



2025:DHC:1880-DB



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

Reserved on: 17 March 2025
Pronounced on: 24 March 2025

+ W.P.(C) 7446/2022 & CM APPL. 22702/2022

LT. COL. SHAJI JOSEPH (RETD.)Petitioner
Through: Mr. Ankur Chhibber, Mr.
Anshuman Mehrotra, Mr. Nikunj Arora,
Advs.

versus

UNION OF INDIA AND ORS.Respondents
Through: Mr. Jitesh Vikram Srivastava,
SPC and Mr. Prajesh Vikram Srivastava,
Advs. with Major Anish Muralidhar, Army

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT
24.03.2025

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C. HARI SHANKAR, J.

1. The petitioner Lt Col Shaji Joseph joined the Department of Posts as a Short Duty Postal Assistant in August 1985. He was transferred on deputation to the Army Postal Service¹ as Field Servant Volunteer in the rank of Warrant Officer on 28 December 1988, to serve in a combatant capacity. Consequent to his passing the JCO cadre course, he was promoted as Junior Commissioned Officer in the

¹ "APS" hereinafter



APS on 19 April 1996. He obtained temporary commission as Lieutenant in the APS on 1 May 1997. He was successively promoted, thereafter, as Captain, Major and, finally, as Lieutenant Colonel w.e.f. 1 May 2010.

2. On 21 April 2017, the petitioner applied to the Superintendent of Post Offices, Idukki Division, under Rule 48A(1)² of the Central Civil Services (Pension) Rules 1972³, for voluntary retirement from service. The application read thus:

“21 Apr 17

Superintendent of Post Offices
Idukki Division
Thodupuzha
PIN- 685584

(Through proper channel)

**VOLUNTARY RETIREMENT FROM SERVICE UNDER RULE
48A OF CCS (PENSION) RULES 1972**

Sir,

1. With due respect, it is submitted that I had Joined the Dept of Posts in Aug 1985 as an SDPA in your Division and was deputed to APS on 27 Dec 1988 after granting appointment as PA on an adhoc basis and enrolled in the Army Postal Service on deputation wef 28 Dec 1988. At present I am holding the civil lien as Postal Assistant in your Division. I have completed more than 28 years of service in the APS. In this connection, a copy of Director of Accounts (Postal), Nagpur letter No. APS/TC-31510H/1772 dated 19 Jan 17 is enclosed as a proof of the qualifying service for your ready reference.

2. I hereby apply for voluntary retirement from the service, directly from APS without repatriation to the parent Department,

² **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.

³ “CCS (Pension) Rules” hereinafter



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wef 01 Aug 2017 (F/N). This may kindly be treated as notice under the provisions of Rule 48-A of CCS (Pension) Rules, 1972.

3. I earnestly request you to accept my application for voluntary retirement and necessary orders may kindly be issued at your earliest.

Thanking you.

Yours faithfully,

Sd/-

(TC-31510H Lt Col Shaji Joseph)”

3. It is not in dispute that the CCS (Pension) Rules were applicable to the petitioner by virtue of Clause 6(a) in Annexure-A to Army Instructions 29/85 which set out the revised terms and conditions of service for temporary commission in the APS, and read thus:

“6. Pension

(a) For service pension, officer will be governed by civil rules.”

4. On 16 May 2017, the following Office Memorandum⁴ was issued by the Ministry of Defence⁵ in respect of persons who were on deputation with the APS and sought to take VRS from the APS:

“No. 9(5X2016-D(Mov)
Government of India
Ministry of Defence
D(Mov)

Sena Bhavan, New Delhi
Dated 16th May 2017

OFFICE MEMORANDUM

Subject: VRS from APS in respect of persons of D/o Post on deputation with APS

⁴ “OM” hereinafter

⁵ “MOD” hereinafter



Reference A-G/MP-8(1 of R) dated 6th December 2016 on the subject mentioned above. It is intimated that a decision has already been taken by the Government with regard to this issue and has been mentioned at Sl. No.2 of Government of India decision, given under Rule 67 of CCS Pension Rules. A copy of the same is enclosed herewith for ready reference.

2. The VRS cases of Non-gazetted DoP personnel on deputation with APS may be dealt as per the provision of the GOI decision mentioned in the above para. With regard to query of extension of their deputation the issue has to be examined considering the man power requirement of APS.

Encl: a.a.”

5. The Government of India Instructions No. 2, below Rule 67⁶, to which the afore-extracted MOD OM dated 16 May 2017 makes reference, is OM dated 5 September 1989 issued by the Department of Telecom⁷, which reads thus:

“(2) Officer-in-Charge, P & T Admn. Cell, Kemptee, Head of Office for settlement of pensionary benefits of non-Gazetted personnel of the DoT on deputation. – 1. As per provision of Rule 67(1) of CCS(Pension) Rules, it has been decided that Officer-in-Charge, P & T Admn. Cell Kemptee, be designated as “Head of Office” in respect of those non-Gazetted personnel of the Department of Telecommunications who wish to retire simultaneously on the discharge from the Army Postal Service after obtaining the approval from the Competent Authority of the Department of Telecommunications in terms of Rule 48 of Central Civil Services (Pension) Rules, 1972, for processing their pensionary benefits.

2. However, concurrence of the Competent Authority of the Department of Telecommunications will be required in each case

⁶ 67. Government servants on deputation –

(1) In the case of Government servant who retires while on deputation to another Central Government Department, action to authorize pension and gratuity in accordance with the provisions of this Chapter shall be taken by the Head of Office of the borrowing Department.

(2) In the case of a Government servant who retires from service, while on deputation to a State Government or while on foreign service, action to authorize pension and gratuity in accordance with the provisions of this Chapter shall be taken by the Head of Office or the Cadre authority which sanctioned deputation to the State Government or to foreign service.

⁷ “DOT” hereinafter



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to accept the notice for voluntary retirement.”

6. On 23 June 2017, the Superintendent of Post Offices, Idukki, in acceptance of the petitioner’s application dated 21 April 2017, for voluntary retirement, issued the following communication:

“No. B/604 dated at Thodupuzha the 23.06.2017

Sri Shaji Joseph (TC31510H LT COL), PA, Idukki Division on deputation to APS w.e.f.28.12.1988, is permitted to retire from service voluntarily with effect from the forenoon of 01.08.2017 under the provisions of Rule 48 A of CCS (Pension) Rules 1972.”

Sd/-
(E T Hari)
Supdt. of POs, Idukki Dn,
Thodupuzha 685584”

7. Following this, on 12 July 2017, the Additional Director General⁸, APS, issued the following communication, in terms of para 9 of AI 29/85, conveying the approval of the competent authority for relinquishment, by the petitioner, of his temporary commission in the APS and simultaneous voluntary retirement from the Department of Posts on 1 August 2017:

“Addl Directorate General of APS
PIN-908700
c/o 56 APO

90024/APS 1A

12 July 17

HO Northern Command
PIN-908545
c/o 56 APO

RETIREMENT: APS OFFICERS

⁸ “ADG” hereinafter



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1. Under the provisions of para 9 of Annexure 'A' to AI 29/85, as amended, approval of competent authority is accorded for relinquishment of Temporary Commission in Army Postal Service by TC-31510H Lt Col Shaji Joseph, the then Officer Commanding, 8 Mtn Div Postal Unit and simultaneous voluntary retirement from department of Posts on 01 Aug 2017 (F/N)

(Auth: Department of Posts, O/O Supdt of Post Offices, Idukki Division Letter No. B/604dt. 23 Jun. 17)

(2) To enable the officer to get his dues within a reasonable time and to get his documentation completed, the following action may please be caused to be taken

(a) Medical examination prior to the officer's repatriation vide AO 03/89 and submission of the copies of the Release Medical Board proceedings to all concerned and this HQ AG's Branch Addl Dte Gen of Man Power (P&P/MP-6 (E).

(b) Certificate to the effect that no disciplinary/vigilance case is either pending or contemplated against the officer should be forwarded in triplicate to Addl Dte Gen APS (APS-1A) before the date of retirement and again on the date of repatriation.

(c) Notification in Part II Order of all outstanding personal occurrences, such as marriage, birth of children/change of NOK with full civil address, leave availed etc, if any, before the date of repatriation.

(d) Submission of notification of relinquishment of commission in the prescribed form as per appendix to AO 103/80 to all concerned and Addl Dte Gen of APS/APS-1A

(e) No demand certificate from Formation HQ of the officer and UABSO concerned should be forwarded to APS Accounts Section O/o DA (P) Nagpur and P & T Adm Cell c/o APS Centre PIN-900 746 c/o 56 APO under intimation to Addl Dte Gen APS.

(f) Publication of personal occurrences regarding retirement and striking off strength, encashment of annual leave as per AO 46/85 and permanent address for communication after retirement as per the specimen given in "Documentation Procedure for publication of Part-II Orders (Officers)".



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3. The officer's attention may be drawn to AO 400/72 and 209/76.

Sd/-
T Mohan
Lt. Col
Offg Director APS (Staff)
For Addl DGD, APS”

Para 9 of AI 29/85 – which actually refers to para 9 of Annexure-A to AI 29/85, read thus:

“9. Relinquishment of Commission and repatriation to the Department of Posts

(1) An officer shall relinquish his temporary commission in Army Postal Service and be repatriated to the Department of Posts or proceed on compulsory retirement on superannuation by order of the Central Govt or the authority specified in Sub Para (2), with effect from the afternoon of the date specified in the orders.

(2) The authority specified in Sub Para (1) shall be the Additional Director General Army Postal Service.

(3) Approval of the Central Government will be obtained by the Additional Director General Army Postal Services prior to the issue of orders in all cases except following:-

(a) Where an officer has completed the minimum period of engagement as specified in Para 3 of AI 29/85 and seeks repatriation to the Department of Posts;

(b) Where the service of the officer is recalled by the Department of Posts;

(c) Where the officer has completed his period of engagement and has outlived his utility to the APS, and

(d) Where an officer has attained the age of compulsory retirement in the Army Postal Service and instead of being repatriated to the Department of Posts seeks retirement from Army Postal Service.



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(4). The consent of the Department of Posts will be obtained and a minimum notice of three months shall be given to the officer before his relinquishment of commission and repatriation to the Department of Posts.”

8. In accordance with the above order dated 12 July 2017 of the ADG, APS issued the following Movement Order on 1 August 2017:

“Movement order

1. TC -31510H Col Shaji Joseph of this unit has retired from service w.e.f 1 Aug 17 (F/N)

(Auth: Addl Dte Gen of APS Letter no. 90024/ASPS TA dated 12 Jul 2017)

2. Date and time of departure: 01 Aug 2017 (F/N)

3. The Officer has been SOS/SORS we.f: 01 Aug 2017

4. The Officer is in possession of retirement Officer’s Identity Card.

6. The present and permanent address of officer is as under:-

Present Address:(SPR)
34, New Defence Colony,
Zirakpur
Mohali, Punjab

Permanent Address
Kappil House, H.No. 13
KSHB Housing Complex
PO: Kottappana
Tehsil: Kottappana
Distt: Idukki (Kerala)
PIN 685508

A/3-3/APS-1

8 Mtn Div Postal Unit
PIN 902 208
C/O 56 APO

01 Aug 2017

Sd/-
S K Sharma
Sub
Offg Officiating Commanding”

9. Following the above, the petitioner retired w.e.f. 1 August 2017



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(F/N).

10. However, no retiral dues were released to him.

11. On 24 April 2018, the ADG, APS issued the following order, cancelling the earlier order dated 12 July 2017 *supra* and once again conveying the *ex post facto* approval of the competent authority for relinquishment, by the petitioner, of his temporary commission in the APS and repatriation to the office of the Superintendent of Post Offices, Idukki, with effect from 30 July 2017:

“Addl Directorate General of APS (AIS-1A)
PIN-908700
c/o 56 APO

90024/APS 1A

24 Apr 18

HO Northern Command
PIN-908545
c/o 56 APO

RELINQUISHMENT OF TEMPORARY COMMISSION: APS OFFICER

1. Under the provisions of para 9 of Annexure A to AI 29/85, as amended, ex-post-facto approval of competent authority is hereby accorded for relinquishment of Temporary Commission in Army Postal Service by TC-31510H Lt Col Shaji Joseph, the then Officer Commanding, 8 Mtn Div Postal Unit and repatriated to the O/o Supdt of Post Offices, Idukki Division, Thodupuzha. Kerala Circle wef 30 Jul 2017 (A/N)

(Auth IHQ of MoD (Army) service note No B/32006/APS/AG/PS-2(a) dated 11 Apr 18)

(2) To enable the officer to get his dues within a reasonable time and to get his documentation completed, the following action may please be caused to be taken



- (a) Medical examination prior to the officer's repatriation vide AO 03/89 and submission of the copies of the Release Medical Board proceedings to all concerned and this HQ AG's Branch Addl Dte Gen of Man Power (P&P/MP-6 (E)).
- (b) Certificate to the effect that no disciplinary/vigilance case is either pending or contemplated against the officer should be forwarded in triplicate to Addl Dte Gen APS (APS-1A) before the date of repatriation and again on the date of repatriation.
- (c) Notification in Part II Order of all outstanding personal occurrences, such as marriage, birth of children/change of NOK with full civil address, leave availed etc, if any, before the date of repatriation.
- (d) Submission of notification of relinquishment of commission in the prescribed form as per appendix to AO 103/80 to all concerned and Addl Dte Gen of APS/APS-1A
- (e) No demand certificate from Formation HQ of the officer and UABSO concerned should be forwarded to APS Accounts Section O/o DA (P) Nagpur and P & T Adm Cell c/o APS Centre PIN-900 746 c/o 56 APO under intimation to Addl Dte Gen APS.
- (f) Publication of personal occurrences regarding repatriation and striking off strength, encashment of annual leave as per AO 46/85 and permanent address for communication after repatriation as per the specimen given in "Documentation Procedure for publication of Part-II Orders (Officers)".
3. The officer's attention may be drawn to AO 400/72 and 209/76.
4. This Dte letter of even No dated 12 Jul 17 may pl be treated as cancelled"

Thus, the relinquishment of temporary commission in the APS, by the petitioner, which had earlier been sanctioned, with simultaneous voluntary retirement from the Department of Posts on 1 August 2017, was replaced with sanction for relinquishment of temporary



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commission and simultaneous repatriation to the office of the Superintendent of Post Offices with effect from 30 July 2017. There were, therefore, two differences between the earlier communication dated 12 July 2017 and the communication dated 24 April 2018, which superseded it, both issued by the ADG, APS. The first was that the date of relinquishment, by the petitioner, of temporary commission in the APS was changed from 1 August 2017 to 30 July 2017. The second was that the approval granted for simultaneous voluntary retirement from the services of the Department of Posts with effect from 1 August 2017 (F/N) was removed, and the petitioner was instead repatriated to the office of the Superintendent of Post Offices, Department of Posts, with effect from 30 July 2017, simultaneously with relinquishment of his temporary commission.

12. Yet another order of sanction for relinquishment of temporary commission in the APS and simultaneous repatriation to the Department of Posts was issued on behalf of the ADG, APS on 18 May 2018, cancelling, this time, the earlier letter dated 24 April 2018 *supra*. However, the only change was that the date of relinquishment of temporary commission and simultaneous repatriation to the office of the Superintendent of Post Offices, Idukki, was shifted from 30 July 2017 to 31 July 2017. The superseded letter dated 24 April 2018, and the superseding letter dated 18 May 2018 were, therefore, identical in all respects, except with respect to para 1, in which there was a change of date. Para 1 of the letter dated 18 May 2018 read thus:

“1. Under the provisions of para 9 of Annexure A to AI 29/85, as amended, ex-post-facto approval of competent authority is



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hereby accorded for relinquishment of Temporary Commission in Army Postal Service by TC-31510H Lt Col Shaji Joseph, the then Officer Commanding, 8 Mtn Div Postal Unit and repatriated to the O/o Supdt. of Post Offices, Idukki Division, Thodupuzha. Kerala Circle wef 31 Jul 2017 (A/N).”

13. Aggrieved by the above developments, the petitioner approached the Armed Forces Tribunal⁹ by way of OA 1239/2018¹⁰, with the following prayer:

“8. Reliefs Sought

For the reasons stated in the facts of the case and grounds, it is respectfully prayed that this Hon’ble Tribunal be pleased to grant the following reliefs: -

- i. to issue a declaration that the applicant is entitled to get all his retirement benefits including pension, gratuity, GPF, AGIF maturity benefits, leave encashment, commutation of pension on retirement on the date of his retirement viz. on 01.08.2017 and that the delay on the part of the respondents in releasing the said benefits due to the applicant is highly willful, negligent, illegal, arbitrary and discriminatory and hence the applicant is entitled to interest at the rate of 18% per annum for the arrears of his aforesaid benefits from the date on which it became due till the date of actual disbursement.
- ii. To issue a further declaration that Annexure A5 and A6 orders letter issued by the 4th respondent is illegal, arbitrary, without any authority of law, against Rule 67 (1) of the Central Civil Service (Pension) Rules, 1972 and against Annexure A2 order and Annexure A7 office memorandum issued by the 1st respondent and hence the same is liable to be set aside.
- iii. To issue a further declaration that the action to authorize pension and gratuity of the applicant shall be taken as per Rule 67 of Central Civil Service (Pension) Rules, 1972 by the Head of Office of the borrowing Department of the applicant viz. the Army Postal Service.

⁹ “Tribunal” hereinafter

¹⁰ Lt Col Shaji Joseph v UOI



iv. To further issue a declaration that the applicant is entitled to “Ex-serviceman” status with pension and hence he is entitled to the benefit of Ex-Servicemen Contributory Health Scheme and Military Canteen Facilities.

v. To call for the records leading upto Annexure A5 and A6 set aside the same.

vi. To issue a direction, directing the respondents to sanction and disburse all pensionary benefits due to the applicant including pension, gratuity, GPF, Army Group Insurance benefit, CGEGIF maturity benefits, leave encashment, commutation of pension on retirement etc.

vii. To further issue a direction, directing the respondent to pay interest at the rate of 18% per annum to the applicant for the arrears on his terminal benefits from the date on its became due till its actual disbursement to the applicant.

viii. To issue a direction, directing the 10th respondent to admit the applicant in the Ex-Servicemen Contributory Health Scheme.

ix. to issue such other further reliefs as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of this case and;

x. to award exemplary cost for this proceedings to the applicant.”

14. By judgment dated 10 February 2022, the Tribunal has dismissed OA 1239/2018 filed by the petitioner. Aggrieved thereby, the petitioner has approached this Court by means of the present writ petition.

The Impugned Judgment

15. Before the Tribunal, the petitioner placed pointed reliance on the MOD OM dated 16 May 2017 *supra* read with Rule 67 of the CCS (Pension) Rules and DOT OM dated 5 September 1989 *supra* issued



thereunder.

16. As against this, the respondent primarily contended that Rule 67 of the CCS (Pension) Rules was entirely inapplicable, as there was no concept of voluntary retirement in the Army. Rule 67(1), it was sought to be contended, applied to persons who retired on reaching the age of superannuation, while on deputation with the Army. The Rule did not, therefore, apply to a person who availed VRS and, therefore, the pensionary benefits in respect of such a person, such as the petitioner, had to be disbursed by the parent department, and not by the APS. The Department of Posts, it was submitted, had already issued provisional pension to the petitioner, which he had not accepted. The petitioner was, therefore, not entitled to the prayers claimed in the OA.

17. The Tribunal framed the question that arose before it for consideration, in para 27 of its judgment, as “whether the borrowing authority of the applicant, i.e., Respondents 4¹¹, 5¹² and 8¹³, are duty bound to release the retirement benefits to him, as prayed by the applicant in the OA instead of Respondent 6¹⁴ as submitted by the respondents in their counter-affidavit.

18. The reasoning of the Tribunal is contained in paras 29 to 36 of the impugned judgment, which may be reproduced as under:

¹¹ The ADG, APS

¹² The Director of Accounts (Postal)

¹³ The Officer-in-Charge, P & T Administration Cell, Kamptee

¹⁴ The Superintendent of Post Offices, Idukki



“29. A bare perusal of this letter goes to show that since the applicant had joined the Department of Posts and as per the letter itself although he was on deputation to APS since 27.12.1988, he was still holding the civil lien as Postal Assistant in the Department of Posts, therefore, the letter was addressed to Superintendent of Post Offices seeking their permission to accept his application for voluntary retirement. This letter was sent through APS as such, vide Annexure R-6, Deputy Director, APS wrote the letter to Superintendent of Post Offices seeking approval of the Competent Authority for voluntary retirement of the applicant without reverting back to the parent department with effect from 01.08.2017. Vide Annexure R-7, permission was granted by the Department of Posts to retire from service voluntarily with effect from the forenoon of 01.08.2017 under the provisions of Rule 48A of the CCS Pension Rules, 1972. Movement order was also issued vide Annexure R-9. Thereafter, discrepancies were observed by the Integrated Headquarters of Ministry of Defence (Army) vide Annexure R-10. It was pointed out that the date of relinquishment of temporary commission in APS has not been mentioned. Moreover, relinquishment and assumption of charges in other department cannot be on the same date. The date of relinquishment of appointment in APS has to be distinctively different from the date of VRS. Moreover, VRS is granted from the Department of Posts. The only provision of retiring directly from APS without reversion to Department of Posts for officers holding temporary commission is for officers retiring on attaining the mandatory age of retirement in the Army as per Para 9(3)(d) of AI 29/85. The letter dated 12.07.2017 is in violation of this AI. Hence, discrepancies were required to be rectified and fresh order was required to be issued. Pursuant thereto, vide Annexure R-17, the letter dated 12.07.2017 was cancelled. Accordingly, the APS Directorate, vide letter dated 24.04.2018 accorded *ex-post facto* approval for relinquishment of temporary commission in APS by the applicant and repatriated to the Office of the Superintendent of Post Offices with effect from 20.07.2017 (AN) as per Annexure R-17.

30. The repatriation of the officer with effect from 30.07.2017 was also not in order. Therefore, vide letter dated 18.05.2018 (Annexure R-18), the relinquishment of temporary commission was amended from 30.07.2017 to 31.07.2017. Although the applicant did not physically join the Department of Posts as he had already proceeded on retirement with effect from 01.08.2017 (FN) prior to issue of Repatriation Order but for practical purposes, his pensionary benefits were to be processed by the parent department.

31. Learned counsel for the applicant has laid emphasis on the Office Memorandum dated 16.07.2017 issued by the Ministry of



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Defence which reads as under:

“Sena Bhawan, New Delhi
Dated 16th May 2017

OFFICE MEMORANDUM

Subject: VRS from APS in respect of persons of D/o Post on deputation with APS

Reference A-G/MP-8(1 of R) dated 6th December 2016 on the subject mentioned above. It is intimated that a decision has already been taken by the Government with regard to this issue and has been mentioned at Sl. No.2 of Government of India decision, given under Rule 67 of CCS Pension Rules. A copy of the same is enclosed herewith for ready reference.

2. The VRS cases of Non-gazetted DoP personnel on deputation with APS may be dealt as per the provision of the GOI decision mentioned in the above para. With regard to query of extension of their deputation the issue has to be examined considering the man power requirement of APS.”

32. Rule 67 of the CCS Pension Rules, 1972 reads as under:

“67. Government Servant on deputation

(1) In the case of the Government servant who retires while on deputation to another Central Govt. Department, action to authorize pension and gratuity in accordance with the provisions of this Chapter shall be taken by the Head of Office of the borrowing Department.”

33. A bare perusal of the above Rule goes to show that it is applicable in the case of a government servant, who ‘retires’ while on deputation. It is the case of the respondents that there is no provision of voluntary retirement in the Army and, therefore, this Rule 67 is not applicable in the case of the applicant.

34. In fact, the Ministry of Defence letter dated 24.08.2006 (Annexure R-3), as reproduced above, states that APS officers granted quasi-substantive rank in the Army will hold such ranks for so long as they are serving in APS. Officers will have no claim to any benefits by virtue of holding the same on reversion to the parent cadre.



35. Further, AI 29/85 dealing with the terms and conditions of service with regard to temporary commission in APS, indicate that for service pension, officer will be covered by civil rules. The submission of learned counsel for the applicant that the respondents themselves admitted that in the past they have granted the benefit to other individuals and, therefore, the respondents cannot be allowed to deviate from that practice, is untenable because a wrong practice cannot be allowed to be perpetuated. Even if the Department of Posts had initially wrongly approved the application of the applicant for voluntary retirement directly from Army Postal Service without repatriation to Department of Posts, since there is no provision for voluntary retirement in Army and the only provision of retiring directly from the Army without repatriation to the Department of Posts is on attaining the age of compulsory retirement in the Army, it cannot be said that the wrong committed by the Department of Posts should be allowed to be perpetuated and cannot be allowed to be corrected subsequently. When these facts were brought to their notice, then corrective measures were taken and the applicant was ordered to be repatriated to the parent department as per CCS Pension Rules, 1972. Vide orders dated 10.01.2019 and 24.01.2019, Postal Directorate also asked the Head of Circle not to accept request for voluntary retirement directly from APS without repatriation to civil side and such request for voluntary retirement is to be considered only after repatriation to the present unit. Moreover, since the applicant had joined the Department of Posts and was still holding lien in that department, therefore, he himself had applied for voluntary retirement to the Directorate of Post only and approval was also accorded by the Department of Posts. Therefore, Department of Posts is the Competent Authority to grant pensionary benefits to the applicant and not the borrowing department i.e. APS. Department of Posts i.e. Respondent No. 6 also processed the case of pensionary benefits of the applicant. As revealed from the counter affidavit of Respondent No. 6, sanction for payment of provisional pension and gratuity were accorded by the Superintendent of Post Offices vide Office Memorandum dated 18.11.2019 and 19.11.2019 although it is a different matter that the applicant did not accept the same. That being so, it cannot be said that the applicant suffered any mental agony or financial loss because once the matter was processed by Respondent No. 6 and the pension and gratuity were sanctioned by the office, it was for the applicant to accept the same and he cannot claim any compensation or interest from Respondent No. 6 for his own fault for not accepting the pensionary benefits.

36. The net result of the aforesaid discussion is that it is the Respondent No. 6, who is the Competent Authority to issue pensionary benefits to the applicant, therefore, the applicant is not



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entitled to the declaration as stated in Para 8 (i) to (iv) of the OA. Since he was only on deputation to APS, he is also not entitled either for 'Ex-serviceman' status or for 'Ex-servicemen Contributory Health Scheme (ECHS)', as prayed for. So far as his claim for interest is concerned, he is not entitled for the same as it was due to his own fault that he did not get the pensionary benefits from Respondent No. 6 and he cannot be allowed to take advantage of the same."

19. A reading of the afore-extracted paragraphs from the impugned judgment reveal that the Tribunal has, in rejecting the petitioner's OA, reasoned thus:

(i) The fact that the petitioner had addressed his representation dated 21 April 2017 *supra* to the Superintendent of Post Offices, Idukki, indicated that, even though he was on deputation with the APS since 27 December 1988, he was still holding civil lien as a Postal Assistant in the Department of Posts.

(ii) As the letter was sent through the APS, the Deputy Director, APS wrote the Superintendent of Post Offices, seeking the approval of the competent authority for voluntary retirement of the petitioner without reversion back to the Department of Posts, with effect from 1 August 2017. Permission, as sought, was granted by the Department of Posts, for the petitioner to retire voluntarily from service with effect from the forenoon of 1 August 2017, under Rule 48A of the CCS (Pension) Rules. Movement order also followed.

(iii) Later, however, it was noticed that there was a



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discrepancy, as relinquishment of temporary commission from the APS and assumption of charge in the office of the Superintendent of Posts could not take place on the same date. The relinquishment of temporary commission in the APS had necessarily to precede the voluntary retirement from the Department of Posts.

(iv) Besides, VRS was to be granted by the Department of Posts. The only provision which permitted direct retirement from the APS without reversion to the Department of Posts, for officers holding temporary commission in the APS, was on their attaining the age of superannuation, as per para 9(3)(d) of Annexure-A to AI 29/85. The letter dated 12 July 2017 was in violation of this instruction.

(v) These discrepancies were required to be rectified and a fresh order issued. It was for this reason that, by letter dated 24 April 2018, the ADG cancelled the earlier letter dated 12 July 2017 and accorded fresh sanction for relinquishment, by the petitioner, of temporary commission in the APS and simultaneous repatriation to the Department of Posts with effect from 30 July 2017. As the correct date with effect from which this was to be permitted was 31 July 2017, it became necessary to issue yet another letter on 18 May 2018, replacing the date 30 July 2017 in the letter dated 24 April 2018 with 31 July 2017.

(vi) For all practical purposes, therefore, the pensionary benefits of the petitioner would have to be disbursed by his



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parent department, i.e. the Department of Posts as he retired from there, after having been repatriated by the ADG, APS.

(vii) Rule 67(1) applied only to government servants who *retired* while on deputation. However, as there was no provision for voluntary retirement in the Army, Rule 67 did not apply to the respondent. Ergo, even if the Department of Posts had initially wrongly approved the application submitted by the petitioner seeking voluntary retirement directly from the APS, nonetheless, as there was, in fact, no provision for voluntary retirement in the Army without repatriation to the parent organization, save and except where the retirement was on attaining the normal age of superannuation, the wrong committed by the Department of Posts could not be allowed to be perpetuated, and was amenable to correction.

(viii) It was, in these circumstances, that corrective measures were taken by the ADG, APS in the form of the letters dated 24 April 2018 and 18 May 2018.

In that view of the matter, the learned Tribunal held that the petitioner was not entitled to voluntary retire from the APS without repatriation to the Department of Posts and that, therefore, the pensionary benefits of the petitioner would have to be released by the Department of Posts, and not by the APS. The OA filed by the petitioner was, therefore, found to be devoid of merit.



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Rival Submissions

20. We have heard Mr. Ankur Chhibber, learned Counsel for the petitioner and Mr. Jitesh Vikram Srivastava, learned SPC for the respondent at length.

21. Mr. Chhibber submits that the view expressed by the Tribunal is contrary to para 2 of the MOD OM dated 16 May 2017 which, read with the DOT OM dated 5 September 1989 and Rule 67 of the CCS (Pension) Rules, clearly permit direct voluntary retirement of the petitioner from the APS without having to be repatriated to the Department of Posts. The Officer-in-Charge, P & T Administration Cell, Kamptee, has been designated as Head of Office for processing of the pecuniary benefits of the officer under Rule 67(1). He further submits that the order dated 23 June 2017, issued by the Superintendent of Post Offices, Idukki, granting permission to the petitioner to voluntarily retire, with effect from 1 August 2017, from the APS, was never recalled.

22. Arguing in response, Mr. Jitesh Vikram Srivastava, Senior Panel Counsel exhorts this Court to accept the reasoning adopted by the Tribunal. He submits that Rule 67 would apply only to an officer who retires in normal course and on attaining the age of superannuation, and not to an officer who voluntarily retires from the Army/APS. He further submits that, in the Army, there is no provision for voluntary retirement, so that the petitioner, if he chose to voluntarily retire, had necessarily to first be repatriated to the



Department of Posts before he could do so. He also relies on the stipulation, in AI 29/85, that for service pension, officers on temporary commission with the Army would be covered by civil rules. This, he submits, indicates that the petitioner would have to be repatriated to his civil posting in the Department of Posts, which would be responsible for disbursing pension to him. When these mistakes were brought to the notice of the competent authorities in the Army, corrective measures were taken and the petitioner was repatriated to his parent department, the Department of Posts, consequent on relinquishment of his commission. He points out that the very fact that the petitioner had addressed his initial communication dated 21 April 2017 to the Superintendent of Post Offices indicates that he acknowledged that he could voluntarily retire only from that office, which would be responsible to disburse his retiral benefits to him.

Analysis

23. Essentially, the Tribunal has reasoned that

- (i) the word “retires” in Rule 67 of the CCS (Pension) Rules applied only to retirement in the normal course on attaining the age of superannuation and not to voluntary retirement, especially as there was no concept of voluntary retirement from the Army,
- (ii) the MOD letter dated 24 August 2006 envisaged APS officers granted *quasi* substantive rank being entitled to hold such ranks only so long as they served in the APS, and not after



they were repatriated to the parent cadre,

(iii) AI 29/85 also specifically stated that officers on temporary commission in the APS would, for the purposes of service pension, be covered by civil rules,

(iv) as there was no provision for voluntary retirement from the Army, Rule 67 had no application at all,

(v) thus, the petitioner could voluntary retire only after he was repatriated to the Department of Posts, and

(vi) the fact that the petitioner had applied initially to the Department of Posts seeking permission for voluntary retirement, also indicated that he was holding a lien in the said department.

24. We now proceed to examine whether Mr. Chhibber's submissions, to the extent they fault the reasoning of the Tribunal, merit acceptance.

25. Mr. Chhibber's contention is that

- (i) para 2 of the MOD OM dated 16 May 2017 envisages direct voluntary retirement of an officer who is on deputation with the APS without his having to secure repatriation to his parent cadre prior thereto,
- (ii) this is further apparent from the fact that the said para 2 makes reference to DOT OM dated 5 September 1989,
- (iii) DOT OM dated 5 September 1989, while making reference to Rule 48 of the CCS (Pension) Rules, applies *ipso facto* to voluntary retirement and



(iv) in the case of such persons who seek voluntary retirement while on deputation with the APS, the DOT OM dated 5 September 1989 appoints the Officer-In-Charge of the P & T Admission Cell, Kemptee as the Head of Office for settlement of pensionary benefits.

26. We proceed to consider Mr. Chhibber's contention and find the following picture emerging:

(i) Para 2 of the MOD OM dated 16 May 2017, no doubt, merely states that VRS cases of non-gazetted personnel of the Department of Posts, on deputation with the APS, may be dealt with as per the DOT OM dated 5 September 1989. It says nothing more. All that is apparent from this stipulation is that personnel of the Department of Posts can be sent on deputation to the APS and that, if such persons seek voluntary retirement, their cases would be dealt with as per DOT OM dated 5 September 1989.

(ii) However, when one deconstructs the DOT OM dated 5 September 1989 into its constituent elements, the following position results:

(a) The OM has been issued under Rule 67 of the CCS (Pension) Rules.



(b) The OM identifies the officer who is appointed as the Officer-in-Charge, *for processing the pensionary benefits* of non-Gazetted personnel of the DOT, *who wish to retire simultaneously on discharge from the APS.*

(iii) We, therefore, have to advert, next, to the DOT OM dated 5 September 1989. What does it say?

(iv) The DOT OM dated 5 September 1989 designates the Officer-In-Charge, PNT Admission Cell, Kemptee as the Head of Office, under Rule 67(1) of the CCS (Pension) Rules, in respect of non-gazetted personnel of Department of Telecommunication, who wish to retire simultaneously from their discharge from the APS, after obtaining prior approval from the competent authority of the DOT, in terms of Rule 48 of the CCS (Pension) Rules for processing of their pensionary benefits.

(v) Rule 67 deals with Government servants on deputation. Sub-Rule (1) thereof stipulates that action, for authorizing pension and gratuity in respect of such Government servants, would be taken by the Head of Office of the borrowing department.

(vi) One of the contentions of the respondent, which has found favour with the Tribunal, is that the word “retirement” in Rule 67 would not encompass voluntary retirement, but would refer only to retirement on attaining the age of superannuation,



in normal course. The Tribunal has relied, for arriving at this conclusion, on the fact that there is no provision for voluntary retirement in the Army and, therefore, in the APS as well.

(vii) Rule 67, however, is not a provision applicable only to deputation to the Armed Forces. The understanding of the expression “retirement” as used in Rule 67(1) cannot, therefore, be coloured by the position as it applies in the Armed Forces. The fact that there may not be, in the Army, any provision for voluntary retirement, cannot, therefore, determine the interpretation of the word “retirement” in Rule 67(1).

(viii) Thus seen, there is no justification for limiting the ambit of the word “retirement” in Rule 67 to retirement on attaining the age of superannuation.

(ix) Besides, the DOT OM dated 5 September 1989 also refers to voluntary retirement, in para 2, and includes, by reference, voluntary retirement within the ambit of the concept of “retirement” in para 1 of the OM as well.

(x) Further, in the present case, para 2 of the MOD OM dated 16 May 2017 specifically makes the DOT OM dated 5 September 1989 applicable to personnel of the Department of Posts who are on deputation with the APS and seek voluntary retirement,



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(xi) In that view of the matter, the applicability of the DOT OM dated 5 September 1989, to the petitioner, cannot be doubted.

(xii) We may now advert to what, exactly, the DOT OM says, and how far it would support the case that Mr. Chhibber seeks to canvass.

(xiii) The DOT OM dated 5 September 1989 has been issued under Rule 67(1). Ergo, it designates the “Head of Office of the borrowing Department” who, under Rule 67(1), would authorize pension and gratuity in the case of Government servants who retire while on deputation to the borrowing Department.

(xiv) It is self-evident, therefore, that Rule 67(1), and the DOT OM dated 5 September 1989, envisage and contemplate retirement of the employee of the DOT while on deputation to the APS. *Mutatis mutandis*, this would also apply to employees of the Department of Posts, by virtue of para 2 of the MOD OM dated 16 May 2017.

(xv) The officer identified by the Notification issued under Rule 67(1) would, therefore, be the identified officer to authorize pension and gratuity for officers who retire while on deputation to his office.



(xvi) Turning, now, to the DOT OM dated 5 September 1989, this officer, in the case of DOT officers on deputation to the APS, is the Officer-in-Charge, P & T Admn Cell, Kemptee. By application of para 2 of the MOD OM dated 16 May 2017, the same officer, i.e. the Officer-in-Charge, P & T Admn Cell, Kemptee, would be the Head of Office, under Rule 67(1), for officers of the Department of Posts who retire while on deputation with the APS.

(xvii) Though para 1 of the DOT OM dated 5 September 1989 refers to Rule 48 of the CCS (Pension) Rules, which deals with normal retirement, and not with voluntary retirement, para 2 of the OM extends its application to voluntary retirement as well. This conclusively demolishes the contention, of the respondent, that the benefit of the DOT OM dated 5 September 1989, or Rule 67 of the CCS (Pension) Rules, cannot apply to voluntary retirement, and would cover only retirement on attaining the age of superannuation.

(xviii) *Here, however, the petitioner faces a hurdle. Both Rules 48¹⁵ and 48-A of the CCS (Pension) Rules cover cases of*

¹⁵ **48. Retirement on completion of 30 years' qualifying service**

- (1) At any time after a Government servant has completed thirty years' qualifying service -
- (a) he may retire from service, or
 - (b) he may be required by the appointing authority to retire in the public interest, and in the case of such retirement the Government servant shall be entitled to a retiring pension:
- Provided that -
- (a) a Government servant shall give a notice in writing to the appointing authority at least three months before the date on which he wishes to retire; and
 - (b) the appointing authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice:



voluntary retirement. The DOT OM dated 5 September 1989 refers to Rule 48. Rule 48 applies to retirement – including voluntary retirement – on completion of 30 years of service, whereas Rule 48-A covers cases where the officer has completed 20 years of service. It is the petitioner's admitted case that he had completed only 28-29 years of service on the day of his application for voluntary retirement. He joined service with the APS on 28 December 1988, and applied for voluntary retirement on 1 August 2017. As such, he would not fall within the ambit of Rule 48 of the CCS (Pension) Rules.

(xix) That being so, the petitioner would not be entitled to the benefit of the DOT OM dated 5 September 1989 and, consequently, of para 2 of the MOD OM dated 16 May 2017 either.

(xx) *De hors* the DOT OM dated 5 September 1989 and the MOD OM dated 16 May 2017, no favourable right can enure to the petitioner solely on the basis of Rule 67 of the CCS (Pension) Rules.

Provided further that where the Government servant giving notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:

Provided further that the provisions of clause (a) of 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.



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Conclusion

27. For the aforesaid reasons, we find no cause to interfere with the decision of the Tribunal. The petitioner cannot claim the benefit of the MOD OM dated 16 May 2017 or the DOT OM dated 5 September 1989.

28. The writ petition is, therefore, dismissed, with no orders as to costs.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 24, 2025

dsn/ar

Click here to check corrigendum, if any