said Writ Petition with the following observations:-

“We have heard learned counsels, and proceed to dispose of the present writ petition. The petitioner/ UOI has preferred the present petition to assail the order dated 21.02.2017 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in O.A. No.1982/2016, whereby the OA preferred by the respondent/ applicant has been allowed, and the petitioner has been directed to allow the respondent/ applicant’s request for voluntary retirement from service with effect from the due date.

The respondent had applied to seek voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972 vide his application on 18.11.2015. The application was returned by the petitioner on 28.01.2016. The respondent then gave a fresh application on 01.02.2016. Since he was not granted permission to voluntarily retire, he preferred the aforesaid O.A.

The tribunal has allowed the O.A. by passing a short order. The operative portion of the said order reads as follows:

4. I have heard the learned counsel for the parties, perused the pleadings as well as the rulings cited at the Bar, and given my thoughtful consideration to the matter.

5. The Government’s “Guidelines for acceptance of notice” given under rule 48-A in the Swamy’s Pension Compilation read, inter alia, as under:

“Such acceptance may be generally given in all cases except those (a) in which disciplinary proceedings are pending or contemplated against the Government servant concerned for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, or (b) in which prosecution is contemplated or may have been launched in a Court of Law against the Government servant concerned.”

6. *Disciplinary proceedings are stated to be contemplated against the applicant, but the other condition that having regard to the circumstances of the case, the disciplinary authority is of the view that the imposition of the penalty of removal or dismissal from service would be warranted in the case, is not fulfilled. That major penalty proceedings are contemplated is not sufficient, because “major penalty”, by definition, is not confined to removal or dismissal.*

7. *In the light of the above, I am of the view that the instant OA deserves to succeed. Therefore, the impugned OM (Annexure A-1) is set aside. The respondents are directed to allow the applicant’s request for voluntary retirement from service w.e.f. the due date.*

8. *The OA is allowed accordingly. No order as to costs”.*

The impugned order leaves much to be desired. The tribunal is expected to record and deal with all the submissions that the parties may raise before it. A perusal of the impugned order shows that the tribunal has only recorded its findings, but the reasons therefor are conspicuously absent. On this short ground, the impugned order cannot be sustained. Accordingly, we set aside the impugned order and remand the case back to the tribunal for rehearing and reconsideration of the matter afresh. The tribunal shall pass a fresh reasoned order dealing with the submissions of the parties.

We make it clear that we have not expressed any opinion on the merits of the respondents claim. We further direct that the impugned order dated 21.02.2017 shall not influence the tribunal, one way or another, while dealing with the matter afresh.

The parties shall appear before the tribunal on 18.07.2017. The tribunal is requested to expedite the hearing of the case as early as possible.”

7. The aforesaid Contempt Petition preferred by the applicant was dismissed as withdrawn by the applicant vide Order dated 14.7.2017.

8. In the above facts and circumstances of this case, this Tribunal heard learned counsel for the applicant and learned counsel for the respondents and perused the pleadings available on record.

9. The grievance of the applicant in this case is against the Office Memorandum dated 26.4.2016, the contents of which read as under:-

“Subject- Request of Voluntary Retirement from Government Service (VRS) from Dr. D.K. Paliwal, Deputy Education Advisor – reg.

The undersigned is directed to refer to notice of voluntary retirement dated 01.02.2016, addressed to Hon’ble Minister for Human Resource Development, tendered by Dr. D.K. Paliwal, Deputy Education Advisor under Rule 48-A of Central Civil Service (Pension) Rules, 1972 seeking retirement from Government Service and to inform that the Competent Authority has denied him the request for voluntary retirement as the fact finding inquiry has recommended Regular Disciplinary Action (RDA) to be initiated against Dr. Paliwal.”

10. Brief facts of the case are that applicant – Deputy Educational Advisor (General) has given in detail the hierarchy of the posts, he occupied before applying for Voluntary Retirement. The applicant had submitted a notice

of 3 months' dated 18.11.2015 for voluntary retirement from Government service under FR-56 (k) (1) addressed to the Secretary (Department of Higher Education), which was received on 23.11.2015. The notice of voluntary retirement was processed in Establishment Branch and Vigilance Branch were requested to furnish the vigilance status in respect of applicant vide Office Note dated 1.12.2015. Vigilance Branch replied vide inter Office Note dated 2.12.2015 that the file dealing with grant of vigilance clearance to the applicant is submitted to Secretary (HE) (for grant of vigilance clearance in connection with private foreign visit) for a decision in the matter. Vigilance Branch was again requested to furnish vigilance status vide Office Memorandum dated 11.1.2016. In the meantime, examination of notice tendered by the applicant revealed some technical defects and as such he was advised to submit a fresh notice vide MHRD Office Memorandum dated 28.1.2016. Thereafter applicant tendered a fresh notice for voluntary retirement dated 1.2.2016 addressed to the Hon'ble Minister of Human Resource Development under Rule 48-A of Central Civil Service (Pension) Rules, 1972 with request to condone 3 months' notice period in view of his earlier notice of voluntary retirement dated 18.11.2015.

10.1 In the meantime, Vigilance Branch vide Office Note dated 4.2.2016 informed that it has been decided to consider

grant of vigilance clearance to the applicant only after a decision is taken on the ongoing enquiry ordered in the matter of payment of HASA [Hill Area Special Allowance] to the employees of the NEHU [North Eastern Hill University] without the approval of the Competent Authority. It is relevant to note that North Eastern Hill University (NEHU), Shillong – a fully funded Central University, was paying Special Duty Allowance (SDA) to its employees from September, 1986. In view of judgment of Hon'ble Supreme Court, payment of SDA to employees of NEHU was discontinued in September, 1994. However, the Executive Council of NEHU, Shillong on 23.9.1997 passed a Resolution in the form of an Ordinance OE-10, which envisaged grant of Hill Area Special Allowance (HASA) to Members of teaching and non-teaching staff in Nehu @ 12% of basic pay subject to a ceiling of Rs.1000 pm. with effect from 1st January 1995. The above Ordinance was forwarded by Deputy Registrar, NEHU, Shillong to Department of Higher Education vide letter dated 23.9.1997 for doing the needful to obtain the Visitor's approval. The applicant while functioning as Assistant Educational Adviser (General), communicated to Registrar, NEHU vide letter dated 26.9.1997 that "**the Ordinance has been noted**". The file No.8-35/97-Desk (U), wherfrom the abovementioned letter was issued, is not traceable. Further, in pursuance of the recommendations of 6th CPC, UGC

conveyed guidelines approved by Ministry of Human Resource Development to all Central Universities including NEHU in October, 2008 for extending the benefits of revised pay Rules to all Central Universities. The guidelines, *inter alia*, stipulated that it would be necessary to ensure that the final package of benefits extended to the employees of Autonomous Organizations is not more beneficial than the admissible to corresponding categories of employees in the Central Government. However, NEHU continued to pay both Special Duty Allowance (SDA) recommended by 6th CPC as well as Hill Area Special Allowance (HASA) to their employees which resulted in unauthorized payment of Rs.11.14 crore by NEHU to its employees from September 2008 to March 2011 on account of HASA as pointed out by Comptroller & Auditor General (C&AG) in their Audit Report.

10.2 In processing of applicability of HASA to NEHU was allegedly processed by the applicant of the OA within a short period of two clear working days only. The said file is missing but the respondents stated that keeping in view the number of channels involved, it was very unlikely that a proposal was processed within a period having only two clear working days in between and that the comments/approval were obtained from University Grants Commission, Integrated Finance Division of MHRD, Hon'ble Minister and finally the President of India in his capacity as the Visitor of the University. In this

back drop, a *prima facie* enquiry was ordered on 10.7.2015 against the actions of the applicant, and the report was submitted on 10.10.2015 concluding that due to lack of records, it is difficult to conclude as to whether any irregularity has been committed or not and to hold anyone responsible for the same. The above report was not accepted by the competent authority. With the approval of the competent authority, a second fact finding enquiry was assigned to a two member Committee vide order dated 8.1.2016 and the said Committee submitted its report on 4.4.2016 concluding that the applicant has violated the set procedure (in issuing the letter dated 26.9.1997 conveying that the ordinance has been noted). Under these circumstances, vigilance clearance in respect of the applicant was withheld by the Vigilance Branch when he applied for voluntary retirement.

10.3 The notice of voluntary retirement dated 1.2.2016 received from the applicant was examined in the Establishment Branch and placed before the Competent Authority (i.e. Hon'ble Human Resource Development Minister) along with vigilance status in respect of the applicant as conveyed by Vigilance Branch for orders on the application. The Competent Authority on 16/17.02.2016 given the proposal at 7(a) and 8, the contents of para 7(a) and 8 reads as under:-

“7. In view of the above facts and circumstances, following options are available for consideration/approval of HRM being the competent authority:-

- (a) **Accept notice of voluntary retirement dated 01.02.2016 [received on 03.02.2016] tendered by Dr. D.K. Paliwal, DEA under sub-Rule (3A) (a & B) and allow him to retire from Government Servant on 19.02.2016 (F.N.) by relaxing 3 months' notice period with condition that Dr. Paliwal Shall not apply for commutation of a part of his pension before the expiry for the period of notice of three months;**
- (b) Accept the notice of voluntary retirement dated 01.02.2016 (received on 03.02.2016) tendered by Dr. D.K. Paliwal, DEA and allow him to retire from Government Service from 03.05.2016 (F.N.) i.e. after expiry of three months notice period; or
- (c) Not to accept the notice of voluntary retirement and refuse him the permission to retire from Government service for which reasons may be recorded.

8. It may be informed that Vigilance Clearance would have to be explicitly given or denied before the due date by the Vigilance Branch, he is due to retire (19.06.2016 in option (a) or 03.05.2016 in option (b) [Para-7 above] as per the decision taken by the Competent Authority (i.e. HRM). Hence, once HRM passes the orders, Vigilance Branch would be asked to give Vigilance Clearance before the due date.”

(emphasis supplied)

After the receipt of in principle approval of voluntary retirement, the matter, for grant of vigilance clearance or otherwise in explicit terms, was again examined at length by the Vigilance Branch and it was found that the instant case was not covered under the conditions where vigilance

clearance can be granted and, thus, advised Establishment Branch to re-submit the case before the Hon'ble Human Resource Development Minister (Competent Authority) for taking a fresh view in the matter. Accordingly, the matter was again placed before the Hon'ble Human Resource Development Minister for taking a fresh view in the applicant's case. It was directed by the Hon'ble Human Resource Development Minister on 7.3.2016 to wait for the vigilance clearance in the matter.

10.4 Thereafter Establishment Branch, vide Office Note dated 8.4.2016 again approached Vigilance Branch to intimate present status of ongoing enquiry ordered against the applicant in the matter of payment of HASA (Hill Area Special Allowance) to the employees of NEHU without the approval of the competent authority, for processing, his request for voluntarily retirement from Government service. The Vigilance Branch vide Office Note dated 11.4.2016 informed that "Fact finding inquiry committee vide its letter dated 4.4.2016 has submitted its report. The Committee in its report has observed that Dr. Paliwal has violated the set procedure and therefore, recommended for proceedings against him by the Ministry. The report is under submission to the Competent Authority in the Ministry for a decision on the same.

10.5 This case was again submitted before the Competent Authority (i.e. Hon'ble Human Resource Development

Minister), along with updated status of vigilance provided by Vigilance Branch, for final orders in the matter. The Competent Authority on the basis of updated vigilance status furnished on 11.4.2016, then took a decision to deny the request of applicant for voluntary retirement from Government service as the fact finding enquiry has recommended Regular Disciplinary Action to be initiated against him. The decision taken by the competent authority was accordingly conveyed to the applicant vide Office Memorandum dated 26.4.2016.

10.6 Being aggrieved by the aforesaid Office Memorandum dated 26.4.2016, the applicant has filed this OA seeking the reliefs as quoted above.

11. During the course of hearing, learned counsel for the applicant submitted that from a perusal of processing of Vigilance Clearance in respect of applicant, as revealed from the notings made in file No.A-38011/47/2015-E.IV (page 10 to 15) that though the entire matter pertains to vigilance clearance in respect of voluntary retirement to be granted to an employee, however, the vigilance section and CVO deliberately kept quoting and referring to the provisions pertaining to “resignation” submitted by an employee and in support of their notings and proposals made on the file, the Vigilance Section refer to para 6.14.1 of Vigilance Manual. Counsel further submitted that notings made in the

afoaresaid file reveals that the Administration/establishment of MHRD, Govt. of India, time and again drew the attention of vigilance section and CVO to the aspect as to whether the case of the applicant seeking voluntary retirement is covered within any of the parameters as stipulated in para 6.14.1 of Vigilance Manual, but still the vigilance section and CVO of MHRD appears to have referred the said para 6.14.1 of vigilance manual in support of their notings and proposals made on the file knowing fully well that the case under processing of the applicant was not the case of resignation rather it was a case of voluntary retirement from service. As such the entire noting made by the vigilance section and agreed to by the CVO, appears to be a clear act to mislead and misguide the higher authorities and to harass the applicant.

11.1 Counsel for the applicant further argued that Vigilance Department of respondent no.1 appears to have deliberately invoked the provisions of DOP&T OM dated 31.5.1994 to misguide and mislead the higher authorities in order to achieve their purpose and objective of harassing the applicant as the said OM of DOP&T is applicable in respect of vigilance clearance to an employee who is “resigning” from service and does not deal with those employees who are seeking ‘voluntary retirement from service’.

11.2 Counsel further argued that so far as grant of permission to voluntarily retirement from service is concerned, the same is governed by the provisions contained in Fundamental Rules, 1922. Counsel also submitted that DOP&T vide its Notification dated 17.1.2014 has notified the Fundamental (1st Amendment) Rules, 2014 which came into force on the date of their publication in the Official Gazette, i.e., 17.1.2014 itself, which provides for amendment in Rule 56 of Fundamental Rules, 1922 and as per the said amendment, it is opened to the appropriate authority to withhold permission to a Government servant, who seeks to retire if the Government servant is under suspension or a chargesheet has been issued and the disciplinary proceedings are pending or if judicial proceedings on charges which may amount to grave misconduct, are pending. Since none of the aforesaid requirement of conditions are attracted in the applicant's case which warrants denial of VRS to the applicant, the action of the respondents denying him VRS vide impugned order is not legally sustainable in the eyes of law. Counsel further submitted that as per the provisions contained in FR 56 (k) (1) (c), the appropriate authority/competent authority may withhold permission to a Government servant to voluntarily retirement from service only in following three situations/conditions:

“i) If the Government servant is under suspension; or

- ii) If 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.”

11.3 Counsel further submitted that applicant's initial application for seeking VRS was submitted on 18.11.2015 and subsequent application for VRS on 1.2.2016 (in view of directions contained in Office Memorandum dated 28.1.2016). Counsel emphasized that neither on 18.11.2015 nor on 1.2.2016 and nor on the date of issuance of the impugned Office Memorandum dated 26.4.2016, any of the aforesaid three conditions as contemplated under Rule 56 (k) (1) (c) of Fundamental Rules exists.

11.4 Counsel also submitted that respondents themselves referred and mentioned about “Fact Finding Enquiry” recommending Regular Disciplinary Action to be initiated against the applicant in the impugned Office Memorandum dated 26.4.2016, which proved that there was neither any disciplinary action pending against the applicant nor any charge sheet has been served or issued to him. Counsel further submitted that it is a well settled principle of law that unless a charge memo in a disciplinary proceeding is issued to the employee, it cannot be said that the departmental proceedings against the employee has been initiated. In support of this contention, applicant's counsel placed reliance

on the decision of the Apex Court in the case of ***Union of India vs. K.V. Jankiraman***, 1991 (4) SCC 109.

11.5 Counsel further argued that even otherwise, the alleged incident pertains to a letter written by the applicant on 26.9.1997 addressed to the Registrar, North Eastern Hill University, Shillong, pertaining to an ordinance on the Hill Area Special Allowance to teaching and non teaching staff. Counsel further alleged that the said letter was sent by the applicant on the directions of and with the approval of higher authorities.

11.6 Counsel further submitted that even the one-man Fact Finding Inquiry Committee vide its Report dated 10.10.2015 gave a finding in which in para 15 (iv) clearly held as follows:-

“IV) The approval has been taken at a level higher than that of the then AEA, Dr. D.K. Paliwal. However, till what level the orders were obtained cannot be said in the absence of the file. Even presuming that recourse to UGC or IFD was not taken, it is difficult to say who in the hierarchy decided not to follow this course of action. What note was put up by the AEA, and what orders were passed by the Higher Authority is not available. Hence, it is impossible to fix the responsibility, and to say where the culpability lies.”

Thus, the respondent nos.1 and 2 are not justified in denying vigilance clearance to the applicant in any manner whatsoever. Counsel also alleged that even after submission of 2nd Fact Finding Report dated 1.4.2016, the respondent nos.1 and 2 are not justified in denying and withholding the

vigilance clearance to the applicant for grant of VRS particularly when the Report of Fact Finding Committee does not bring into existence the “commencement of enquiry within the meaning of CCS (CCA) Rules and any of the conditions for denial of VRS as contemplated under Fundamental Rule 56 (k)(1) (C).

11.7 Counsel also submitted that in response to first application of VRS of the applicant dated 18.11.2015, the respondent no.1 issued an Office Memorandum dated 28.1.2016 informing the applicant as under:-

“3. Furthermore, the notice for voluntary retirement should have been addressed to the appointing authority, i.e., Hon’ble HRM

4. In view of the above technical defects, the application for voluntary retirement given by Sh. DK Paliwal, DEO dated 18.11.2015 cannot be processed further. In case, he seeks voluntary retirement, he is advised to apply afresh under Rule 48-A of CCS (Pension) Rules, 1972 addressed to the Hon’ble HRM, being Competent Authority.”

Thereafter, the applicant submitted his another application dated 1.2.2016 seeking VRS in compliance of the aforesaid Office Memorandum dated 28.1.2016, therefore, having advise the applicant to submit an applicant for VRS vide OM dated 28.1.2016, the respondent nos.1 and 2 cannot subsequently, deny vigilance clearance for VRS of the applicant.

11.8 Counsel further argued that the Competent Authority, i.e., Hon'ble Minister for HRD granted permission to the applicant for voluntary retirement from service on 16.2.2016 and therefore, the respondent nos.1 and 2 subsequently, could not have withheld and denied vigilance clearance to the applicant particularly when none of the conditions as contemplated under FR 56(k)(1)(c) existed in respect of the applicant and moreover even the 1st Fact Finding Report dated 10.10.2015 also did not find/recommend anything adverse against the applicant. Counsel for the applicant also placed reliance on the decision of the Apex Court in the case of ***Mohinder Singh Gill and another vs. The Chief Election Commission, New Delhi and others***, (1978) 1 SCC 405 as also of this Tribunal in the case of ***Ranjit Dadlani vs. CPWD and another*** in OA 1284/2014 decided on 23.9.2014 in support of the claim of the applicant.

11.9 Lastly, counsel for the applicant submitted that the impugned order is liable to be quashed by this Tribunal and the respondents be directed to allow the applicant's request for voluntary retirement from service with all consequential benefits.

12. On the other hand, learned counsel for the respondents submitted that the vigilance clearance in respect of the Applicant was withheld by the Vigilance Branch in the backdrop of pending enquiry relating to issue of a letter to

North Eastern Hill University, Shillong by the Applicant which has led to unauthorized payment of Hill Area Special Allowance (HASA) to the employees of NEHU amounting to Rs. 11.14 Crore as pointed out by the Comptroller & auditor General (C&AG) in their Audit Report which was communicated to the respondents vide letter dated 15.12.2011 [Annexure R-XVII (A)]. Counsel further submitted that on the basis of the findings of second Fact Finding Enquiry Report, it has been decided by the Competent Authority to initiate Regular Disciplinary Action for Major Penalty proceedings under Rule-14 of Central Civil Services (CCA) Rules, 1965 and a proposal in this regard has also been referred to Central Vigilance Commission, vide letter dated 02.11.2016 (annexure R-XXII), for seeking first stage advice in the matter which is awaited. The Vigilance Branch has submitted all relevant facts of the case before the higher authorities and neither misled nor misguided higher authorities.

12.1 Counsel further submitted that the instructions contained in FR-56 (k) (1) provides that “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".

The request of voluntary retirement of Applicant [Date of Birth-05.06.1957], presently holding the post of Deputy Educational Adviser (General) [Group "A". Gazetted] post and had entered into Government Service on 12.11.1992 [i.e. after attaining the age of 35 years], is not covered under FR-56 but covered under Rule 48-A of Central Civil Services (Pension) Rules, 1972.

12.2 Counsel also submitted that the applicant submitted his notice of Voluntary Retirement dated 01.02.2016 under Rule 48-A of Central Civil Services (Pension) Rules, 1972. The Competent Authority had initially given the proposal at para 7 (a) and 8 for accepting the request of the Applicant for grant of Voluntary Retirement on 16/17.02.2016 subject to explicit vigilance clearance. After the Second Fact Finding Enquiry Report recommended Regular Disciplinary Action for Major Penalty, the vigilance status was reviewed and based on which the Competent Authority decided not to accept his request for voluntary retirement.

12.3 Counsel further submitted that it would have been appropriate if the applicant had gone by the contents of the Office Notes provided to him under Right to Information act, 2005 in framing his arguments instead of placing reliance on reply furnished by the CPIO (Vigilance) to his specific query asking for the prescribed rule under which his vigilance

clearance for voluntary retirement was kept in abeyance. Thus, the allegation leveled by the applicant that the Vigilance Branch have misguided and misled the higher authorities is incorrect on the face of the records.

12.4 Counsel also submitted that applicant, though, is/was not under suspension but there was *prima facie*/Fact Finding Enquiry ordered against the Applicant in connection with issue of a letter dated 26.09.1997 by him which resulted in un-authorized payment of Rs. 11.14 Crore to the employees of NEHU, Shillong as pointed out by C&AG in Audit Report [Annexure R-XVII (A)].

12.5 Counsel further submitted that the decision taken by the Competent Authority, conveyed to the Applicant vide Office memorandum No. A-38011/47/2015-E.IV dated 26.04.2016, being based on the ground that the vigilance clearance was not available in explicit terms as Fact Finding Enquiry has recommended Regular Disciplinary Action to be initiated against him. As such there is no illegality or arbitrariness in the decision taken by the Competent Authority.

12.6 Counsel also submitted that the Vigilance Branch has neither misled nor misguided the higher authorities but submitted all relevant facts and circumstances before them so as to enable them to take a comprehensive decision in the matter. The fact that the Applicant, has not been issued any

charge sheet as on date, is admitted but at the same time it is most respectfully submitted that second Fact Finding Enquiry, assigned to a two member Committee vide Order dated 08.01.2016 [annexure R-XX], in its report dated 01.04.2016 submitted on 04.04.2016 [annexure R-XXI] concluded that the Applicant has violated the set procedure (in issuing the letter dated 26.09.1997 conveying that the ordinance has been noted) and recommended for Regular Disciplinary Action against the Applicant. Under these circumstances, vigilance clearance in respect of the Applicant was withheld by the Vigilance Branch when he applied for voluntary retirement. It is further submitted that on the basis of the findings of second Fact Finding Enquiry Report, it has been decided by the Competent Authority to initiate Regular Disciplinary Action for Major Penalty proceedings under Rule-14 of Central Civil Services (CCS) Rules, 1965 and a proposal in this regard has also been referred to Central Vigilance Commission, vide letter dated 02.11.2016 [Annexure R-XXII], for seeking first stage advice in the matter which is awaited.

12.7 Counsel also submitted that Clause (3) under Para 63 (General Instructions for Drafting] of Chapter-VIII in Central Secretariat Manual of Office procedure [Old Edition] states that official communications emanating from a department and purporting to convey the views of orders of Government

of India must specifically be expressed to have been written under the directions of Government [Annexure R-XXXIV]. Accordingly, in Government of India Secretariat, it is a part of common secretariat practice to use the phrase "I am directed" or "The undersigned is directed" to begin a letter. It does not necessarily mean that all letters wherein such phrases have been used would definitely have the approval of the higher authorities. As such, the argument of the Applicant that since the letter dated 26.09.1997 begins with such one phrase and, therefore, it has been written with the approval of the higher authorities is not tenable.

12.8 Counsel also submitted that the fact that one man Fact Finding Committee of Shri Praveen Kumar, Joint Secretary (Department of Higher Education) was constituted vide Order dated 10.07.2015, which had submitted its report on 10.10.2015. However, the said report was not accepted by the Competent Authority and, therefore, second Fact Finding Committee consisting of two members was consisted in this regard.

12.9 Counsel for the respondents also submitted that case of voluntary retirement of the Applicant is covered under Rule 48-A of Central Civil Services (Pension) Rules, 1972 and the fact that the first Fact Finding Report of one man committee comprising of Shri Praveen Kumar, Joint Secretary (Department of Higher Education) was not accepted by the

Competent Authority and therefore second Fact Finding Committee was constituted by the competent authority, which submitted its report dated 1.4.2016 to the respondents on 4.4.2016 concluded that the applicant has violated the set procedure (in issuing the letter dated 26.09.1997 conveying that '**the ordinance has been noted**'). As such on the basis of the findings of Second Fact Finding Committee report, it has been decided by the competent authority to initiate Regular Disciplinary Action for Major Penalty proceedings under Rule-14 of Central Civil Services (CCA) Rules, 1965 and a proposal in this regard has also been referred to CVC vide letter dated 2.11.2016 for seeking first stage advise in the matter which is awaited. Counsel further emphasized that the case of the applicant for voluntary retirement is covered under Rule 48-A of CCS (Pension) Rules, 1972 as the earlier notice of voluntary retirement dated 18.11.2015 containing certain technical defects which were conveyed to the applicant vide OM dated 28.2.2016 and in pursuance of the same, the applicant submitted his fresh notice for voluntary retirement dated 1.2.2016 with request to condone 3 months notice period in view of his earlier notice of voluntary retirement dated 18.11.2015. Counsel further submitted that communication of OM dated 28.2.2016 was only related to defects in the notice and has no relationship with the vigilance status which was received on first occasion on

4.2.2016. Therefore, linking of vigilance clearance with the communication dated 28.1.2016 is irrelevant.

12.10 Counsel also submitted that competent authority though had decided on 16/17.2.2016 to accept the notice of voluntary retirement dated 1.2.2016 with relaxation in notice period and gave its proposal to retire him voluntarily with effect from 19.2.2016 but the same was subject to explicit clearance from vigilance angle from Vigilance Branch before due date of retirement. Further the decision taken on 16/17.02.2016 was subsequently reviewed by the competent authority on 25.4.2016 on the basis of inputs received from Vigilance Branch and decided to deny the request of applicant for voluntary retirement from Govt. service as the fact finding enquiry has recommended Regular Disciplinary Action to be initiated against him which has been conveyed to him vide Order dated 26.4.2016.

12.11 Lastly counsel for the respondents submitted that the reliance placed by the applicant on the aforesaid decisions is not relevant to the facts of this case and the present OA is liable to be dismissed by this Tribunal.

13. Heard learned counsel for the parties and perused the pleadings available on record. The respondents strongly contested the arguments of the applicant and drew our attention specifically to the Order dated 16/17.2.2016 in the

File No.A-38011/47/2015-E.IV, which is a proposal as below:-

“7. In view of the above facts and circumstances, following options are available for consideration/approval of Hon’ble HRM being the competent authority:-

- (a) **Accept notice of voluntary retirement dated 01.02.2016 [received on 03.02.2016] tendered by Dr. D.K. Paliwal, DEA under sub-Rule (3A) (a & B) and allow him to retire from Government Servant on 19.02.2016 (F.N.) by relaxing 3 months’ notice period with condition that Dr. Paliwal Shall not apply for commutation of a part of his pension before the expiry for the period of notice of three months;**
- (b) Accept the notice of voluntary retirement dated 01.02.2016 (received on 03.02.2016) tendered by Dr. D.K. Paliwal, DEA and allow him to retire from Government Service from 03.05.2016 (F.N.) i.e. after expiry of three months notice period; or
- (c) Not to accept the notice of voluntary retirement and refuse him the permission to retire from Government service for which reasons may be recorded.

8. It may be informed that Vigilance Clearance would have to be explicitly given or denied before the due date by the Vigilance Branch, he is due to retire (19.06.2016 in option (a) or 03.05.2016 in option (b) [Para-7 above] as per the decision taken by the Competent Authority (i.e. HRM). Hence, once HRM passes the orders, Vigilance Branch would be asked to give Vigilance Clearance before the due date.”

(emphasis supplied)

They pointed out that specifically in para 8 above, it has been noted that “**It may be informed that Vigilance Clearance would have to be explicitly given or denied before the due date by the Vigilance Branch, he is due to retire**

(19.06.2016 in option (a) or 03.05.2016 in option (b)
[Para-7 above] as per the decision taken by the Competent Authority (i.e. HRM). Hence, once HRM passes the orders, Vigilance Branch would be asked to give Vigilance Clearance before the due date.” Hence, vigilance clearance was needed before the final approval of the VRS request. As per Para 7 (b) of the note referred to above, it is clearly stated that the notice of voluntary retirement dated 1.2.2016 was received on 3.2.2016, which was processed to allow him to retire from the Government service on 19.2.2016 by relaxing three months period but it was also stated in para 8 above that before 7(a) was finally given effect to vigilance clearance would have also be expressly given or denied as per the decision taken by the competent authority. It was also mentioned that once Hon’ble HRM passed the order, vigilance branch would be asked to give vigilance clearance before the due date. This did not happen as the vigilance clearance final status was furnished only on 11.4.2016. Hence, voluntary retirement could not come into effect before the vigilance clearance based on Para 8 of the note supra. Hence, in the peculiar facts of this case, where regular departmental action for major penalty proceedings under Section 14 of the CCS (CCA) Rules was recommended to the CVC, the final clearance for voluntary retirement was not given effect to and the applicant was denied voluntary retirement.

14. It is an admitted position that in pursuance of Audit report submitted by the Accountant General (Audit) vide its letter dated 15.11.2011, the matter of inadmissible payment of Hill Area Special Allowance (HASA) of Rs.11.14 crore in respect of North Eastern Hill University, Shillong is/was under investigation. Admittedly the applicant submitted his second application for voluntary retirement on 1.2.2016 with request to condone 3 months notice period in view of his earlier notice of voluntary retirement dated 18.11.2015 and competent authority though had decided on 16/17.2.2016 giving its proposal to accept the notice of voluntary retirement dated 1.2.2016 with relaxation in notice period and allow him to retire voluntarily with effect from 19.2.2016 but the same was subject to explicit clearance from vigilance angle from Vigilance Branch before due date of retirement. However, the said vigilance clearance was not granted to him. Further the decision taken on 16/17.02.2016 was subsequently reviewed by the competent authority on 25.4.2016 on the basis of inputs received from Vigilance Branch and decided to deny the request of applicant for voluntary retirement from Govt. service as the second fact finding enquiry has recommended Regular Disciplinary Action to be initiated against the applicant after having enquired into the matter relating to issue of a letter dated 26.09.1997 to North Eastern Hill University, Shillong by the Applicant which has led to

unauthorized payment of Hill Area Special Allowance (HASA) to the employees of NEHU amounting to Rs. 11.14 Crore as pointed out by the Comptroller & Auditor General in their Audit Report, which has been conveyed to him vide Order dated 26.4.2016.

15. From the aforesaid gamut of facts, it is evidently clear that the decision of competent authority in this matter taken on 16/17.2.2016 gave its proposal to accept the notice of voluntary retirement dated 1.2.2016 with relaxation in notice period and allow him to retire voluntarily with effect from 19.2.2016, is *sina quo non* to explicit clearance from vigilance angle from Vigilance Branch before due date of retirement and it is admitted fact that enquiry on the alleged irregularities relating to HASA to the employees of NEHU was ordered on 10.7.2015, which Fact Finding enquiry Committee submitted its report dated 10.10.2015 to the competent authority but the same was not accepted by the competent authority and accordingly second Fact Finding enquiry was constituted and assigned to a two Member Committee vide Order dated 8.1.2016 and the said Committee submitted its report dated 1.4.2016 on 4.4.2016 concluded that the applicant has violated the set procedure (in issuing the letter dated 26.9.1997 conveying that ***the ordinance has been noted***). As such the vigilance clearance was not given to the applicant to enable him to retire voluntarily. The said report

of second Fact Finding Enquiry was placed before the competent authority to review its earlier decision dated 16/17.02.2016 and the competent authority has denied the applicant the request for voluntary retirement, which was rightly communicated to the applicant vide Office Memorandum dated 26.4.2016.

16. Further for better appreciation of the issue involved in this case, it is deemed appropriate to reproduce the relevant contents of File No.38011/47/2015-E.IV, which read as under:-

“F.No.38011/47/2015-E.IV
Department of Higher Education
(Administration Bureau)

“7. In view of the above facts and circumstances, following options are available for consideration/approval of Hon’ble HRM being the competent authority:-

- (a) Accept notice of voluntary retirement dated 01.02.2016 [received on 03.02.2016] tendered by Dr. D.K. Paliwal, DEA under sub-Rule (3A) (a & B) and allow him to retire from Government Servant on 19.02.2016 (F.N.) by relaxing 3 months’ notice period with condition that Dr. Paliwal Shall not apply for commutation of a part of his pension before the expiry for the period of notice of three months;
- (b) Accept the notice of voluntary retirement dated 01.02.2016 (received on 03.02.2016) tendered by Dr. D.K. Paliwal, DEA and allow him to retire from Government Service from 03.05.2016 (F.N.) i.e. after expiry of three months notice period; or
- (c) Not to accept the notice of voluntary retirement and refuse him the permission to retire from Government service for which reasons may be recorded.

8. It may be informed that Vigilance Clearance would have to be explicitly given or denied before the due date by the Vigilance Branch, he is due to retire (19.06.2016 in option (a) or 03.05.2016 in option (b) [Para-7 above] as per the decision taken by the Competent Authority (i.e. HRM). Hence, once HRM passes the orders, Vigilance Branch would be asked to give Vigilance Clearance before the due date.”

9. Proposal in para 6, 7, (any one option) & B for kind perusal/Orders of Hon’ble HRM.”

“....

Sec (HE) Sd/-

HRM

Sd/-

The officer is permitted voluntary retirement. Accordingly proposals at pre para 7(a) & 8 are also approved.

Secy (HE) Sd/-

JS (A) Sd/-

Vigilance Branch may kindly see for necessary Action

SD/- 18.2.2016”

Perusing the file and especially the order regarding said voluntary retirement on the said file, we find that noting has been put up at the level of Secretary to the Hon’ble HRM and below, but we do not find any stamp and signature in the said noting of the competent authority, although this whole matter has been argued as if those notings were of the Hon’ble HRM. As such we do not find any approval of the same in the noting produced before us. Further even if it is presumed, the said is the noting of the competent authority, who took decision on

the request of voluntary retirement of this applicant, we find para 8 in the said order was totally conditional, which had to be complied with before issuing final order of VRS. Further we also note that the applicant of this OA had moved application for contempt in this case in which on 1.6.2017 the coordinate Bench of this Tribunal has observed as under:-

“2. Learned counsel for the petitioner while submitting that he is going to retire on attaining the age of superannuation on 30.06.2017 and this Tribunal while allowing the O.A directed the respondents to allow the applicant's request for voluntary retirement from service with effect from the due date. The respondents are trying to avoid implementation of the orders of this Tribunal till 30.06.2017 and hence unless they are compelled to comply with the orders of this Tribunal immediately, the orders of this Tribunal in the O.A itself become infructuous.

3. In the circumstances, list the C.P. on 13.06.2017 for reporting compliance by the respondents however, subject to the result of the Writ Petition filed by them before the Hon'ble High Court.”

17. Hence, the arguments put forth by the counsel for the respondents that applicant continued in service till the date of his normal retirement, i.e., 30.6.2017 is very relevant and the counsel for the applicant was himself aware on 1.6.2017 that if the order of voluntary retirement was not given effect to before 30.6.2017, i.e., the date of applicant's normal retirement, the earlier Order of this Tribunal in the OA itself will become infructuous. Subsequently, the applicant retired in the normal course on 30.6.2017 and the Order in Writ Petition (Civil) No.5242/2017 filed by the respondents against

the earlier Order of this Tribunal passed in this case was finally decided by the Hon'ble Delhi High Court vide Order dated 12.7.2017, i.e., after the retirement in normal course of the applicant of this OA. Hence, the present OA of the applicant has in fact now become infructuous because he retired in the normal course while continuing in service till 30.6.2017.

18. As such this Tribunal does not find any illegality in the order impugned in this case as the applicant is very much aware that the matter in relation to objection raised by the Audit, as stated above, is under investigation even well before tendering his voluntary retirement. Therefore, the pleas and grounds as raised by the applicant in the instant OA are not sustainable in the eyes of law. Moreover, voluntary retirement cannot be claimed as a matter of right and the acceptance of voluntary retirement is always subject to vigilance clearance as on the date of relieving of the employee. Since no vigilance clearance has been given by the competent authority in the case of the applicant, in the above facts and circumstances of this case, the question of relieving the applicant from the said post by virtue of his voluntary retirement from the due date does not arise.

19. The judgments of the Apex Court, as relied upon by the applicant in support of his claim, in the cases of ***Union of India vs. K.V. Jankiraman***, 1991 (4) SCC 109; ***Mohinder***

Singh Gill and another vs. The Chief Election Commission, New Delhi and others, (1978) 1 SCC 405 as also of this Tribunal in the case of ***Ranjit Dadlani vs. CPWD and another*** in OA 1284/2014 decided on 23.9.2014, were perused and considered but we do not find the same as relevant to the issue involved in this case and as such the same are distinguishable on facts. It is further observed that Voluntary Retirement application of the applicant was initially approved on 16/17.2.2016 with the condition that vigilance clearance would have to be obtained before giving effect to the same. However, vigilance clearance was sought and upon receipt of vigilance report, the decision taken on 16/17.02.2016 was subsequently reviewed by the competent authority on 25.4.2016 on the basis of inputs received from Vigilance Branch and it was decided to deny the request of applicant for voluntary retirement from Govt. service as the fact finding enquiry has recommended Regular Disciplinary Action with proposed major penalty to be initiated against him.

20. In the above facts and circumstances of this case and, for the foregoing reasons, the present OA is dismissed being devoid of merit. There shall be no order as to costs.

(Nita Chowdhury)
Member (A)

/ravi/