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

+ **W.P.(C) 26/2017**

Date of Decision : 27 March, 2017

ANIL KUMAR TYAGI Petitioner
Through Mr. Suresh Tripathy, Advocate

Versus

CHIEF EXECUTIVE OFFICER, DELHI JAL
BOARD & ANR Respondents
Through Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Siddhartha Nagpal,
Advocate and Mr. Ram Bilas, Office
Supdt. DJB]

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

The petitioner in this writ petition impugns the order dated 23.12.2016 whereby OA No. 3599/2016 filed by him has been disposed of with the following findings:-

“8. In the instant case, I find that it is true that disciplinary proceedings for major penalty were contemplated against the applicant at the time his request for voluntary retirement was considered. However, there is no record to show that the appointing authority had applied his mind to the charges contemplated against the applicant and had come to the conclusion that in case those charges were proved,

penalty of removal or dismissal from service would be warranted in this case. Moreover, the reason given in the impugned order for refusing the request of voluntary retirement is that applicant was not clear from vigilance angle. This was not any of the conditions mentioned in the DoP&T guidelines for refusing voluntary retirement. Hence, the impugned order does not appear to have been passed in accordance with the guidelines of DoP&T and is, therefore, unsustainable.

9. *However, in this case, I notice that the applicant after passing of the impugned order has continued in service. This was admitted by learned counsel for the respondents during course of hearing. Thus, the applicant has not only discharged duties of the post after expiry of notice period but has also drawn salary on his post. He did not presume acceptance of the notice of voluntary retirement from the date of expiry of the notice period, which expired on 06.06.2016. He, therefore, cannot now be retired from the date on which notice period had expired. Thus, in the peculiar circumstances of this case, I come to the conclusion that even after quashing of the impugned order, the applicant cannot be treated to have retired from the date on which notice period expired.*

10. *I, therefore, dispose of this O.A. by quashing the impugned order dated 01.06.2016. However, no further relief can be granted to the applicant. No costs."*

2. The petitioner submits that there is contradiction between the findings recorded in paragraphs 8 and 9. Noticing the contention, we had issued the notice in this writ petition vide order dated 04.01.2017 which reads as under:-

"Learned counsel for the petitioner submits that the application seeking voluntary retirement, dated 7.3.2016, was under Rule 48A of the CCS(Pension) Rules, 1972 and not under fundamental Rule 56. The statement is taken on

record.

We have examined the letter dated 7.3.2016, written by the petitioner seeking voluntary retirement. The relevant paragraph of the said letter reads as under:

“I Anil Tyagi joined the department on April 1989 as Work Assistant (Civil). Subsequently I was promoted to the post of JE(Civil) in the year December 1993. Presently I am posted in the division of EE (South)-IV. Off late I am facing certain domestic issues due to which I am unable to continue my services in the department. It is therefore humbly request to grant me voluntary retirement from the services of Delhi Jal Board under Voluntary Retirement Scheme.

I further request to kindly relieve me from the services as early as possible waiving the notice period of 90 days. May kindly consider this as notice for opting retirement under V.R.S. w.e.f. today i.e. 7.3.2016.”

The aforesaid letter refers to Voluntary Retirement Scheme, which, it is conceded, was not in operation at that time.

Learned counsel for the petitioner submits that there is a contradiction in the findings recorded by the Tribunal in paras 8 and 9.

Issue notice, returnable on 15.2.2017. Mr. Siddharth Nagpal, Advocate accepts notice on behalf of respondent Nos.1 and 2.

We clarify that the Court may examine the entire controversy afresh.

We are not inclined to grant stay of the departmental proceedings. Learned counsel for the petitioner submits that the petitioner had not attended his duties from 7.5.2016 till 4.11.2016. He states that the petitioner had remained on leave for this period on account of ill-health. The petitioner had reported for duty on 5.11.2016 and again applied for medical leave from 7.11.2016 to 13.11.2016. This application is pending. We do not comment and state anything in this regard.

As a short issue arises for consideration, learned counsel for the parties should be ready for arguments on the

next date of hearing.

3. Before we give reasons and record our findings we would take notice of the relevant facts.
4. The petitioner is an employee of Delhi Jal Board. He was appointed as Work Assistant (Civil) in the year 1989 and had earned promotions from time to time and was promoted to the post of Junior Engineer (Civil).
5. The petitioner was prosecuted by the Central Bureau of Investigation under Section 120-B read with Section 420 and 471 of the Indian Penal Code and Section 13(2) read with Section 13 (1) (d) of the Prevention of Corruption Act, 1988. By the judgement dated 18.01.2016, the petitioner was acquitted.
6. Soon after the order of acquittal, the petitioner by his application dated 07.03.2016, received by the respondent-Delhi Jal Board on 08.03.2016, had sought voluntary retirement. This letter written by the petitioner has been quoted in our order dated 04.01.2017 reproduced in paragraph 2 above. The letter did not refer to the applicable rule or provision under which the petitioner was seeking voluntary retirement, albeit reference was made to the

Voluntary Retirement Scheme, though no Voluntary Retirement Scheme was in operation at that time. The petitioner had requested that he should be relieved from the service as early as possible, with waiver of notice period of 90 days.

7. This request for voluntary retirement was rejected vide letter dated 01.06.2016 written by the Assistant Commissioner (T), which reads:-

“Kindly refer to your 03 months notice dated 07.03.2016 for voluntary retirement from the services of Delhi Jal Board. In this context, it is to inform you that your request has been rejected by the Competent Authority on the ground of not clearance from Vigilance angle.”

8. The petitioner had challenged the rejection letter dated 1.6.2016 in the OA No. 3599/2016 that has been disposed off by the impugned order.

9. The letter of rejection dated 1.06.2016, the petitioner submits, is bad and contrary to law, as non clearance from the Vigilance angle, is not a valid reason and justification to reject an application for voluntary retirement made under Rule 48 A of the Central Civil Services (Pension) Rules, 1972. Reference is made to the Instructions of the Central Government quoted in the Swamy's Compilation, 2013

Edition on the said aspect and exercise of discretion, which reads: -

“(iii) **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 Pension Rules, Article 459 (i) 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.”

According to the petitioner as per said guidelines, request for

voluntary retirement can be rejected where the disciplinary proceedings are pending or contemplated for the imposition of a major penalty and the disciplinary authority, having regard to the circumstances of the case, is of the view that imposition of the penalty of removal or dismissal from service would be warranted. In the present case, the petitioner was earlier prosecuted and acquitted by the trial court. The letter of rejection dated 1.6.2016, it is submitted, is not in terms with the said guidelines.

10. The letter of rejection dated 1.06.2016 quoted above, refers to the decision of the Competent Authority, to not accept the request for voluntary retirement. It also states that the Vigilance Branch has not granted clearance. The letter did not elaborate and clarify the reason why vigilance clearance could not be accorded. The counter affidavit however had elucidated that clearance was denied as major penalty proceedings vide RDA No. 27/Major/2016 dated 21.03.2016 were booked against the petitioner and issue of charge sheet for major penalty was under process. The petitioner submits that this elaboration and explanation should be ignored and is unreadable for this was not the reason and explanation in the letter of rejection dated 1.06.2016.

11. The letter of rejection dated 1.06.2016 was to convey and inform rejection of the request by the competent authority for voluntary retirement. The guidelines referred to relate to the parameters to be applied by the authorities when considering an employee's notice seeking voluntary retirement. The purpose and objective of the letter was not to communicate in detail the grounds and reasons considered and recorded. The letter conveys the outcome, as rejection of the request for voluntary retirement must be communicated before the specified period. The letter was not the order which was passed on the file. It was written to the petitioner to inform that the request for voluntary retirement stands rejected. In a case of this nature, the respondents can rely upon the grounds and reasons given for the rejection. Reference and reliance on the reasons considered and recorded is not prohibited and precluded. The guidelines, administrative in nature, state that requests for voluntary retirement are generally accepted in all cases, except those where disciplinary proceedings are pending or for major penalty are contemplated. In the latter case, the disciplinary authority should be of the view that imposition of penalty of removal or dismissal would be warranted. It

would be imprudent and perhaps unlawful for the disciplinary/competent authority to communicate the said reason, when the issue whether or not to initiate major departmental proceedings is under contemplation/consideration and not decided. Statement that “dismissal or removal order may be warranted” could be construed as an attempt to prejudge the merits. The rejection in the present case was in consonance and in terms of the guidelines.

12. The Supreme Court in *State of Uttar Pradesh and Ors. Vs. Luxmi Kant Shukla*, (2011) 9 SCC 532, referring to somewhat similar provision in Fundamental Rule 56 and in particular clauses (c) and (d) had observed that in case of "a contemplated disciplinary proceedings" the government servant should be informed about the rejection before the expiry of his notice. The rejection in the present case was communicated within time.

13. It is apparent that the petitioner was certainly aware and conscious of the respondents' intent to initiate regular departmental proceedings after his acquittal in the criminal case. This is apparent from the letter of the petitioner dated 22.06.2016 to the Chief Executive Officer, which reads :-

“I, Anil Tyagi working as Junior Engineer (C) had opted for voluntary retirement & submitted the request on 8.03.2016 to get myself relieved from the services of Delhi Jal Board on completion of notice period of three months. Now at belated stage I have come to know that NOC issued by Vigilance indicates an inquiry is in progress against me. It is reported to be in the same case against which the CBI had conducted a detailed inquiry & submitted a charge sheet in the CBI Court.

It is state that on the dated 18.01.2016, the Hon’ble Court of Shri Gurdeep Singh, Special Judge (PC Act) CBI05 pleased to pass an order that all accused persons are acquitted in reference to RC No. DAI 2011-A-0031/CBI/CAN/Delhi. The certified copy of the same was submitted in the office of Director of Vigilance on 24.02.2016. However, a copy is again enclosed for ready reference.

I am shocked to note that department has still going ahead which inquiry in the same case that has already been concluded in the CBI Court. It is humbly requested that the said RD booked after judgement passed by Hon’ble CBI Court may kindly be dropped as inquiry has already been concluded & acquitted by the CBI Court. Department had not issued any charge sheet in the case. Kindly issue my relieving order from the services of Delhi Jal Board. A letter has already been written to the member (Administration) of Delhi Jal Board on dated 01.06.2016.

The above letter by the petitioner states that the Vigilance Branch had objected to his request for voluntary retirement for an inquiry against him was in progress, in spite of the fact that he has been acquitted. He had pleaded that the disciplinary proceedings should be dropped.

14. In the aforesaid circumstances, we hold that the letter dated 01.06.2016 was not illegal. We express our inability to agree with the findings recorded by the Tribunal in paragraph 8 of the impugned order and hold that the petitioner's request for voluntary retirement was validly rejected vide letter dated 1.6.2016. We are conscious and aware that the respondents have not filed any writ petition challenging the adverse findings recorded in paragraph 8. In our opinion this would not make any difference, as the Tribunal vide reasoning in paragraph 9 of the order dated 23.12.2016 has dismissed the OA No. 3599/2016 holding that the petitioner was not entitled to the relief. We have affirmed the said finding, albeit for additional and new reason and ground.

15. The petitioner it is accepted had continued to work, after he had received the rejection letter dated 01.06.2016. The petitioner had accepted the rejection. This was the reason for the petitioner to apply and seek leave and extension of leave from duty.

16. Learned counsel for petitioner during the course of hearing had drawn our attention to the judgment of the Supreme Court in the case of *State of Haryana and Others Vs. S. K. Singhal*, (1999) 4 SCC

293. This judgment deals with Punjab Civil Services Rules and Regulations. Referring to the rule position, it was held that the provision requires acceptance of the appointing authority within the period specified. It would, nevertheless, be open to the appointing authority to withhold grant of retirement to the employee who was under suspension, or against whom departmental proceedings were pending or contemplated. Reliance was placed on the "future good conduct", being an implied condition for every grant of pension. We do not think that this aforesaid judgement would be of any help to the petitioner for the reason that in the present case the request for voluntary retirement was rejected on 01.06.2016, which was prior to the prescribed 90 days period which ended on 07.06.2016. To this extent there is no dispute.

17. In ***Balram Gupta Vs. Union of India and Another*** 1987 Supp. SCC 228, the Government employee had sought voluntary retirement with effect from 31.03.1981 vide letter dated 28.01.1981. Later, the employee changed his mind and vide letter dated 31.01.1981 had sought withdrawal of the notice of voluntary retirement. The authorities disallowed the request for withdrawal. Rule 48-A (4) of

the CCS (Pension) Rules, 1972 precludes a Government servant from withdrawing his notice except with specific approval of the authority. The Supreme Court allowed the appeal, holding that retirement was to take effect from a subsequent date prospectively. The normal rule which relates to withdrawal of resignation would not apply because sub-Rule (4) to 48-A permits withdrawal with the approval of the authority. Further, while deciding whether or not to grant approval the statutory authority must act reasonable and rationally. In the said case the authority had rejected the application for the reason that the Government servant had not indicated reasons for withdrawal. The Supreme Court observed that the letter of withdrawal had sufficiently indicated the reason for change of mind as persistent persuasion of friends and staff. Some degree of flexibility was required when this flexibility did not jeopardise administration. The dictum in the said judgment is of no relevance in the present case.

18. Lastly, reliance was placed on *Sheelkumar Jain Vs. The New India Assurance Company Ltd. and Ors.* (2011) 12 SCC 197. This judgment draws difference between the effect of resignation and voluntary retirement. Resignation under the applicable rules entailed

forfeiture of past service and consequently an employee was not entitled to pensionary benefits, whereas in voluntary retirement pensionary benefits were payable. In the said case the employee had written the letter dated 16.09.1991 which was before the formulation and notification of the 1995 Pension Scheme. Neither the employee nor the employer was aware and knew the difference between resignation and voluntary retirement under the Scheme. Referring to the fact that the employee had rendered 20 years of qualifying service and had given notice of not less than 90 days to the appointing authority of his intention to leave service, it was treated as a case of voluntarily retirement even if the employer had used the term “resigned”. The said decision is of no application to the present case.

19. For the aforesaid reasons we hold the OA was rightly dismissed. The writ petition has no merit and is dismissed. There would be no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

MARCH 27, 2017/b