IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE N.AUTHINATHAN

Writ Petition No.23195 of 2016
W.M.P.No.19899 of 2016

1. The Additional Central Provident
   Fund Commissioner (TN &K),
   Employees' Provident Fund Organisation,
   37, Royapettah High Road,
   Chennai 600 014.

2. The Regional Provident Fund Commissioner-I,
   Employees Provident Fund Organisation,
   Regional Office, Bhavishya Nidhi Bhavan,
   Dr.Balasundaram Road, Coimbatore 641 018.

3. Regional Provident Fund Commissioner-II,
   Employees' Provident Fund Organisation,
   Sub Regional Office, Jayalakshmi Complex,
   Anna Salai, Swarnapuri, Salem 636 004. .... Petitioners

vs.

1. The Registrar
   Central Administrative Tribunal
   Chennai Bench,
   High Court Building,
   City Civil Court Complex,
   Chennai.

2. G.Ramji .... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent in O.A.No.1262 of 2014, dated 05.04.2016 and quash the same.

For Petitioners : Mr.V.Vijay Shankar

For 2nd Respondent : Mr.M.S.Velusamy
R1- Tribunal

ORDER

Challenge in this appeal, is to an order, made in O.A.No.1262 of 2014, dated 05.04.2016, by which, the Central Administrative Tribunal, Madras Bench, while quashing the proceedings of the Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Coimbatore, 2nd petitioner herein, vide Letter No.TN/RO-CBE/Regl. Adm/F.2/2013, dated 22.03.2013 and the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organisation, Sub Regional Office, Salem, 3rd petitioner herein, vide Letter No.TN/SRO/SLM/ADM/A-2/VRS/GR/2013, dated 26.3.2013 and Letter No.TN/SRO/SLM/ ADM/A-2/VRS/GR/2014, dated 08.08.2014, directed the writ petitioners to accept the VRS of the 2nd respondent, within a period of three weeks and settle his benefits, leave encashment and other dues, within a further period of six weeks.

2. Short facts leading to the writ petition are that the 2nd respondent herein was appointed as Lower Division Clerk (LDC) in the Ministry of Power, Government of India and joined as LDC on 12.05.1988. Lateron, he was absorbed in Employees Provident Fund Organisation, Royapettah, Chennai, as junior most LDC on 19.05.1994. Thereafter, he was promoted as UDC in the year 1997. He was subsequently re-designated as Social Security Assistant (SSA).

3. As the 2nd respondent had already completed 23 years of service, due to domestic compulsion, he opted for Voluntary Retirement (VR), under Rule 48A of CCS (Pension) Rules, 1972 and submitted a representation, dated 08.01.2013, to that effect, to the Regional Provident Fund Commissioner -I, Coimbatore, 2nd petitioner herein. He also sought for waiver of three months' notice period. Subsequently, on 15.01.2013, he made a further representation to the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organisation, Sub Regional Office, Salem, 3rd petitioner herein, seeking permission to avail leave at his credit, to run concurrently with the notice period, as provided for, in Office Memorandum No.25013/3/2003-Estt (A), dated 17.06.2003, till such time he was relieved on 'Voluntary Retirement'.

4. The request of the 2nd respondent for Voluntary Retirement was rejected by the competent authority and the same was conveyed, vide Letter No.TN/RO-CBE/RegI.Adm/F.2/2013, dated 22.03.2013, issued by the Assistant Provident Fund Commissioner (ADM), Office of Employees Provident Fund Organisation, Regional Office, Coimbatore, the 2nd petitioner herein, citing that an investigation against him, was pending. A

representation, dated 26.03.2013, has been made, denying the allegations and sought immediate relief on 'voluntary retirement'. He also requested for grant of eligible leave, till he was relived.

5. According to the 2nd respondent, he was not served with any show cause notice, in respect of any matter, reportedly being inquired into and which formed the basis for rejection of his request for 'voluntary retirement'. However, his request for grant of eligible leave, till his relief has been misconstrued as 'unauthorized absence' and by proceedings No.TN/SRO/SLM/VIG/Rule -10/GR/2013, dated 09.12.2013, the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organisation, Sub Regional Office, Salem, 3rd petitioner herein, initiated disciplinary action, under Rule 10 of EPF Staff (CCA) Rules, 1971.

6. Thereafter, the 2nd respondent submitted an appeal/representation, dated 08.05.2014, followed by a reminder on 24.07.2014, to the Additional Central Provident Fund Commissioner (TN &K), Employees' Provident Fund Organisation, Chennai, 1st petitioner herein and that the same had been disposed of, by the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organisation, Sub Regional Office, Salem, 3rd petitioner herein, vide letter, dated 08.08.2014, summarily rejecting the request of the 2nd respondent herein. Contending inter alia that the writ petitioners were indefinitely withholding his genuine request, for 'Voluntary retirement', for certain unfounded allegations, which they have not established, even after 19 months, the 2nd respondent has filed O.A.No.1262 of 2014, to quash the proceedings of the Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Coimbatore, 2nd petitioner herein, vide Letter No.TN/RO-CBE/Regl. Adm/F.2/2013, dated 22.03.2013 and the Regional Provident Fund Commissioner-II, Employees' Provident Fund Organisation, Sub Regional Office, Salem, 3rd petitioner herein, vide Letter No.TN/SRO/SLM/ADM/A-2/VRS/GR/2013, dated 26.3.2013 and Letter No.TN/SRO/SLM/ ADM/A-2/VRS/GR/2014, dated 08.08.2014 and consequently, prayed for a direction to the writ petitioners to accept his voluntary retirement, w.e.f. 08.04.2013 Forenoon and settle his retiral benefits, leave encashment and other dues, within a specified period.

7. The writ petitioners have filed a reply and additional reply, contending inter alia that on 06.03.2013, a reply was received from the Regional Office, Chennai EPFO, intimating the pendency of an investigation by the Zonal Vigilance Directorate, South Zone and therefore, on 22.03.2013, the competent authority has rejected the request for voluntary retirement and the said

fact was communicated by the 3rd petitioner. In the mean while, on 29.04.2013, a charge memo was issued, under Rule 12 of Employees Provident Fund Staff (CCA Rules), 1971, on the ground of unauthorized absence, wilful insubordination and gross negligence of duty. The 2nd respondent has submitted a reply, dated 06.05.2013. After considering the same, the request of the 2nd respondent for voluntary retirement, was rejected on the ground that an order of penalty of withholding of one increment for a period of one year, without cumulative effect, was imposed on the 2nd respondent and further, the period of unauthorized absence from 04.02.2013 to 21.05.2013, has been declared as "dies non".

8. Before the Tribunal, the writ petitioners have further submitted that a Charge Memo has been issued on 09.12.2013, under Rule 10 of Employee's Provident Fund (Classification, Control and Appeal) Rules, 1971 for unauthorized absence from 21.05.2013 and enquiry into the above charge was pending. The 2nd respondent has made a representation to the 1st respondent, against the rejection of Voluntary Retirement and also requested the competent authority to consider the deemed relief, with effect from 08.4.2013 and voluntary retirement. Copy of the letter, dated 24.7.2014, which rejected the request of the 2nd respondent, has been sent to the Sub Regional Office, Salem. For the abovesaid reasons, they prayed for dismissal of the Original Application.

9. Considering the rival submissions, the Tribunal observed that departmental action had been taken against the 2nd respondent, for his alleged unauthorized absence, wilful insubordination and gross negligence of the duty, for which, the 2nd respondent was imposed with a penalty of withholding of one increment for a period of one year, without cumulative effect. The Tribunal has further observed that for the vigilance complaint, stated to be pending against the 2nd respondent, from 2013, the petitioners have not produced any document to show, the nature of the complaint and that no charge memo has been issued.

10. In the abovesaid circumstances, by observing that there was no option, but to conclude that the 2nd respondent was not facing any departmental enquiry and that the allegation against the 2nd respondent, as vindictive, the Tribunal, vide order made in O.A.No.1262 of 2014, dated 05.04.2016, warned the petitioners not to make unfounded allegations to prejudice the outcome of the Original Application and also made observations that the Regional Provident Fund Commissioner (II), Sub Regional Office, Salem, was expected to maintain decorum of the Office and discipline in the institution. The Tribunal has made serious observations against the abovesaid Commissioner that she had

exceeded her limit and used the vigilance complaint, as an excuse to deny the rightful claim of the 2nd respondent and directed the writ petitioners to accept the VRS of the 2nd respondent, within three weeks, and to settle the retiral benefits, leave encashment and other dues, within a further period of six weeks. Being aggrieved by the abovesaid observations and directions of the Central Administrative Tribunal, Madras Bench, the present writ petition has been filed.

11. Assailing the correctness of the same, Mr.V.Vijaya Shankar, learned counsel for the petitioners submitted that the Tribunal has failed to take note of the substantive contentions, which would disentitle the 2nd respondent, from considering his request for voluntary retirement. Inviting the attention of this Court to Rule 48(A) of the CCS (Pension) Rules, which prescribes 20 years as the qualifying service, for submitting a request for voluntary retirement, he submitted that the 2nd respondent joined the Provident Fund Organisation only on 20.05.1994 and as on 08.01.2013, viz., the date on which, he submitted his request for voluntary retirement, he had completed only 18 years, 7 months and 19 days of qualifying service. He therefore submitted that though the said fact has been pointed out in the additional counter affidavit, filed by the Department, the Tribunal has committed a serious error in simply brushing aside the same.

12. Learned counsel for the petitioners further submitted that the 2nd respondent does not satisfy the qualifying years of service, which goes to the root of the matter, which disentitles the 2nd respondent, from making the very request for voluntary retirement. In this context, he further added that earlier, from 12.05.1988, the 2nd respondent was working in Ministry of Power. He joined the Employees Provident Fund Organisation only on 20.05.1994. According to him, the services of the 2nd respondent in Provident Fund Organisation and the services under the previous employer, viz., Ministry of Power, are different and there was no transfer of service, as averred by the 2nd respondent.

13. Learned counsel for the petitioners further submitted that for counting the past service, the 2nd respondent has to apply and exercise his option and should ensure that there is transfer of pro-rata pensionary benefits, for the previous service, from the previous organization to the petitioners' organisation. There should be a Tri-Partiate transaction, involving the 2nd respondent, the previous employer (Ministry of Power) and the present employer, viz., Employee's Provident Fund Organization. According to him, detailed instructions and guidelines under the CCS (Pension) Rules, 1972, have been issued by the Government of India, setting out the circumstances, under which, past service, can be counted and as to the modalities

therefor.

14. Learned counsel for the petitioners further submitted that in terms of Rule 48(A) of the CCS (Pension) Rules, 1972 and the instructions issued thereunder, acceptance of voluntary retirement by the department, is mandatory and before doing so, the department is expected to scrutinize the service record of the employee, to find out, if he/she fulfil the qualifying service and whether there are any pending or contemplated disciplinary proceedings against him. As the 2nd respondent is facing vigilance investigation, learned counsel for the petitioners submitted that the request of the 2nd respondent was rightly rejected. It is also his submission that based on subsequent events, by filing additional counter affidavit, it was clearly informed that the disciplinary authority had taken a decision, to issue major penalty proceedings against the 2nd respondent and other officers and that the matter was referred to the Central Vigilance Commission for advice.

15. According to learned counsel for the petitioners, in the light of the instructions issued by Government of India, under Rule 48(A) of the CCS (Pension) Rules, 1972 and disciplinary proceedings were contemplated, against the 2nd respondent and taking note of the decision of the disciplinary authority, request for voluntary retirement, has been rejected. He further submitted that the 2nd respondent has no unfettered right to claim acceptance of his request for voluntary retirement.

16. Learned counsel for the petitioners further submitted that when investigation was pending against the 2nd respondent and others, for initiation of major penalty proceedings and when the matter was referred to the Central Vigilance Commission for advice, the observations by the Tribunal, made against the petitioners, to an extent of warning them, are uncalled for and arbitrary. He further submitted that the Tribunal has failed to consider Rule 48-A of the abovesaid Rules and the instructions of the Government of India, in proper perspective and hence, prayed to quash the order of the Tribunal, dated 05.04.2016.

17. Defending the order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.1262 of 2014, dated 05.04.2016, Mr.M.S.Velusamy, learned counsel for the 2nd respondent submitted that between 12.05.1988 and 19.05.1994, the 2nd respondent was employed in the Ministry of Power. Subsequently, he was appointed on 19.05.1994 as LDC in Employee's Provident Fund Organization. According to him, it was a mere transfer of service from Ministry of Power to the Employee's Provident Fund Organization. He further submitted that when the request of the 2nd respondent for voluntary retirement was considered, no charge memo or enquiry was pending

against him and therefore, he ought to have been permitted to go on voluntary retirement.

18. Referring to the Government of India's letter, dated 23.05.2000, relating to the time schedule for conducting investigations, learned counsel for the 2nd respondent further submitted that when the investigation was not completed, within three months, the writ petitioners ought to have allowed the 2nd respondent to go on voluntary retirement. He also submitted that till the filing of the Original Application, in the year 2014, there was no formulated charge or enquiry, pending against the 2nd respondent and not even a memo was served, on the 2nd respondent, pursuant to any complaint or investigation, said to have been taken up by the Vigilance.

19. Learned counsel for the 2nd respondent further submitted that there was nothing wrong, on the part of the Tribunal, in making observations, against the writ petitioners, when the Tribunal quashed the orders, impugned therein. He further submitted that merely because, there was some proceedings contemplated against the 2nd respondent, for imposition of major penalty, request for voluntary retirement cannot be rejected, by citing vigilance investigation, which had not been taken up, since 2004. For the abovesaid reasons, he prayed to sustain the order of the Tribunal.

20. When the matter was posted for subsequent hearing, it was brought to the notice of this Court that on 18.07.2016, a charge memo has been issued to the 2nd respondent, for imposition of major penalty. Learned counsel for the petitioners further submitted that explanation has been submitted by the 2nd respondent and not satisfied with the same, an enquiry officer has been appointed. On the date, when the request for voluntary retirement was considered, there was no formulated charge and it was only at the stage of preliminary enquiry or investigation.

Heard the learned counsel appearing for the parties and perused the materials available on record.

21. Before adverting to the rival submissions, this Court deems it fit to extract Rule 48-A of the CCS (Pension) Rules, 1972.

> "48-A. Retirement on completion of 20 years' qualifying service:-
>
> (1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(ii) posted abroad in foreign based offices of the Ministries/Departments,

(iii) 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.

(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.

(3) - Omitted
(a) Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority :

Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted vide notification GSR No.928 (E), dated 21st December, 2012 [F.No.38/80/08-P&PW(A)]

(6) This rule shall not apply to a Government servant who -

(a) retires under Rule 29, or
(b) retires from Government service for being absorbed permanently in an autonomous body of a public sector undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION. - For the purpose of this rule the expression "appointing authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement."

22. Reading of the rule makes it clear that a Government servant, who had completed twenty years' qualifying service, may, by giving notice of not less than three months in writing to the appointing authority, retire from service, subject to the conditions, stated in the rule. Notice of voluntary retirement, given under sub-rule (1) shall require acceptance by the appointing authority. Guidelines issued by the Government of India, for acceptance of notice, seeking voluntary retirement are extracted hereunder:

"Guidelines for acceptance of notice.- A notice of voluntary retirement given after completion of twenty years' qualifying service will require acceptance by the appointing authority if the date of retirement on the expiry of the notice would be earlier than the date on which the Government servant concerned could have retired voluntarily under the existing rules applicable to him [e.g., FR 56 (k), Rule 48 of the CCS(Pension) Rules,1972, Article 459 of CSRs or any other similar rule]. 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. If it is proposed to accept the notice of voluntary retirement even in such cases, approval of the Minister-in-charge should be obtained in regard to Group `A' and Group `B' Government servants and that of the Head of the Department in the cases of Group `C' and Group `D' Government servants. Even where the notice of voluntary retirement given by a Government servant requires acceptance by the appointing authority, the Government servant giving notice may presume acceptance and the retirement shall be effective in terms of the notice unless, the competent authority issues an order to the contrary before the expiry of the period of notice."

23. Material on record discloses that the 2nd respondent was appointed as Lower Division Clerk (LDC) on 12.05.1988, in the Ministry of Power, Government of India and joined as LDC. Thereafter, on 28.04.1994, he was offered the post of LDC in the Office of the Regional Provident Fund Commissioner, Royapettah, Chennai, based on the direction of the Central Provident Fund Commissioner, New Delhi. Consequent on his selection for appointment as LDC in the Office of the Regional Provident Fund Commissioner, Royapettah, Chennai, his technical resignation was accepted by Government of India, Central Electricity Authority, New Delhi

24. Consequent to the acceptance of his technical resignation from the post of LDC in the Ministry of Power, vide letter, dated 12.05.1994, the 2nd respondent has been relived from the duties, in the Central Electricity Department, w.e.f. 13.05.1994. Accordingly, he was absorbed in Employees Provident Fund Organisation, Royapettah, Chennai, as a junior most LDC on 19.05.1994, subject to certain terms and conditions. Based on the last drawn pay certificate, issued in the month of May' 1994, the 2nd respondent has joined the Employees Provident Fund Organisation, Royapettah, Chennai. Material on record discloses continuity of service from the Department of Power.

25. The Central Vigilance Commissioner, Government of India, New Delhi, vide letter, dated 23.05.2000, has issued a schedule a time limit in conducting investigations and departmental inquiries. The said letter is extracted hereunder:

"Delays in disposal of disciplinary cases are a matter of serious concern to the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. The Commission has issued instructions, vide its communication No. 8(1)(g)/99(3) dated 03.03.1999, that departmental inquiries should be completed within a period of six months from the date of appointment of Inquiry Officers. Regarding other stages of investigation/inquiry, the time-schedule, as under, has been laid down in the Special Chapters on Vigilance Management in Public Sector Banks/Enterprises, which are applicable to the employees of public sector banks / enterprises. The Commission desires that these time-limits should also be adhered to by the Ministry/Departments of Government of India, autonomous organisations and other Cooperative Societies, in respect of their employees, so as to ensure that the disciplinary cases are disposed of quickly."

26. From the reading of the instructions, dated 23.05.2000, of the Central Vigilance Commission, Government of India, for conducting investigation and submission of report, the time limit is three months. One month time from the date of receipt of investigation report is given for referring departmental investigation reports to the Commission for advice. Thereafter, there are different stages.

27. Ministry of Personnel, P.G. & Pensions (Department of Personnel and Training), vide Office Memorandum, dated 17th June, 2003, has introduced a scheme for voluntary retirement for Central Government employees and the same is extracted hereunder:

No. 25013/3/2003 -Estt. (A)
Government of India
Ministry of Personnel, PG.and Pensions
(Department of Personnel & Training)

New Delhi, dated the 17th June 2003

OFFICE MEMORANDUM

Subject:- Scheme of Voluntary Retirement for Central Government employees.

Attention of all Ministries/Departments is invited to the provisions contained para 3(xiii) of Department of Personnel &Training O.M. No. 25013/7/77-Estt.(A) dated 26.8.1977 and clarifications contained in O.M. No.25013/10/85-Estt.(A) dated 5.7.1985 on the above subject. It has been laid down in the Office Memoranda referred to above, that a Goverment servant giving notice of voluntary retirement may also apply, before the expiry of the notice, for the leave standing to his credit which may be granted to him to run concurrently with the notice period except in the case of Extra-ordinary Leave as such leave whether on medical ground or on private affairs can not be termed as leave standing to the credit of a Government servant. The matter has been reviewed and it has been decided to modify the provisions contained in para 3 (xiii) of O.M. No. 25013/7/1977-Estt.(A) dated 26.8.1977 and O.M. No. 25013/10/85-Estt.(A) dated 5.7.1985 as follows :-

Para 3 (iii) A Government servant giving notice of voluntary retirement may also apply, before the expiry of the notice, for the leave standing to his credit which may be granted to him to run concurrently with the period of notice. Extra-ordinary leave is not termed as leave standing to his credit and therefore, it cannot run concurrently with the period of notice given by him for seeking voluntary retirement. In case, a Government servant applies for voluntary retirement while already on extra-ordinary leave other than on medical ground, the notice period need not be insisted upon and his request may be accepted with immediate effect provided he is clear from vigilance angle. However, If a Government servant while already on extra-ordinary leave on medical ground, applies for voluntary retirement, the notice period, if any, given may be accepted and he may be allowed to retire after the expiry of the notice period subject to vigilance clearance.

2. In so far as persons serving in the Indian Audit and Accounts department are conoerned, these orders issue in consultation with the Comptroller and Auditor General of India.

sd/-
(V.A. PILLAI)
Under Secretary to the Government of India

28. The Central Vigilance Commission, New Delhi, vide Office Memorandum, dated 14.12.2007, has issued guidelines, regarding grant of vigilance clearance to the members of the Central Civil Services/Central Civil Posts. As per the said guidelines, vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of atleast a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession, prima facie substance to verifiable allegations, regarding (i)corruption; (ii)possession of assets disproportionate to known sources of income; (iii) moral turpitude; and (iv) violation of the Central Civil Services (Conduct) Rules, 1964. Other circumstances under which vigilance clearance shall not be withheld are as follows:

"(b) Vigilance clearance shall not be withheld if a preliminary inquiry mentioned in 2(a) above takes more than three months to be completed.

(c) Vigilance clearance shall not be withheld unless (i) the officer is under suspension (ii) a chargesheet has been issued against the officer in a disciplinary proceeding and the proceeding is pending (iii) orders for instituting disciplinary proceeding against the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of passing such order (iv) chargesheet has been filed in a Court by the Investigatina Agency in a criminal case and the case is pending (v) orders for instituting a criminal case aaainst the officer have been issued by the Disciplinary Authority provided that the chargesheet is served within three months from the date of initiating proceedings (vi) sanction for investigation or prosecution has been granted by the Competent Authority in a case under the PC Act or any other criminal matter (vii) an FIR has been flied or a case registered by the concerned Department against the officer provided that the chargesheet is served within three months from the date of filing/registering the FIR/case (viii) the officer is involved in a trap/raid case on charges of corruption and investigation is pending."

29. Though Mr.M.S.Velusamy, learned counsel for the 2nd respondent placed strong reliance on the schedule of time limits in conducting investigations and departmental inquiries, issued vide letter, dated 23.05.2000, of the Central Vigilance Commission and contended that vigilance clearance, ought not to have been withheld for more than three months and therefore, the writ petitioners ought to have permitted the 2nd respondent to go on voluntary retirement. Letter, dated 22.03.2013, of the Assistant Provident Fund Commissioner (ADM), Employees Provident Fund Organization, Regional Office, Coimbatore, shows that the request for voluntary retirement had been considered and that the competent authority has rejected the same, stating that a detailed investigation regarding a complaint alleging demand for bribe by the 2nd respondent has been taken up by the Zonal Vigilance Department (South Zone), Hyderabad, after confirming that there is prima facie evidence about the possible involvement of the 2nd respondent.

30. Clause 2(a) states that the vigilance clearance shall not be withheld due to the filing of a complaint, unless it is established on the basis of atleast a preliminary inquiry or on the basis of any information that the concerned Department may already have in its possession that there is prima facie, substance to verifiable allegations, regarding (i)corruption; (ii)possession of assets disproportionate to known sources of income; (iii) moral turpitude; and (iv) violation of the Central

Civil Services (Conduct) Rules, 1964. Thus, the case of the 2nd respondent would squarely fall under Clause 2(a) of the guidelines, dated 14.12.2007, regarding the grant of vigilance clearance to the members of the Central Civil Services/Central Civil Posts.

31. When the 2nd respondent made a representation, dated 26.03.2013, to the Regional Provident Fund Commissioner-I, Employees Provident Fund Organisation, Regional Office, Coimbatore, stating that he was not involved in the alleged act nor received any intimation from any authority, in her 23 years of service with the Organisation, on the basis of the letter, dated 21.03.2013, a reply, dated 26.03.2013, has been sent to the 2nd respondent, reiterating the same stand.

32. Subsequently, when the 2nd respondent made representations, dated 08.05.2014 and 24.07.2014, the Regional Provident Fund Commissioner, Employee's Provident Fund Organisation, Sub-Regional Office, Salem, vide letter, dated 08.08.2014, has sent a reply to the 2nd respondent, stating that his request for Voluntary Retirement was already rejected by the competent authority and that the same was communicated to the 2nd respondent, vide Office Letter, dated 26.03.2013 and despite rejection of the same, the 2nd respondent has continued to seek for the same relief and therefore, the 2nd respondent has been informed that his act would be construed as acts of willful disobedience and subversive to discipline, warranting action.

33. As rightly contended by Mr.V.Vijay Shankar, learned counsel for the writ petitioners, acceptance of voluntary retirement cannot be given in all cases, where, disciplinary proceedings are pending or contemplated, on prima facie evidence, regarding corruption, against the government servant concerned for imposition of any major penalty. As stated supra, the case of the 2nd respondent, would fall under Clause 2(a) of the Office Memorandum, dated 14.12.2007, because in the investigation, a prima facie evidence, regarding corruption, has been made out.

34. Though Mr.M.S.Velusamy, learned counsel for the 2nd respondent submitted that as on the date of request for voluntary retirement, there was no charge memo and that therefore, the Tribunal was right in quashing the impugned Original Application, this Court is not inclined to accept the same, considering the subsequent event that a charge memo, dated 18.07.2016, has been issued, for imposition of major penalty and that an enquiry officer has also been appointed.

35. As on today, the 2nd respondent is facing a corruption charge for imposition of major penalty. If the 2nd respondent is

permitted to go on voluntary retirement, it could be contrary to Rule 48-A of the CCS (Pension) Rules and the Government of India's guidelines, issued for acceptance of notice, for voluntary retirement.

36. In the light of the above discussion and the subsequent events, this Court is of the view that the order of the Central Administrative Tribunal, Madras Bench, made in O.A.No.1262 of 2014, dated 05.04.2016, requires to be interfered with. The Order of the Tribunal, dated 05.04.2016, is set aside. The observations made are uncalled for, and require to be set aside.

37. In the result, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed

sd/
Assistant Registrar

/true copy/

Sub Assistant Registrar

skm

To

1. The Registrar
   Central Administrative Tribunal
   Chennai Bench,
   High Court Building,
   City Civil Court Complex,
   Chennai.

2. The Additional Central Provident Fund
   Commissioner(TN&K) Employees' Fund Organization
   37, Royapettai High Road, chennai-14.

3. The Regional Provident Fund Commissioner-1
   Employee's Provident fund organization,
   Regional office, Bhavishya Nidhi Bhavan
   Dr.Balasundaram Road, Coimbatore 641 018.

4. The Regional Provident fund commissioner-II
Employee's provident fund organization,
Sub Regional Office, Jayalakshmi complex,
Annasalai.. swarnapuri, salem- 636 004.

+1 CC to Mr. V. Vijay Shankar, Advocate SR 71575

+1 CC to Mr. T.S. Velusamy, Advocate SR 71912

SK
sp/18/1