IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14241 of 2019

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Devendra Prasad Singh, (Aged about 58 years (Male)), Son of Late Bhikhari Prasad Singh, Resident of Village-Shitalpur Babu Tola, P.O. Shitalpur, District-Saran.

... ... Petitioner/s

Versus

1. Union of India through Secretary, Department of Posts, Dak Bhavan, New Delhi-110001
2. The Chief Post Master General Bihar Circle, Patna-800001
3. The Director of Postal Service (HQ) O/o CPMG, Bihar Circle, Patna-800001
4. The Assistant Director (Staff) O/o CPMG, Bihar Circle, Patna-800001
5. The Superintendent of Post Offices, Vaishali Postal Division, Hajipur-844101
6. The Post Master Hajipur (HQ), Hajipur-844101

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mithilesh Kumar Rai, Adv.
Mrs. Vandana Kishore, Adv.

For the Respondent/s U.O.I.: Mr. S.D. Sanjay (ADSG)
Mrs. Poonam Kumari Singh, CGC
Mr. Mohit Agarwal, Adv.
Mrs. Parul Prasad, Adv.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA

C.A.V. JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 15-10-2019

The petitioner has prayed for setting aside the impugned order of the Tribunal dated 30th May, 2019 that has upheld the action of the respondent authorities whereby they had cancelled the request of the petitioner for voluntary retirement and the appeal filed against the same has been dismissed.

02. A further prayer has been made to quash a charge-sheet issued to the petitioner and the consequential proceedings on the ground, that if the petitioner is deemed to have been retired in law w.e.f. 01.09.2017 then in that event no disciplinary action could have been taken against him which was also prayed to be declared as null and void on the aforesaid ground. We find that this relief had been prayed for before the Tribunal in the Original Application even though there is no specific prayer to that effect in the present writ petition.

03. The petitioner while working as Assistant Post Master (SBSO), Head Office, Hajipur applied for voluntary retirement under Rule 48 of the CCS (Pension) Rules, 1972 and for that a notice dated 21st of May, 2017 with an endorsement of having been served before the competent authority on 22.05.2017. The caption of the application-cum-notice mentions that it is being moved under Fundamental Rule 56 read with Rule 48-A CCS (Pension) Rules, 1972. This application for voluntary retirement was admittedly accepted on 23rd August, 2017. The same is extracted hereinunder:-

भारतीय डाक विभाग,

Department of Posts, India

कार्यालय चीफ पोस्टमास्टर जनरल, बिहार सर्किल, पटना– 800001

Office of the Chief Postmaster General, Bihar Circle, Patna-800001

ORDER

Memo. No.Staff/PF/LSG/Misc./2016 Dated at Patna 23.08.2017

The Competent Authority is pleased to accept the notice dated 21.05.2017 of Voluntary Retirement by Sri Devendra Prasad Singh, APM, SBSO, Hajipur HO, Vaishali Division, under Rule-48 of CCS (Pension) Rules, 1972 and permit him to retire voluntarily from Government Service w.e.f. 01.09.2017 forenoon.

(Narsingh Mahto)
Assistant Director (Staff)

Phone:- 0612-2225148
Email: staff.br@indiapost.gov.in

Copy for information and necessary action to

1. The Director of Accounts(Postal), Patna
2. The Supdt. Of Postoffices, Vaishali Division, Hajipur with reference to his letter no.B1/157/Ch-I dated 16.06.2017. He is requested kindly to adjust the dues against the office, if any.
3. The Postmaster, Hajipur HO.
4. Sri Devendra Prasad Singh, APM, SBSO, Hajipur HO, Vaishali Division.
5. Spare

Assistant Director (Staff)"

04. A perusal of the notice/request for voluntary retirement tendered by the petitioner would clearly demonstrate a recital that the petitioner intended to retire w.e.f. 1st of September, 2017 upon completion of 34 years 4 months of service and having attained the age of 55 years 8

months as on 31.08.2017 that was accepted as above.

05. To clear the mist about the applicability of rules, it would be apt to quote Rule 48-A of the CCS Pension Rules, 1972 which is extracted hereinunder:-

> ***"Rule 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 Co-operation (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 foreignn 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) Deleted.

(3-A)(a) 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 therefore;

(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."

06. The extract of Fundamental Rule 56 as applicable, namely, Fundamental Rule 56(k)(c) relating to voluntary retirement is extracted hereinunder:-

> *"(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--*
>
> *(c) it shall be open to the Appropriate Authority to withhold permission to a Government servant, who seeks to retire under this clause, if--*
>
> *(i) the Government servant is under suspension: or*
>
> *(ii) a charge-sheet has been issued and the disciplinary proceedings are pending; or*
>
> *(iii) if judicial proceedings on charges which may amount to grave misconduct, are pending."*

07. The application moved by the petitioner

being in conformity with the aforesaid Rules was accepted by the Department on 23.08.2017 which is already extracted hereinabove.

08. It is thus evident that the petitioner having attained the requisite number of years of service was eligible to apply and the period of three months of prior notice having elapsed, his request for voluntary retirement was accepted in accordance with law on 23.08.2017. There is absolutely no dispute up to this stage according to which the petitioner had been given the opportunity to retire w.e.f. 01.09.2017 forenoon.

09. The dispute commences thereafter the petitioner claims that he submitted an application for leave from 29.08.2017 to 31.08.2017 while on the other hand the respondent department claims that on 30th August, 2017 the order whereby voluntary retirement had been accepted was cancelled and withdrawn and simultaneously on account of certain charges of grave financial irregularities had come to the notice of the department, charge-sheet was also issued on the said date. The order dated 30.08.2017 is extracted hereinunder:-

भारतीय डाक विभाग,

Department of Posts, India

कार्यालय चीफ पोस्टमास्टर जनरल, बिहार सर्किल, पटना– 800001

Office of the Chief Postmaster General, Bihar Circle, Patna-800001

"No.Staff/PF/LSG/Misc/2016 Dated at Patna 30.08.2017

The notice dated 21.05.2017 of voluntary retirement by Shri Devendra Prasad Singh, APM (SBSO), Hajipur HO, Vaishali Division was accepted by the competent Authority vide C.O. Memo no. even, dated 23.08.2017 under Rule-48 of CCS (Pension) Rules, 1972 and he was permitted to retire from Government service with effect from 01.09.2017 forenoon. The Supdt. of Post Offices, Vaishali Dn., Hajipur has issued a charge sheet under Rule-16 of CCS (CCA) Rules, 1965 against Shri Devendra Prasad Singh vide Memo no.F4-1/2014-15 dated 30.08.2017.

Keeping in view of the pendency of the disciplinary proceeding the Competent Authority is pleased to cancel the acceptance of notice for voluntary retirement w.e.f. 01.09.2017 of Shri Devendra Prasad Singh, APM (SBSO), Hajipur HO, Vaishali Division issued vide C.O. Memo no. even, dated 23.08.2017.

(Narsingh Mahto)

Assistant Director (Staff)
Phone:- 0612-2225148
Email: staff.br@indiapost.gov.in

Copy to

1. The Director of Accounts(Postal), Patna
2. The Supdt. Of Postoffices, Vaishali Division, Hajipur with reference to his letter no.B1/157/Ch-I dated 16.06.2017. He is requested kindly to adjust the dues against the office, if any.
3. The Postmaster, Hajipur HO.
4. Sri Devendra Prasad Singh, APM, SBSO, Hajipur HO, Vaishali Division.
5. Spare

Assistant Director (Staff)"

10. The petitioner contends that since he was on leave till 31st August, 2017 there was no occasion for

service of the cancellation or the memo of charge-sheet. He maintains that on 1st September, 2017 he had also tendered charge and has also indicated the preparation of charge memos which, however, do not contain any counter-signature of the competent authority.

11. The request for leave is stated to have been received through the Postmaster, Hajipur on 31st August, 2017. The Post Master, Hajipur, however, confirmed that the petitioner was not on casual leave and, therefore, the same was being treated as an act of absence from duty.

12. The charge-sheet according to the respondents came to be served upon the petitioner on 3rd of October, 2017. The respondent department maintains that since he was absent from duty and the charge-sheet sent to his home address was refused to be received by his family members, it was in these circumstances that the charge-sheet came to be served on 3rd of October, 2017.

13. The petitioner in response thereto submitted his representation on 21st October, 2017 informing the respondents that he stood retired w.e.f. 01.09.2017 and he later on claimed his pension and other benefits accordingly.

14. It is in this background that the petitioner approached the Central Administrative Tribunal in the first round of litigation challenging the order dated 30th August, 2017 cancelling the acceptance of voluntary retirement. The Tribunal noticed that the petitioner had also filed an appeal under the statutory rules available and since the same was pending, the Tribunal directed that the appeal be decided within two months vide judgment dated 29th May, 2018.

15. The petitioner pursued his appeal which was dismissed and the cancellation order dated 30th August, 2017 confirmed vide an order dated 18th July, 2018.

16. The petitioner initiated the second round of litigation with the filing of Original Application before the Central Administrative Tribunal praying for quashing of the order dated 30th August, 2017 and its confirmation by the appellate authority, and further prayed for quashing of the memo of charge dated 30th August, 2017 as well as the order of punishment pursuant to the disciplinary proceedings dated 28th March, 2018. A further prayer was made to treat him to have voluntary retired w.e.f. 01.09.2017 and pay all

consequential benefits.

17. The Tribunal has now proceeded to reject this original application on 30th May, 2019 against which the present writ petition has been filed praying for quashing the same and setting aside of the orders impugned before the Tribunal, except the prayer for setting aside the order of punishment dated 23.08.2018. This change in the relief clause as against the original application therefore deserves to be noticed.

18. While advancing his submissions, learned counsel for the petitioner urged that once the request for voluntary retirement had been accepted, based on the recommendations of the department itself that there was no vigilance case pending against him, then the transaction relating to the final acceptance of his request for retirement was complete and could not have been reopened thereafter. It is the contention of learned counsel for the petitioner that upon completion of three months of period of notice under Fundamental Rule 56 as extracted hereinabove, the transaction was complete and there could not have been any cancellation or withdrawal of permission after the expiry of the aforesaid period. Learned counsel also submitted that the

order dated 30th August, 2017 cancelling the acceptance of voluntary retirement is in violation of principles of natural justice inasmuch as no notice was given prior to the passing of the order. It is then submitted that since the order had not been served on the petitioner, as he was on leave, and since admittedly the charge-sheet had not been served on the petitioner prior to 01.09.2017, there was no initiation of any departmental proceeding in law and hence no power to withdraw permission or cancel the permission was retained by the authority that could be exercised. The action being impermissible in law, the petitioner will be deemed to have been retired w.e.f. 01.09.2017 and no action pursuant to the alleged charge-sheet could have been taken.

19. The contention is that in view of the law laid down by the Apex Court that a departmental proceeding commences with the service of charge-sheet, the charge-sheet admittedly having been served according to the respondents on 3rd October, 2017 was long after the date of retirement which became effective on 01.09.2017. Thus the cancellation order being invalid for the reasons aforesaid, consequential proceedings have also to fall through.

20. Learned counsel has relied on the judgment

in the case of **Dinesh Chandra Sharma vs. State of Assam and Ors.** reported in **(1977) 4 SCC 441**, the judgment in the case of **B.J. Shelat vs. State of Gujarat and Ors**. reported in **(1978) 2 SCC 202** and the third decision in the case of **Union of India and Ors. vs. Sayed Muzaffar Mir** reported in **1995 Supp (1) SCC 76** and also reliance has been placed in the case of **State of Haryana and Ors. vs. S.K. Singhal** reported in **(1999) 4 SCC 293**.

21. Learned counsel for the respondents, Sri S.D. Sanjay has urged that the permission granted could be withdrawn before it was given effect to and the right of the employer to cancel the acceptance stands retained till the date of retirement arrives. Learned counsel contends that the date of retirement as proposed by the petitioner himself was 01.09.2017, and on 29th August, 2017 information was received by the competent authority about the lapse on the part of the petitioner which formed the basis of the charge-sheet. The respondents maintain that the petitioner was found involved in the withdrawal of a sum of Rs. 3, 67,000/- from a Saving Account of the post office standing in the name of late Bigani Devi, when the petitioner was posted there between 03.06.2014 to July, 2014 in spite of the fact that the

lady had already died on 04.04.2010. The permission to withdraw this amount was during the tenure when the petitioner was in the capacity of Assistant Post Master (SBSO), Head Office, Hajipur. The charge is that the withdrawal was made by a fraudulent signature by an imposter which was for a heavy amount that was permitted to be transacted without ascertaining the identity of the depositor.

22. Learned counsel for the respondent therefore urges that once this fact was brought to the notice of the authorities, the same was acted upon with the issuance of the charge-sheet and order of cancellation on 30th August, 2017. It is urged that the acceptance had not yet come into operation, and there is no provision or even otherwise it is not necessary to give any notice prior to cancellation. The power accorded to the authority under Fundamental Rule 56(k)(1)(c)(ii) is to withhold permission in the event charge-sheet has been issued and disciplinary proceeding is pending. According to the learned counsel once the charge-sheet had been issued which the petitioner appears to have deliberately avoided to receive, the proceedings had been initiated and, therefore, the permission was rightly withheld with the

issuance of the cancellation order. The contention is that the employer-employee relationship was continuing and had not been snapped, as such even otherwise the respondents were well within their authority to have initiated the proceedings and simultaneously cancelled the acceptance of voluntary retirement.

23. It is in this background that the learned counsel for the parties have urged that the moot question is about the exercise of power by the authority to cancel the acceptance of voluntary retirement after its acceptance on the basis of issuance of charge-sheet.

24. Learned counsel has not been able to provide to us any exact precedent of a similar nature and, therefore, we have to traverse the facts of this case and applicability of the rules before arriving at a conclusion.

25. The Tribunal has proceeded to conclude that once the employer-employee relation exists it was upon to the authority to have cancelled the acceptance and accordingly the disciplinary proceedings could continue against the petitioner.

26. Having considered the submissions raised the undisputed facts are that the petitioner did apply for

voluntary retirement and which was unconditionally accepted by the authorities on 23rd August, 2017 permitting him to retire w.e.f. 01.09.2017, even though it is stated that a leave application had been tendered by the petitioner who had requested the conversion of casual leave into earned leave. The fact remains that the charge-sheet was prepared on 30th August, 2017 but it was not actually served on the petitioner who alleges to be on leave whereas the respondents allege it to be a period of absence without any leave. The petitioner further came up with a case that he had prepared charge memo on 1st September, 2017 which does not contain any counter-signature of the competent authority. The effort to serve the charge-sheet at the address of the petitioner failed as his family members refused to receive the same. The same was served on 03.10.2017.

27. It is in this background that the argument has been advanced that there was no service of charge-sheet and, therefore, there was no initiation of disciplinary proceedings.

28. In our opinion, the issue is with regard to the power to be exercised for cancellation of the Voluntary Retirement order on the strength of pendency of disciplinary

proceedings as per Fundamental Rule 56 (supra) which, in turn, is dependent upon the fact of the initiation of departmental proceedings. There is no doubt that the respondents acted on having received the information on 29th August, 2017, but the incident is of the year 2014. It is not understood as to why the respondent authorities did not initiate any proceedings about such alleged withdrawal for almost three years when the petitioner was very much in service. There is also no explanation that when the request for voluntary retirement came to be accepted, why was the recommendation made with an endorsement that there was no vigilance case pending against the petitioner. A sudden discovery of an incident three years old right two days before the date of retirement does cause a doubt about the promptness in action by the respondent authorities. This *prima facie* belief is further fortified by the view that the petitioner had moved the application for voluntary retirement on 21st May, 2017. The purpose of giving three months prior notice also indicates that an exercise by the authorities should be undertaken to ascertain all facts that may be necessary before allowing a person to voluntarily retire. No such exercise appears to have been undertaken and to the contrary the acceptance of voluntary retirement upon the completion of three months was communicated on 23rd August, 2017 unconditionally. The exercise to find out any lapse on the part of the petitioner is completely lacking and was undertaken at the last moment as indicated above. There is no plausible ground disclosed for this indeterminate slumber.

29. The next question is as to whether the disciplinary proceedings will be deemed to have been initiated. The charge-sheet was prepared on 30th August, 2017 but the service on the petitioner even though attempted was made much thereafter. The order of cancellation dated 30th August, 2017 has been sent by registered post on 31st August, 2017 was received to the Office back on 15.09.2017. In the given circumstances, there is no material or findings on the basis whereof it can be concluded that the charge-sheet had been actually served on the petitioner prior to 1st of September, 2017.

30. It is in this background that we have to construe as to whether the disciplinary proceedings stood initiated or not. The Tribunal has concluded the service of

the charge-sheet after the date of retirement will not vitiate the action on the ground that the applicant was not available on the said days so as to serve the orders on him.

31. It is here we find that the pleadings as contained in the written statement of the department and the challenge raised thereto have not been discussed by the Tribunal in correct perspective while passing the order. A copy of the written statement which is on record has narrated facts about the application of leave, the submission of the charge memo by the petitioner which the respondents allege had not been counter-signed. The factum of the appellant being not available for service of the charge-sheet therefore required a further probe so as to establish as to whether the petitioner had avoided service deliberately or there was a lapse on the part of the department in this regard. There is an assumption by the appellate authority while rejecting the appeal of the petitioner that a registered letter dated 31.08.2017 had been issued before the retirement order came into effect on 01.09.2017, and on this assumption rejected the argument relating to actual service of charge-sheet on the petitioner. The appellate authority has assumed unauthorized absence of the appellant and his dilatory attitude without

recording any finding on the defence of the petitioner about his having taken leave or its status of acceptance in spite of the fact that these pleadings have been averred in the written statement of the respondents as well before the Tribunal. The Tribunal has completely overlooked this aspect of the matter.

32. The question, therefore, as to whether the disciplinary proceedings stood initiated with service of charge-sheet on the petitioner or would be deemed to have been initiated so as to empower the authority to withhold or cancel permission does not appear to have been appreciated in the correct perspective of facts that required investigation in order to invoke the applicability of Fundamental Rule 56(k)(1)(c)(ii) by the Tribunal. Since this involves a probe on questions of fact as noted above, and since there are no conclusive findings on the same, we find it necessary to remit the matter back to the Tribunal for recording its findings on these facts as the same would form the foundation of the exercise of power or otherwise for withholding or cancellation of the acceptance of voluntary retirement.

33. We, accordingly, partly allow this writ petition and quash the impugned order of the Tribunal

dated 30th May, 2019 and remit the matter back to the Tribunal to take a decision afresh in the light of the observations made hereinabove.

34. The Tribunal shall decide all the issues that have been referred to in the argument of the respective parties on the basis of the material available on record or such other material that may be made available to the Tribunal in the matter as expeditiously as possible preferably within six months.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

K.C.Jha/Vikash-

AFR/NAFR	AFR
CAV DATE	07.08.2019
Uploading Date	15.10.2019
Transmission Date	NA