

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (Civil) No.8102 of 2010**

% ***Date of Decision: 15.02.2011***

Union of India & Ors. *Petitioners*

Through Mr.Rajinder Nischal, Advocate

Versus

Sh.Ved Prakash Sharma *Respondent*

Through Mr.Sant Lal, Advocate

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MS. JUSTICE VEENA BIRBAL

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioners, Union of India & Ors., have challenged the order dated 21st July, 2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No.1098 of 2010, titled 'Ved Prakash Sharma v. Union of India & Ors.' holding that the respondent had served a proper notice under Rule 48 of the CCS (Pension) Rules, 1972 being eligible on 17th July, 2009 which attained finality and did not require any permission as the respondent was not under suspension and therefore, he is deemed to have retired on 18th October, 2009 and directing the petitioners to retire the respondent voluntarily w.e.f. 18th

October, 2009 and granting all the pensionary benefits which are admissible to him as per rules.

2. The petitioners have also challenged the order dated 14th September, 2010 passed in R.A.No.243 of 2010 dismissing the review application against the order dated 21st July, 2010 in O.A.No.1098 of 2010 on the ground that the review sought by the petitioners was not within the scope and ambit of Section 22 (3) (f) of the Administrative Tribunal Act, 1985.

3. Brief facts to comprehend the controversies between the parties are that the respondent, while working as a Postal Assistant, Narnaul Head Office had served a notice dated 6th June, 2009 on the petitioners of his retirement after three months under Fundamental Rule 56 (k)(1) seeking retirement from 15th September, 2009. The notice given by the petitioners is as under:

“The Director Postal Services,
Gurgaon Division, Gurgaon,

(Through Postmaster
Narnaul, H.O)

Subject: Notice of Retirement under FR 56 (k)(1)

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Sir,

It is humbly submitted that the applicant's date of Birth is 4th July, 1950 and has already crossed the age of 55 years. His date of appointment in the Department is during the year 1969. He has not only rendered qualifying service of

more than 30 years as laid down in Rule 48 of CCS (Pension) Rules, 1972 but also crossed the age of more than 55 years as laid down in FR 56(k)(1). The applicant intends to seek retirement from service honourably. He, therefore, tenders three months notice of Retirement under FR 56(k)(1) and his retirement would take effect from 15th September, 09 i.e. after the expiry of the said period of notice which is more than the prescribed period of three months.

It is requested that necessary steps may kindly be taken to get all his pension papers completed during the period of this notice so that he may get his retirement benefits in due time.

Thanking you in anticipation.”

4. The respondent by notice dated 8th June, 2009 was seeking retirement from service after attaining the age of 55 years under Rule 56 (k)(1) of the Fundamental Rule. As per the rule no permission was required and the employee would retire after three months. The said rule is as under:-

“FR 56 (k) (1) 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:

Provided that-

(a) Not printed (Since Clause (a) has been deleted)

(b) nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign-based office of a Ministry/Department and (iii) goes on a specific contract assignment to a foreign Government

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; and

(c) it shall be open to the Appropriate Authority to withhold permission to a Government servant under suspension who seeks to retire under this Clause.”

5. Pursuant to the notice of the respondent to permanently retire after attaining the age of 55 years, a communication dated 3rd July, 2009 was sent by the petitioners seeking an explanation as the rule quoted by the respondent, Fundamental Rule 56 (k)(1), does not cover voluntary retirement from service, and therefore, no action can be taken on his application. The respondent was advised to refer the correct rule/provision, if voluntary retirement is desired by him. He was also asked to forward his application along with proper recommendations.

6. Pursuant to clarification sought by the petitioners, the respondent sent another notice dated 17th July, 2009 contending that he had not sought voluntary retirement in the notice dated 8th June, 2009, nor had he submitted his request for voluntary retirement. He further asserted that under Fundamental Rule 56 (k)(1) he had fulfilled the requirement as he has attained the age of 55 years, and consequently, the clarification/objection raised in communication dated 3rd July, 2009 by the petitioners is erroneous. The respondent also clarified that an identical provision is under Rule 48 of CCS (Pension) Rules, 1972 however, the voluntary retirement under the said Rule is

subject to condition that the Government servant should have completed 30 years of qualifying service whereas under Rule 56 (k)(1), the condition stipulated is of 55 years of age and not the minimum years of service.

7. Though the respondent had sought retirement in terms of Rule 56 (k)(1) of the Fundamental Rule, another communication dated 11th September, 2009 was sent to the respondent, disclosing inter-alia, that his request for voluntary retirement dated 17th July, 2009 cannot be accepted as a disciplinary case is contemplated against him. The respondent, however, sent another communication dated 15th September, 2009 stating that he was liable to give three months notice for retirement under Rule 56 (k)(1) of the Fundamental Rule and that since he had given a notice on 8th June, 2009 (8 days 3 months had expired on 15th September, 2009) and since he had given the notice for retirement 3 months in advance, therefore, on 15th September, 2009 he had retired. The respondent further stated in his communication that he is going to his home after his retirement and gave his new address to which all his dues for payment of his allowances and retirement benefits was to be sent. Yet another communication was sent by the respondent dated 19th October, 2009 requesting the petitioners to take necessary action to get the requisite application form and other pension papers completed and for releasing his retiral dues without any further delay so that he may not suffer serious financial hardship.

8. Since the pension papers of the respondent were not prepared, the respondent sought information under the Right to Information Act by application dated 9th January, 2010 with respect to his documents regarding his pension under Rules 58 and 59 of CCS (Pension) Rules, 1972. The respondent however, received a memo dated 18th February, 2010 from the Superintendent of Post Offices Gurgaon, followed by a letter dated 8th March, 2010 intimating the respondent that he is being treated as absent from duty w.e.f 15th September, 2009 as he had not sought approval for retirement nor was any approval from the competent authority granted. The pension and the retiral benefits of the respondent were also not released. The notice dated 18th February, 2010 received by the respondent was as under:

“SHOW CAUSE NOTICE

Whereas Sh.Ved Parkash Sharma PA Narnaul HO is reported to be absent from duty w.e.f. 15/9/2009 unauthorisedly by Postmaster Narnaul H.O. vide letter No.B/Staff/Misc./4395 Dated 15.09.09.

Whereas the said Sh.Ved Parkash Sharma was given a notice for his absence with effect from 15/9/2009 unauthorised to explain as to why he absented himself from the office without information or approval of the competent authority vide this office letter of even no. dated 14/10/2009. The said Sh.Ved Parkash Sharma was further directed to join his duty forthwith through the above.

Now, the said Sh.Ved Parkash Sharma is further called upon through this notice to explain as to why Disc. Action may not be taken against him for unauthorized absence from duty w.e.f.15.09.2009.

The said Sh.Ved Parkash Sharma is directed to submit his explanation with in a period of 10 days from the date of receipt of this notice, failing which ex-parte decision will be taken.

Supdt. Of Post Offices
Gurgaon-122001.”

9. Later on the respondent was also served a charge sheet dated 17th May, 2010. The respondent, therefore, filed an application under Section 19 of the Administrative Tribunal Act, 1985 seeking inter-alia to declare the letters dated 14th October, 2009, memo dated 18th February, 2010 and letter dated 8th March, 2010 as non est and to set aside the same and to direct the petitioners to release all the retiral benefits and other dues to which he is entitled for.

10. By letter dated 18th February, 2010 the respondent was called upon as to why disciplinary action should not be taken against him for unauthorized absence from duty w.e.f. 15th September, 2009. The respondent was also served a charge sheet with memorandum dated 17th May, 2010 and the article of charge against the respondent was that Sh.Raghubir Singh had opened a RD account at Bahadurgarh, Head Office on 24th December, 2005 and a nomination was made by him in the name of his son Sh.Mahendra Singh which was changed on 19th December, 2006 in the name of Sh.Manjit Singh which was done by the respondent without obtaining any application or prescribed form from the depositor as required under the departmental rules as the

depositor had already expired on 18th November, 2006 and therefore, the respondent failed to maintain the absolute integrity, devotion to duty and behaved in a manner unbecoming of a Government servant thereby violating the provisions of Rule 3 (1) (i), 3(1) (ii) & 3 (1)(iii) of CCS (Conduct) Rules, 1964. The article of charge also stipulated that the respondent had issued duplicate KVP certificate without obtaining any orders from the Postmaster Bahadurgarh at his own level and without obtaining non encashment certificate from the Deputy Director of A/Cs (Postal), Ambala. The respondent was also charged with sanctioning the claim of Sh.Raghubir Sing, deceased in the name of Sh.Manjit Singh Dahiya at his own level without obtaining the orders of the Postmaster, Bahadurgarh for which he was not competent as per departmental rules and that various other claims of the deceased persons were sanctioned by him exceeding his power and using the power of Postmaster and without any delegation of power to him.

11. The petitioners had contested the claim of the respondent made in the original application before the Tribunal by contending inter-alia that the respondent was involved in fraud pertaining to saving bank accounts and change of nomination and other irregularities while he was working as APM (SB) Bahadurgarh, Head Office of Rohtak Division and a vigilance enquiry was under process with Circle Office, Ambala vide Office letter dated 13th October, 2010. Regarding the respondent seeking retirement, the petitioners contended that in the notice dated 6

June, 2009, it was advertently read as Fundamental Rule (k)(L) instead of Fundamental Rule (k)(1) which was clarified by the respondent by his other notice dated 17th July, 2009. The petitioners however, did not deny that as per report of the Postmaster, Narnaul Head Office, dated 15th September, 2009 the respondent had attended the Office on 15th September, 2009 at 9:00 hours and had left the Office at 10:00 hours without information or permission of the competent authority. The petitioners also disclosed that a disciplinary proceeding under Rule 14 of the CCS (CCA) Rules, 1965 has been initiated against the respondent by memo dated 17th May, 2010 wherein the next date of hearing was 5th July, 2010.

12. The pleas and contentions raised by the petitioners were refuted by the respondent by filing the rejoinder contending specifically that the petitioners have deliberately made a misstatement that they had noted the rule FR 56 (k)(1) as rule FR 56 (k)(L) as the Postmaster Narnaul, Head Office who had forwarded his notice dated 8th June 2009 to DPS Gurgaon in his letter dated 8th June, 2009 had very clearly stated that the respondent had given notice under FR 56 (k)(1) for necessary action. Regarding the letter dated 11th September, 2009 which was allegedly served on the respondent on 14th September, 2009, he asserted that Superintendent of Postmaster Office did not have competent jurisdiction for issuing the said letter which was also in gross violation of proviso (c) of FR 56 (k) (1). Regarding the notice of

seeking retirement, he reiterated that his notice of 3 months for retirement under Rule 56 (k)(1) did not require acceptance under the said rule and on expiry of 3 months, as he had sought retirement from 15th September, 2009, he stood retired. Regarding the charge sheet dated 17th May, 2010 and appointment of enquiry officer by order dated 5th July, 2010 and the show cause notice dated 18th February, 2010 it was averred that they are invalid in law as he had retired w.e.f. 15th September, 2009 and show cause notice & charge sheet have been issued after he had retired and after he filed the original application under Section 19 of the Administrative Tribunal Act seeking the relief of release of his pension and other retiral benefits. The respondent also relied on his representation dated 28th May, 2010 in reply to the charge sheet dated 17th May, 2010.

13. Before the tribunal, the reliance was placed by learned counsel for the respondent on FR 56 (k)(1) and it was asserted relying on *Dinesh Chandra Sangma v. State of Assam* (1977) 4 SCC 441 that no permission is required for retirement under the said rule unless the employee is under suspension. However, the learned counsel for the petitioners had contended before the tribunal that the notice dated 8th June, 2009 under FR 56 (k)(1) was not in accordance with the rule, as notice was issued under Rule 48 of CCS (Pension) Rules and since a disciplinary proceeding was contemplated on account of unauthorized absence of the respondent, as such no permission to retire him had

been granted and the order withholding the permission for retirement does not suffer from any infirmity.

14. The tribunal in its order dated 21st July, 2010 has, however, dealt with the case of the respondent, as if the respondent had sought voluntary retirement under Rule 48 of CCS (Pension) Rules which contemplates that on completion of 30 years of service, on a notice given by employee of 3 months, he would be automatically voluntarily retired and only impediment to such retirement is that the employee should not be under suspension. Relying on Tek Chand v. Dile Ram (2001 SCC (L&S) 555), the tribunal held that since the respondent was not under suspension, therefore, on service of proper notice under Rule 48 and being eligible on 17th July, 2009 which attained finality, no permission was required and he deemed to have retired on 18th October, 2009. The tribunal also held that rejecting the request of the respondent for retiral benefits on account of disciplinary case is not in accordance with rules. The relevant order of the tribunal in para 6 and 7 is as under:-

“6. In the light of the above, as the applicant has served a proper notice under Rule 48 of the Pension Rules and being eligible on 17.07.2009, the same attains finality and does not require any permission and as the applicant was not under suspension, he is deemed to have retired on 18.10.2009. Rejecting his request on account of disciplinary case is not in accordance with the rules.

7. Resultantly, O.A is allowed. Impugned orders are set aside. Respondents are directed to deem the applicant retired voluntarily w.e.f. 18.10.2009 and he shall be entitled

to all pensionary benefits, which are as per rules. The same may be released to him within a period of two months from the date of receipt of a copy of this order. No costs.

15. The learned counsel for the petitioners, Mr.Nischal, had contended that the tribunal has passed the impugned order in a hasty manner ignoring the correct facts of the case and has rejected the pleas and contentions of the petitioners without any valid ground. According to him, the plea of the petitioners was that the request of the respondent for voluntary retirement was rejected prior to expiry of 3 months. It was also contended that ratio of Tek Chand case (Supra) has not been followed.

16. Per contra, the learned counsel for the respondent has very emphatically contended that neither the tribunal, nor the petitioners have appreciated the correct facts and have repeatedly committed an error even in the writ petition in comprehending the pleas and contentions of the respondent.

17. According to the learned counsel for the respondent, for retirement under Rule 56 (k)(1), the conditions are that a Government Servant should have attained the age of 55 years and 3 months notice should be given. He emphasized that the reading of the notice dated 8th June, 2009 makes it clear that without any doubt retirement was sought from 15th September, 2009, 3 months

after giving notice on 8th June, 2009 under Rule 56 (k)(1) and not under Rule 48 of CCS(Pension) Rules 1972. According to him, what was stated in the notice was that he has not only rendered qualifying service of more than 30 years as laid down in Rule 48 of CCS(Pension) Rules 1972 but in any case after the age of 55 years he is entitled for retirement under Rule 56 (k)(1) of Fundamental Rule. The learned counsel also emphasized that the clarification/objection sought by letter dated 3rd July, 2009 was not warranted as while forwarding the notice dated 8th June, 2009 to the concerned authority, it was categorically mentioned that the respondent is seeking retirement under Rule 56 (k)(1) of Fundamental Rules. The learned counsel also asserted that the plea of the respondent is that under Rule 56 (k)(1) no permission or acceptance was required on expiry of 3 months, as the respondent had sought retirement by a notice of more than 3 months from 15th September, 2009, he stood retired and on that date since no departmental enquiry was pending against him, as the charge sheet was issued on 17th May, 2010 and he was not under suspension, therefore, neither it can be held that the respondent did not retire, nor that the departmental proceeding could continue against him. He also emphasized that though the alleged charge is on account of alleged misconduct, however, the petitioners are also raising the pleas of unauthorized absence which will not be sustainable in the facts and circumstances of the

case, as the respondent had legally retired from 15th September, 2009. In any case no charge sheet for unauthorized absence was issued against him.

18. On perusal of the notice dated 8th June, 2009 this Court is of the opinion that there is no ambiguity in the said notice which is categorically under Rule 56 (k) (1) of the Fundamental Rules and the respondent had not sought voluntary retirement under Rule 48 of CCS(Pension) Rules, 1972. If it has been mentioned in the said notice that he had also rendered service of more than 30 years as laid down in Rule 48 of CCS(Pension) Rules, 1972 that does not reflect that he is seeking voluntary retirement under Rule 48 of CCS(Pension) Rules, 1972. In view of the specific stipulation that the notice is under Rule 56 (k)(1) and also the later part of the notice categorically disclosing that the retirement is sought under Rule 56 (k)(1), the tribunal and the petitioners have committed grave error in treating the case of the respondent under rule 48 of CCS (Pensions) Rules, 1972.

19. This stand of the respondent was also reiterated by him in his letter dated 17th July, 2009 which was sent in reply to clarification/objection raised by the petitioners to the respondent.

20. Confronted with this situation, the learned counsel for the petitioners, Mr.Nischal accepts that if the respondent is seeking retirement under Rule 56 (k)(1) of the Fundamental Rules then there is no impediment on his retirement from 15th September, 2009, nor the retirement under Rule 56 (k)(1) requires any permission or approval from any authority provided the employee has attained the age of 55 years which fact cannot be denied. This is also admitted by the learned counsel for the petitioners that if the respondent stood retired on 15th September, 2009 he would be entitled for his pension and retiral benefits as on that date he was neither under suspension, nor were the disciplinary proceedings initiated against him, as the charge sheet for disciplinary proceedings was issued by Memorandum dated 17th May, 2010 and pursuant to show cause notice issued to him on 18th February, 2010 and letter dated 8th March, 2010, no charge sheet for unauthorized absence had been issued. This is also admitted that the respondent was not under suspension when he gave a notice dated 8th June, 2009 for retirement under FR 56(k) (1) nor was he under suspension till expiry of the three months period till 15th September, 2009, the date from which his retirement came into effect.

21. The learned counsel for the respondent also on instructions is categorical that the respondent is not seeking voluntary

retirement under Rule 48 of CCS (Pension) Rules, 1972 nor was it his plea before the Tribunal and in the notices which were given by him. According to him mis-appreciation of the provision under which he had sought retirement will not impact his rights in any manner. He also contended that on the basis of his notices and communications, there is no scope even to comprehend that the voluntary retirement was sought by the respondent. According to him the respondent had sought retirement under FR 56 (k) (1) and after expiry of three months period he retired without requiring any approval or sanction from any authorities.

22. In the circumstances, apparently the tribunal has committed an error in allowing the petition on the basis that the respondent had served a notice under Rule 48 of CCS (Pension) Rules, 1972 being eligible on 17th July, 2009 which attained the finality as the respondent was not under suspension. If this is not the case of the respondent, the tribunal could not have passed the impugned order dated 21st July, 2010 holding that the respondent retired voluntarily w.e.f. 18th October, 2009 and directing the petitioners to grant all pensionary benefits w.e.f. 18th October, 2009. In the circumstances the impugned order dated 21st July, 2010 is liable to be set aside. Since the relief sought by the respondent could not be denied to him and the learned counsel for the petitioners have also not shown any grounds on which relief claimed by the

respondent before the Tribunal could be denied to him, in the circumstances, the writ petition is disposed of setting aside the order of the tribunal dated 21st July, 2010 in O.A.no.1098 of 2010, titled 'Ved Prakash Sharma v. Union of India & Ors,'. Instead this court holds that the respondent retired under Rule 56 (k)(1) of Fundamental Rule on 15th September, 2009 and thereafter his absence was not illegal as he had retired on 15th September, 2009 and consequently, the respondent shall also be entitled for his pensionary and other retiral benefits as per rules on his retirement from 15th September, 2009.

23. Consequently, the pension and other retiral benefits of the respondent be released to him within a period of two months from the date of receipt of copy of this order by the petitioners. Since the respondent was neither under suspension, nor the disciplinary proceedings were initiated against him on the date of his retirement, on 15th September, 2009 memorandum of charge dated 17th May, 2010 and show cause notice dated 18th February, 2010 and letter dated 14th October, 2009 holding that the respondent's absence after 15th September, 2009 is unauthorized, are also quashed.

24. For the foregoing reasons the writ petition is disposed of with the directions as detailed in paragraphs herein above. Considering the facts and circumstances, the parties are however, left to bear their own costs.

ANIL KUMAR, J.

February 15, 2011.
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VEENA BIRBAL, J.