

\$~2

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

% *Date of Judgment : 19th December, 2019*

+ W.P.(C) 12977/2019

DR. DINESH KUMAR PALIWAL

..... Petitioner

Through Mr. Amitesh Kumar, Ms. Bivisa
Mohanty and Ms. Priti Kumari,
Advocates

versus

UNION OF INDIA & ORS

..... Respondents

Through Mr. Vikrant N. Goyal with Mr. Suraj
Kumar and Ms. Anju Singh,
Advocates for respondents no.1 to 3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

1. The petitioner was working as a Deputy Education Advisor in the Ministry of Human Resource Development, Government of India. By notice/application dated 01.02.2016, the petitioner requested for Voluntary Retirement from Service (VRS) under Rule 48(A) of Central Civil Service (Pension) Rules, 1972. The request of the petitioner was declined vide Office Memorandum (OM) dated 26.04.2016 on the ground that a fact-finding inquiry had recommended Regular Disciplinary Action to be initiated against him.
2. Aggrieved by the OM, the petitioner filed an OA in which the Tribunal, vide order dated 21.02.2017, set-aside the said OM. The said order was challenged by the respondents by filing W.P.(C). No.5242/2017 in this

Court. By order dated 12.07.2017, this Court set-aside the Tribunal's order dated 21.02.2017; and remanded the matter back to the Tribunal for rehearing and reconsideration of the matter afresh. By an order dated 11.09.2019, the Tribunal has dismissed the OA filed by the petitioner, which has led to the filing of the present writ petition.

3. Mr. Kumar, learned counsel for the petitioner has drawn the attention of the Court to advice letter dated 22.11.2016 issued by Department of Personnel and Training (DoPT), which we reproduce below:

“Reference preceding notes of Department of Higher Education recorded on File No.C-18011/02/2016-E-IV.

2. *The matter has been examined in so far as VRS is concerned, as per DoPT OM No.25013/3/2010-Estt. (A) dated 27.2.2014, it shall be open to the appropriate authority to withhold permission to a Government servant who seeks to retire under : (i) if the Government servant is under suspension or (ii) if a charge sheet has been issued and the disciplinary proceedings are pending : or (iii) if judicial proceedings on charge which may amount to grave misconduct are pending.*

3. *As none of the above conditions are satisfied in the case the request for voluntary retirement from service cannot be refused.*

4. *This issues with the approval of JS (GDT).*

*Sd/-
(Surya Narayan jha)
Under Secretary to the Government of India”*

4. Mr. Kumar submits that in the absence of any of the grounds as mentioned in the afore-stated advice letter being made-out, the request

of the petitioner for VRS could not have been turned down by the respondents. He submits that the action of the respondents initiating disciplinary proceedings is patently illegal and *mala fide* since the subject matter pertains to a communication made by him as far back as in the year 1997.

5. Learned counsel for the respondents, on the other hand, submits that well before the advice letter dated 22.11.2016 was issued by DoPT, the request of the petitioner for VRS already stood rejected. In response to the submission of the respondents so made, learned counsel for the petitioner submits that the contents of advice letter dated 22.11.2016 were, or in any case ought to have been, within the knowledge of the respondents and therefore the request of VRS could not have been declined.
6. After some hearing in the matter, Mr. Kumar submits that the petitioner has already laid challenge to the charge-sheet and the Tribunal has stayed further proceedings. He submits that he would raise all the grounds raised in the present writ petition before the Tribunal and, if required, would also place an additional affidavit before the Tribunal. Counsel submits that subject to liberty in that regard being granted, the petitioner would not press this petition.
7. Accordingly, as prayed, this writ petition is disposed of for the petitioner to approach the Tribunal, where challenge has already been laid and the petitioner is granted liberty to raise all grounds, including the grounds raised before us in the present writ petition and also to place before the Tribunal any subsequent events and the VRS not having been granted to him.

8. The writ petition stands disposed of in above terms.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

DECEMBER 19, 2019

pst

