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

\+ **WRIT PETITION(C) No. 10052/2016**

Date of decision: 26th October, 2016

DINESH KUMAR GUPTA ..... Petitioner

Through Mr. Shanker Raju, Mr. Nilansh Gaur & Ms. Himantika Saini Gaur, Advocates.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr. Sanjeev Narula, CGSC & Mr. Abhishek Ghai, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE SUNITA GUPTA

SANJIV KHANNA, J. (ORAL):

Having heard learned counsel for the petitioner, we are not inclined to interfere with the impugned order dated 19th September, 2016 passed by the Principal Bench of the Central Administrative Tribunal (Tribunal, for short) dismissing OA No. 4414/2012.

2. The petitioner, who was working as Superintendent in Service Tax Commissionerate at New Delhi, vide letter dated 29th August, 2012 had submitted a request for voluntary retirement under Rule 48A of the Central

Civil Services (Pension) Rules, 1972 stating that due to personal reasons he would like to retire under the aforesaid provision with effect from 30th November, 2012.

3. Contention of the petitioner is that the respondent authorities had not refused permission before the expiry of the period specified in the said notice, i.e., 30th November, 2012. The petitioner was informed of the refusal for the first time only on 14th December, 2012. Accordingly, the petitioner had voluntarily retired as per mandate of Rule 48A on 30th November, 2012. It is a case of deemed acceptance.

4. The Tribunal has rightly rejected the said contention of the petitioner for several good and cogent reasons. The respondents have placed on record order dated 2nd November, 2012, which was signed by the Deputy Commissioner (P & A), Service Tax, New Delhi on 8th November, 2012. This letter/communication records that the request of voluntary retirement had not been accepted by the competent authority in view of DGoV (Director General of Vigilance) advice for initiation of RDA (Regular Departmental Action) for major penalty proceedings against the petitioner. This letter was addressed to the petitioner, who was then working as Superintendent, Adjudication, Service Tax, New Delhi. This letter was sent by speed post as per the proof of dispatch placed on record. The letter was posted to the petitioner's permanent address at Bhilai. The Tribunal has also recorded that attempts were made to serve the petitioner by hand

at his office through Ranvir Singh, Lower Division Clerk on 9th November, 2012. The petitioner had refused to accept service. In these circumstances, it was reasonable for the Tribunal to draw the inference that the petitioner was deliberately obstructing service and not accepting the same. Certainly, the petitioner was fully aware and conscious that the request for voluntary retirement had been rejected as major penalty proceedings were to be initiated against the petitioner. Ignorance expressed by the petitioner is rather inane. We do not think, in the aforesaid facts, the impugned order requires interference.

5. Learned counsel for the petitioner, during the course of hearing, had placed reliance on the judgment of the Supreme Court in ***P. Lal versus Union of India and Others***, (2003) 3 SCC 393. The said judgment refers to the case of voluntary retirement and the issue addressed was different. The requirement to communicate acceptance, it is observed, arises when the member continues to work. When the member has by his own conduct abandoned services, there was severance of relationship of master and servant, which takes place immediately on acceptance of notice. The said decision has no relevance in the present factual matrix as the competent authority had on 8th November, 2012 rejected the request for voluntary retirement.

6. Counsel for the petitioner submits that alongwith the rejoinder the petitioner had filed documents procured from the office of the Department

of Posts to show that the letter sent by speed post vide registration No. ED80033660 2 IN-26907 was not received. This, according to us, would not be of any consequence in the facts of the present case. The letter was dispatched and sent by speed post on 9th November, 2012. It was sought to be served personally on the petitioner, but he had refused to accept and give receipt.

7. In view of the aforesaid position, we do not find any merit in the present writ petition and the same is dismissed.

SANJIV KHANNA, J.

SUNITA GUPTA, J.

OCTOBER 26, 2016
VKR