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

Date of decision: 04.08.2025

+ W.P.(C) 1602/2022 & CM APPL. 4576/2022, CM APPL. 12603/2022

UNION OF INDIA AND ORS

.....Petitioners

Through: Ms.Pratima N. Lakra, CGSC
with Mr.Chandan Prajapati,
Mr.Shailendra Kumar Mishra
and Ms.Falguni Rai, Advs.

versus

JITENDRA KUMAR

.....Respondent

Through: Mr.A.K. Trivedi, Ms.Bineeta
Sajwan and Mr.Rupesh Kumar
Upadhyay, Advs

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

HON'BLE MS. JUSTICE MADHU JAIN

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner, challenging the Order dated 30.09.2021 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal') in O.A. No. 3230/201, titled ***Jitendra Kumar v. Union of India through the General Manager & Ors.***, whereby the learned Tribunal allowed the O.A. filed by the respondent herein, with the following directions:

“(i) *The impugned order dated 27.06.2018 (Annexure A-1) is quashed;*



- (ii) Applicant's retirement will become effective from 09.05.2018;*
- (iii) The respondents shall pass an order with regard to declaring the applicant as having retired voluntarily from railway service w.e.f. 09.05.2019.*
- (iv) The applicant shall be entitled to all consequential benefits flowing from such order of voluntary retirement in accordance with relevant rules and instructions on the subject.*
- (v) The respondents shall complete the aforesaid exercise by passing appropriate orders, as expeditiously as possible, but not later than six weeks from the date of receipt of a copy of this order."*

2. To give a brief background of the facts giving rise to the present petition, the respondent, who was serving with the petitioners as a Senior Section Engineer, submitted a request for voluntary retirement under Rule 67 of the Railway Services (Pension) Rules, 1993 (hereinafter referred to as the 'Rules'). The petitioners admittedly failed to respond to the said request within the three-month period prescribed under the Rules. However, by an internal communication dated 27.06.2018, the request of the respondent for proceeding on voluntary retirement was rejected, and the Assistant Divisional Engineer was directed to communicate the same to the respondent.

3. The respondent filed the above-mentioned O.A. challenging the said order and further prayed that he be deemed to have voluntarily retired three months after submitting his request.

4. The learned Tribunal allowed the O.A. filed by the respondent herein, observing as under:

"11. In the present case, admittedly the applicant has submitted his request on 09.02.2018 through proper channel, which



was duly forwarded by the competent authority on 12.02.2018. Though the applicant has not mentioned the period of three months in the notice as required under sub-rule (1) of Rule 67 of the Rules, but he has requested for acceptance of his request for voluntary retirement on most urgent basis i.e. *शीघ्रातिशीघ्र* and, therefore he has given the reasons precisely in his application dated 09.02.2018.

12. The rule under reference does not provide that the one who is undergoing any penalty imposed in the disciplinary matters, cannot give a notice for voluntary retirement even after having qualifying service of 20 years. Moreover, the impugned order is not based on any reason. It is settled law that mere non-mentioning of provision of rules does not invalidate an order in the event it is found that a power therefore exists. In this regard, we may refer to the law laid down in **M.P. Khan vs. Government of Andhra Pradesh** [2004 (1) AP 146]. On the same analogy, once the applicant is entitled to seek voluntary retirement after completion of qualifying service of 20 years under the respondents, it is immaterial as to whether he has quoted any of the provisions of the Rules. Once the applicant has informed the respondents that he wants to seek voluntary retirement in view of his personal and adverse family circumstances, it cannot be construed that he has not disclosed any reason for urgent acceptance of his request for voluntary retirement. If his request for acceptance of voluntary retirement on urgent basis was not likely to be acceded to, the respondents have no reason as evident from the pleadings on record, to refuse his request after lapse of three months from the date of his request letter dated 09.02.2018. In absence of any order from the respondents refusing the request of the applicant before three months from the date of his request i.e. 09.02.2018, the retirement of the applicant shall become effective from the date of expiry



of the said period in view of the provision of Rule 67(2) of the Rules.”

5. The learned counsel for the petitioners submits that the learned Tribunal failed to appreciate that the voluntary retirement cannot be claimed as a matter of right and that it is the prerogative of the employer to allow or disallow the same. She further submits that in the present case, the application filed by the respondent was not in strict conformity with Rule 67 of the Rules. She further submits that the respondent had been visited with the penalties for misconduct, and therefore, the Competent Authority was of the opinion that he should not be allowed to proceed on voluntary retirement.

6. We find no merit in the above contentions of the learned counsel for the petitioners.

7. As noted by the learned Tribunal in the Impugned Order, the application of the respondent for proceeding on voluntary retirement had been duly forwarded by the Competent Authority. Mere non-mention of the relevant Rule would not render the application incompetent.

8. In any case, the proviso to Rule 67 (2) states that in case the Appointing Authority does not refuse to grant permission for voluntary retirement before the expiry of the three-month period, the retirement shall become effective from the date of the expiry of the said period. In the present case, it is admitted that no such communication of refusal was issued to the respondent. Therefore, there was a deemed acceptance of his application.

9. As far as the respondent being visited with orders of penalty,



again, the learned Tribunal has rightly held that the same cannot be a relevant consideration for refusing the grant of permission to the respondent to proceed on voluntary retirement.

10. For the reasons stated hereinabove, we find no merit in the present petition

11. The learned counsel for the respondent submits that the respondent has not been paid his retiral dues due to the pendency of the present petition.

12. We direct that the retiral dues of the respondent, as per the applicable rules, be released by the petitioners within a period of eight weeks from today, along with interest at the rate of 6% per annum.

13. The petition, along with the pending applications, is disposed of with the above directions.

NAVIN CHAWLA, J

MADHU JAIN, J

AUGUST 4, 2025/bs/P/DG