



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 14.01.2025
Pronounced on: 29.01.2025

+ W.P.(C) 5366/2024

SANDEEP GUPTAPetitioner

Through: Mr. Tapas Das, Adv.

versus

UNION OF INDIA AND ORSRespondents

Through: Mr. Sahaj Garg, SPC for UOI
with Mr. Shyam Singh Negi,
HQ DGBR.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

SHALINDER KAUR, J.

1. The petitioner, a Superintending Engineer (in short, “SE”) (Civil) in the Border Roads Organization (in short, “BRO”) has approached this Court to seek directions to the respondents to consider the petitioner as deemed to have voluntarily retired with effect from 17.04.2024 pursuant to his applications dated 30.12.2023 and 30.03.2024 under Rule 48 of the Central Civil Services (Pension) Rules, 1972 (in short, “CCS Pension Rules”). Although, in the petition the petitioner has taken the ground of voluntary retirement under Rule 56(k) of the Fundamental Rules (in short, “FRs”). Additionally, the



petitioner has also sought directions to the respondents for grant of all pensionary benefits.

2. We may set out the relevant facts as follows:-

- a) The petitioner was appointed in the General Reserve Engineer Force (in short, “GREF”) in BRO on 04.03.1995 as an Assistant Executive Engineer (in short, “AEE”) (Civil). He was promoted to the rank of SE (Civil) on 16.12.2017 through the Departmental Promotion.
- b) The petitioner was medically examined by the Medical Board, which *vide* its report dated 13.08.2022, placed the petitioner in the medical category of ‘SHAPE - 2Z’. He was found to be obese and suffering from ‘Dyslipidemia’ and ‘Bronchial Asthma’ and was opined to be ‘UNFIT; for ‘HAA/ECC/Hilly’ areas.
- c) After serving for over 30 years in Hilly terrains of the country, the petitioner applied for voluntary retirement with effect from 01.04.2024 under Rule 48 of the CCS Pension Rules citing his health challenges and facing responsibilities of his aged parents, with ailing father, *vide* applications submitted on 30.12.2023 and 01.01.2024. The petitioner had completed 31 years 10 months and 6 days of service in GREF as on 31.12.2023.



d) A reminder was sent by his office *vide* letter dated 26.03.2024 to the Head Quarter, expressing the urgency of the sanction from the competent authority for petitioner's voluntary retirement, however to no avail. The petitioner sent another letter dated 30.03.2024 requesting to voluntary retire from 16.04.2024 instead of 01.04.2024, yet no action was taken by the respondents, thus, leading to filing of the present writ petition on ground of voluntary retirement under Rule 56(k) of the FRs.

SUBMISSIONS OF THE PARTIES:

3. Mr. Tapas Das, the learned counsel for the petitioner, raised two contentions before us. He submitted that the petitioner had preferred the application seeking voluntary retirement, giving over three months' notice, fulfilling all the requisite conditions under Rule 56(k) of the FRs. He submitted that neither any disciplinary or judicial proceedings is pending against the petitioner, as he has not been put to notice regarding any alleged offence committed by him during the course of his employment. He submitted that there is no provision in the FRs to withhold the right of an employee seeking voluntary retirement, except in certain contingencies, that is, when the employee is under suspension or when a departmental inquiry is pending or contemplated against the employee. He submitted that even otherwise, in case of aforementioned contingencies, the authority concerned has to pass a specific order withholding permission to retire



and must also communicate the same to the employee. He submitted that upon completion of the notice period, the petitioner is to be treated as having voluntarily retired with effect from 17.04.2024.

4. The learned counsel submitted that as the petitioner received no response from the Appointing Authority, in spite of the reminder given by his Unit where he was posted, therefore, he be declared to have been voluntarily retired from the date of expiry of three months' notice period, at the most extended by 15 days', with all pensionary benefits.

5. The learned counsel in support of the submissions placed reliance on the following judgments:

- i. ***State of Arunachal Pradesh and Others vs. Tai Nikio: 2019 SCC OnLine Gau 1392;***
- ii. ***State of Haryana and Others vs. S.K. Singhal: (1999) 4 SCC 293.***

6. *Per contra*, Mr. Sahaj Garg, the learned counsel for the respondents, while seeking dismissal of the writ petition, submitted that prior to the acceptance of the petitioner's application for voluntary retirement, vigilance clearance is mandatory from the Legal Department for processing the application of an individual. Accordingly, vigilance clearance was asked from the DV and the Legal Department, which intimated that the petitioner was a defence witness in a departmental proceeding contemplated against Sh. V.K. Singh, SE (Civil), for misconduct of obtaining illegal gratification while on deputation with the National Highways and Infrastructure



Development Corporation Limited (in short, “NHIDCL”). The examination of the petitioner as a defence witness was completed on 07/08.03.2024. It was also intimated that a complaint by one Sh. R. K. Garg making serious corruption allegations was filed against the petitioner and that these allegations can be ascertained only by holding the Departmental Inquiry proceedings. Further, the petitioner was stated to be also involved in a case of irregular claim of House Rent Allowance (in short, “HRA”) which he claimed while serving and occupying government accommodation at Arunak and Sewak for the period from 14.07.2020 to 23.06.2023, for which a Court of Inquiry (COI) was ordered on 26.03.2024. Therefore, the Legal Department requested to process the voluntary retirement application of the petitioner accordingly and to obtain final vigilance clearance from Central Vigilance Office (“CVO”) (MES).

7. The learned counsel for the respondents submitted that in view of the information that the COI is pending against the petitioner and a Departmental Inquiry on the basis of a complaint with corruption allegations may be needed, petitioner’s application for voluntary retirement has not been considered.

ANALYSIS AND FINDINGS:

8. We have heard the learned counsels for the parties and have perused the record.

9. The issue involved in the present petition is whether the respondents can withhold the permission for voluntary retirement under Rule 56(k) of the FRs.



10. Before proceeding to adjudicate the issue, it would be apposite to refer Rule 56(k), which reads as under:

“(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—(b)nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign-based office of a Ministry/Department and (iii) goes 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; and

(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.*

EXPLANATION.- For the purpose of this clause, judicial proceedings shall be deemed to be pending, if a complaint or report of a police officer, of which the Magistrate takes cognizance, has been made or filed in criminal proceedings;”

(1-A)(a) A Government servant referred to in sub-clause (1) may make a request in writing to the Appointing Authority to accept notice of less than three months giving reasons therefor; (b) On receipt of a request under sub-clause (1-A)(a), the Appointing Authority 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.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.

11. Rule 56(k) states that a government servant is entitled to retire from service after having attained the age of 50/55 years by giving a notice of not less than three months in writing to the appropriate authority. However, *proviso (c)* to Rule 56(k) states that it is open to the Appropriate Authority to withhold permission to a government servant in the circumstances as enumerated therein. Thus, under the FRs issued by the Government of India, the right of the government servant to voluntarily retire is subject to the *Proviso* wherein the Appropriate Authority may withhold such permission to a government servant.

12. In the present case, it is not disputed that the petitioner had entered the service before attaining the age of 35 years and had completed the age of 50 years. It is an undisputed position that the petitioner is not covered in any of the conditions as mentioned in *Proviso (c)* to Rule 56(k). It is immaterial that a COI or a complaint is pending against him, as no Charge-Sheet had been issued on the basis of same.



13. Indisputably, in case the respondents contemplated any action against the petitioner, it was essential to intimate the same to the petitioner in writing about the decision to ‘withhold’ his application. In this regard, we may refer to the decision in **Tai Nikio** (supra), wherein it has been held as under:

“13. In that background, in the present circumstance, when the notice period of three months had elapsed and no step had been taken by the appellants to either reject the notice or defer the consideration of the request for voluntary retirement by passing an order to that effect and communicating the same, a right had accrued and crystallised in favour of the respondent. Hence, the materials sought to be relied on subsequently in the context of the notice being issued and any other contentions to the contrary cannot be accepted so as to defeat such right. In that view, the decision in the case of Sethi Auto Service Station v. Delhi Development Authority, (2009) 1 SCC 180, relied upon by the learned Assistant Solicitor General would also not be of assistance. In the said case the issue was with regard to the legitimate expectation as claimed and in that light it was held therein that the noting on the file would not be sufficient and only when there is communication as per law, a right is created. In that view, it is contended herein that until a decision is taken by the Government to accept the voluntary retirement application no right is created and, therefore, the respondent cannot have any legitimate expectation for acceptance of his voluntary retirement.

14. In the instant case, rule 48A and the proviso to sub-rule (2) is to the contrary effect. It does not provide that the voluntary retirement will become effective only after communication of the acceptance. On the other hand, it provides that if there is no



communication indicating refusal, the notice is deemed to have been accepted as it becomes effective when the period has expired. When the provision subsists, it would have to be accepted in the manner as it exists.”

14. We may also refer to the case titled **S.K. Singhal** (supra). The relevant observations in which are as under:

“13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be said that non-communication of acceptance should be treated as amounting to withholding of permission.”

15. From the aforementioned decisions, it is manifest that the effect of Rule 56(k) is of a deemed acceptance of the notice given by a



Government servant to voluntary retire on fulfilling the conditions as contained therein, provided however, that prior to the expiry of the notice period, the Government issues a notice rejecting the request of the Government Servant on the grounds mentioned in the *Proviso* to Rule 56(k). The *Proviso* to Rule 56(k), therefore, has restricted the right conferred on a Government servant.

16. In the present case, the petitioner was not under suspension nor any departmental proceedings or charge sheet was pending against him at the time of expiry of the notice period. Though, the respondents have vaguely stated that a complaint alleging corruption was pending against the petitioner, and that there was a COI convened, in case the respondents contemplated any action against the petitioner on the basis of the complaint or the COI, the same should have been intimated to the petitioner clarifying that the respondents wanted to ‘withhold’ the permission to accept his application of voluntary retirement. On the contrary, the notice and reminders by the petitioner have not been replied to so as to indicate withholding or rejecting the request of the petitioner before the expiry of notice period.

17. In view of the above facts and the law, the petitioner is entitled to the declaration sought in the writ petition.

18. Accordingly, the notice of the voluntary retirement issued by the petitioner, as prayed by him, has become effective from 17.04.2024. Consequently, the petitioner shall be entitled for all the pensionary and other retiral benefits as per rules on his retirement on 17.04.2024. We, therefore, direct that the pension and other retiral



benefits of the petitioner be released by the respondents to him within a period of two months from the date of this order.

19. The writ petition is allowed in the aforesaid terms.

SHALINDER KAUR, J.

NAVIN CHAWLA, J.

JANUARY 29, 2025/ab/km