

Form No. J.(2)
Item No.71
Court No. 1
KS

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

HEARD ON: 20.04.2026

DELIVERED ON: 20.04.2026

**CORAM:
THE HON'BLE CHIEF JUSTICE SUJOY PAUL
AND
THE HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)**

WP.CT 127 of 2012

**Atahar Khan @ Atahar
Vs.
The Union of India & Ors.**

Appearance:-

**Mr. Debasis Sur
Mr. M. Chatterjee
Mr. Dilip Kumar Das
Ms. Rekha Das**

.....For the Petitioner

**Mr. Kalyan Kumar Chakraborty
Mr. Farnaz Nasim**

.....For the Respondent Nos.1 to 5

JUDGMENT (ORAL):

PER SUJOY PAUL, CJ.:

1. This petition filed under Article 226/227 of the Constitution of India takes exception to the order of Central Administrative Tribunal dated 31st January, 2011 passed in O.A. No.1249 of 2010 whereby Original Application (O.A.)

filed by the petitioner assailing the punishment of removal from service and grant of retiral dues was rejected by the Tribunal.

2. The admitted facts between the parties are that petitioner remained absent from 7th October, 2002 to 12th November, 2003 and from 8th March, 2004 to 24th July, 2004. Because of said absence, petitioner was served with a charge-sheet dated 01.06.2005 and a major penalty disciplinary proceeding was initiated against him. During pendency of the said proceeding, on 17th May, 2007, petitioner preferred an application seeking voluntary retirement. This request of the petitioner was not exceeded to.
3. Since, in the aforesaid departmental enquiry initiated with effect from 01.06.2005 by issuing the charge-sheet, the petitioner remained absent in the enquiry on various dates viz. 28.02.2005, 10.01.2006, 02.02.2006, 08.03.2006 and 21.06.2006, the Department having left with no other option, proceeded *ex parte* against the petitioner and removed him from service by order dated 31.03.2007.
4. This punishment order dated 31.03.2007 was called in question in O.A. 1249 of 2010. In addition, it was prayed that the petitioner be given the benefit of retiral dues.
5. The Tribunal by the impugned order came to hold that once major penalty disciplinary proceeding was pending, it was not open to the petitioner to ask

for voluntary retirement. The Tribunal opined that in the enquiry, petitioner was afforded with sufficient opportunity and same ended with imposition of punishment of removal from service against which petitioner did not prefer any appeal. Thus, Tribunal could not find any reason for interference and O.A. was dismissed.

6. Learned counsel for petitioner by taking this Court to the grounds raised in the original application against the impugned action urged that since petitioner applied for voluntary retirement on May 17, 2007, the Department ought to have voluntarily retired him and retiral dues should have been paid to him. He submits that the petitioner's letter dated 4th August, 2005 (Annexure – P2) was not accepted by the Department. He submits that the Tribunal has committed an error in not treating the petitioner as voluntarily retired and thereby giving all consequential benefits including retiral dues.
7. Learned counsel for the Department supported the order of the Tribunal.
8. We have heard the parties at length and perused the record.
9. Admittedly, the petitioner was served with a charge-sheet on 01.06.2005. Petitioner preferred the application for compulsory retirement much later on 17.05.2007. Thus, Tribunal opined that during pendency of disciplinary proceedings, application for voluntary retirement could not have been accepted. In our opinion, the finding of Tribunal is in accordance with Rules.

As per the Pension Rules, application for voluntary retirement cannot be accepted, if employee is either under suspension or facing a major penalty disciplinary proceeding. Otherwise, such delinquent employees, who is facing disciplinary proceeding for grave charges, will get a way out to get rid of such proceedings by preferring application for voluntary retirement. Thus, Tribunal, in our opinion, took a plausible view, which is in consonance with the relevant Rules.

10. So far punishment of removal from service is concerned, we have meticulously examined the grounds taken by the petitioner in the O.A. against the disciplinary proceeding and punishment order. The only ground, which has some nexus with the punishment order is alleged notice dated 17th May, 2007 preferred for voluntary retirement. As noticed above, the said notice was preferred during the pendency of disciplinary proceedings and, therefore, it cannot be said that Department was under an obligation to accept his application for voluntary retirement. There is no other ground taken, which causes any dent on the disciplinary proceedings and punishment.
11. The scope of interference on a disciplinary proceeding by this Court under Article 226 of the Constitution of India is limited. If the Disciplinary Proceeding suffers from a palpable procedural impropriety, which violates

principles of natural justice and which also causes serious prejudice to the delinquent employee, interference can be made. Interference can also be made if the findings of Enquiry Officer are perverse and not based on material on record, punishment order can be interfered with if it shocks the conscience of the Court on the doctrine of proportionality. In the instant case, no such ingredient is available on the strength of which interference can be made.

12. As a result, the interference is declined. A removed employee is not entitled to get the retiral dues.
13. Resultantly, petition is dismissed. The order of Tribunal is affirmed.
14. Urgent photostat certified copy of this order, if applied for, be furnished to the parties expeditiously upon compliance of all legal formalities.

(SUJOY PAUL, CJ.)

I agree.

(CHAITALI CHATTERJEE (DAS), J.)