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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

+ WRIT PETITION No. 24786 of 2002

% Dated 12.10.2015

U. Krishna Murthy

....Petitioner

Vs.

\$ Secretary, Telecom Commission,

Department of Telecom Services, New Delhi & others.

....Respondents

! Counsel for the petitioner : Sri Ch. Ravinder

^ Counsel for the Respondents : Sri V. Ravinder

Sri N.V. Ramanujam, Standing

Counsel for Central Government.

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> HEAD NOTE:

? Cases referred

AIR 1991 Supreme Court 2010

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

WRIT PETITION No. 24786 of 2002

Between:

U. Krishna Murthy

....Petitioner

Vs.

Secretary, Telecom Commission,

Department of Telecom Services, New Delhi & others.

....Respondents

DATE OF JUDGMENT PRONOUNCED: 12.10.2015

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THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

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1. Whether Reporters of Local newspapers
may be allowed to see the Judgments?

2. Whether the copies of judgment may be
marked to Law Reporters/Journals?

3. Whether Their Lordship wish to see the
fair copy of the Judgment?

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

AND

THE HON'BLE MRS. JUSTICE ANIS

WRIT PETITION No. 24786 OF 2002

ORDER: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Petition is directed against the order passed by the Central Administrative Tribunal, Hyderabad Bench in O.A. No. 1574 of 2001 instituted by this writ petitioner, rejecting the request made by him to retire from service on voluntary basis, in terms of and in accordance with Rule 48-A of the Central Civil Services (Pension) Rules, 1972. As the respondents were contemplating certain disciplinary proceedings against the petitioner, they refused to grant him permission to retire voluntarily from service on completion of 20 years qualifying service. It is in

that context, the O.A. came to be instituted.

Sri Ch. Ravinder, learned counsel for the petitioner would urge that when once the rule makes it clear that the government servant can retire from service on completion of 20 years of qualifying service, the rejection to grant any such permission can only be for a valid reason. In the instant case, the permission has been denied on the ground that disciplinary proceedings were contemplated against the petitioner. The learned counsel for the petitioner would further urge that since no charge memo was drawn and served on the petitioner, it is unjust to deny him the right to retire from service voluntarily. He places reliance upon the judgment rendered by the Supreme Court in ***Union of India v. K.V. Jankiraman*** and would urge that the disciplinary proceedings would commence only if a charge memo is drawn and communicated to the petitioner, but not otherwise. Since no charge memo has been drawn and served on the petitioner, the order of rejection of his request to retire voluntarily, is liable to be set aside.

It is worthy to notice sub-rule (2) of Rule 48-A of the 1972 Rules:

“ 48-A(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

The above sub-rule makes it clear that every notice of voluntary retirement tendered by the civil servant requires acceptance by the Appointing Authority, at the first instance. However, the proviso incorporated thereunder creates a fiction. By virtue of the proviso, if the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period of notice of three months contemplated by sub-rule (1), the retirement of the employee becomes effective from the date of expiry of the said notice period of three months. Therefore, a right of refusal is conceded in favour of the Appointing Authority while dealing with the notice of voluntary retirement tendered by the employee. Though this right of refusal is not hedged by any conditions, but nonetheless, it shall be assumed that such a power of refusal by the Appointing Authority has to be exercised reasonably and carefully for valid and tenable reasons. Any such refusal should not be based on

whimsical or unreasonable grounds. Wherever there is an element of public interest involved for refusing to accord the permission for retirement, then, such an exercise can only be construed as a reasonable exercise but not an arbitrary one. Now reason for refusal assigned by the respondents was that disciplinary proceedings were contemplated against the civil servant. The contemplated disciplinary proceedings have as much a chance of ending up in exoneration of the charges as they have for establishing the charges. In the event of the charges being grave and also being established, it is very likely that it would fetch imposition of a punishment, which would have some impact upon the terminal benefits that are liable to be paid to the civil servant, such as gratuity and pension, in particular. For the purpose of illustration, we can assume that if the disciplinary proceedings were to end even in a minor punishment of withholding of one or two increments or reduction of pay by one or two stages without cumulative effect, even in such a scenario also, the quantum of terminal benefits will get impacted. As is too well-known, the average emoluments of last drawn wages would hold the key for determining the quantum of gratuity payable to the employee for the services rendered to the employer in the past. Similarly, the average of last drawn wages is relevant for the purpose of determining the quantum of pension/family pension liable to be settled in favour of the employee or his spouse, as the case may be. Therefore, when disciplinary proceedings are contemplated against the civil servant, the grant of refusal to retire from service voluntarily cannot be described as an unreasonable exercise, but it is an exercise, which has a direct bearing upon the conditions of the service itself.

It is true that in ***Jankiraman's case*** (cited supra), the Supreme Court has noted the principle that disciplinary proceedings can be stated to have commenced against a civil servant only upon service of a charge memo in accordance with the Classification, Control and Appeal Rules. But however, it was in the context of confining the promotion of a civil servant, who is facing disciplinary proceedings, to a sealed cover, the above principle came to be enunciated, so that a mere contemplated disciplinary action against the civil servant should not result in denial of actual promotion in spite of the Departmental Promotion Committee/Screening Committee finding the service profile of the individual to be otherwise meritorious enough to fetch him a promotion. Here the rule never contemplated that the right of refusal is to be exercised only in the event of disciplinary proceedings being initiated against the civil servant concerned. Hence, we are of the opinion that the principle in ***Jankiraman's case*** is not attracted to the present case scenario.

This apart, we are of the opinion that if the services of an experienced employee, who has already rendered 20 years of service, are so essentially-needed, the refusal can be ordered by the Appointing Authority, inasmuch as the larger public interest is of paramount consideration than the private interests of the employee concerned. For instance, if a person is holding an important office and it becomes difficult for the department to find a substitute readily or it might even take sometime for one to get equipped with the necessary knowledge/expertise to hold the post effectively, in such circumstances, refusal to grant permission can be ordered. In such cases, to sub-serve the larger public interest, the power of refusal to grant the permission is exercised and hence, the rule is intended to cover cases of that nature.

Since we have not found any infirmity in the right of refusal exercised by the competent authority to accord permission to the petitioner to retire voluntarily from service, the order passed by the Tribunal does not warrant any interference, in exercise of judicial review power, by us. Hence, we dismiss this Writ Petition, but however, without costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

ANIS, J

12th October 2015

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