

MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH NAGPUR
ORIGINAL APPLICATION NO. 513 OF 2016 (D.B.)

Shri Govind S/o Babulal Chaurasiya,
Aged about : 56 years, Occupation – Voluntary Retired,
R/o Rail Toli, Gonadia.

Applicant.

Versus

- 1) The State of Maharashtra through,
Secretary Department of Revenue and Forest.
- 2) The Divisional Commissioner,
Nagpur Division, Nagpur.
- 3) The Collector , Gondia.
- 4) The Tahsildar, Gondia.
- 5) The Sub-Divisional Officer, Gondia.

Respondents

Shri G.G.Bade, the Id. Adv. for the applicant.

Shri A.M.Ghogre, the Id. P.O. for the respondents.

**Coram :- Hon'ble Shri J.D. Kulkarni,
Vice-Chairman (J).**

JUDGMENT

(Delivered on this 22nd day of January, 2018)

Heard Shri G.G.Bade, the learned counsel for the applicant and Shri A.M.Ghogre, the learned P.O. for the respondents. The matter is being disposed off with consent of the parties.

2. The applicant, a Talathi has submitted an application for voluntary retirement on 15/02/2016 (Annexure-A-4) and intimated the respondents S.D.O. Gondia that he was opting for voluntary retirement on medical grounds. In the said application, it was stated that the applicant had completed total service of 24 yrs. and 6 months and it was impossible for him to work due to his ill health as specifically mentioned in the said application. On 07/05/2016, the applicant moved an application to the S.D.O. Gondia and requested that his application for voluntary retirement be rejected and be treated as withdrawn. The S.D.O., Gondia however, vide order dated 13/05/2016 was pleased to accept the application for voluntary retirement and the applicant was directed to be relieved after office hours on 14/05/2016. Being aggrieved by the said communication, this O.A. has been filed.

3. The applicant has claimed that the order dated 13/05/2016 issued by respondent no. 5 rejecting the applicant's request for withdrawal of his application for voluntary retirement, be quashed and set aside and the respondents be directed to pay salary and arrears thereof to the applicant from 13/05/2016.

4. Perusal of the affidavit-in-reply on behalf of respondent nos. 2 to 5 shows that they have taken defence that the applicant could not submit fitness certificate alongwith his application at all and as such it cannot be said that the person who himself stated that he was not fit to perform his duty, has become fit to perform his duty within a span of 2 and ½ months. It is further stated that as per Rule 66 (5) of the Maharashtra Civil Services (Pension) Rules, 1982, the person opted for voluntary retirement, is precluded from withdrawing the same, except with approval of specific authority. The applicant has not sought any approval for withdrawal and, therefore, the acceptance of his voluntary retirement was correct.

5. The Id. counsel for the applicant pointed out the order vide which the applicant's request for withdrawal of the application for voluntary retirement had been rejected. The said impugned order is at (Annexure-A-1). It is material to note that in this order, there is no reference to the application filed by the applicant dated 07/05/2016; whereby the applicant had requested that his application for voluntary retirement be rejected and, therefore, it is clear that the request for withdrawal of the application for voluntary retirement has not at all being considered by the S.D.O.

6. From the record; it seems that the applicant has filed an appeal against the order passed by S.D.O. whereby his application for

voluntary retirement was accepted and the said appeal has been rejected by Collector, Gondia vide communication dated 07/06/2016 (Annexure-A-9). In the said communication it is stated by the Collector, Gondia as under :-

"I mfhaz vtzuo; s vki .A LoBnkfuorRhpK vtZ ukeatj ¼j | ½ dj.; kckcr ; k dk; kzy; kl I knj dsysk vkgs rFAkfi vki .A fnukad 15-02-2016 ps vtzuo; s mi foHakxh; vf/Adkjh] xkin; k ; kpsdMsos] dh; dkj .A nk[kow LoBnkfuorRrh eatj dj.; kl fourh vtZl knj dsysk fnl u ; s vkgs R; kud kj mi foHakxh; vf/Adkjh] xkin; k ; kuh vki yk LoBnkfuorRhpK vtZfnukad 13-05-2016 ps vkns AUo; seatj dsysk vkgs R; keGs I njpk LoBnkfuorRhpK vtZl {Ae i kf/Adkjh g; kuh vki ys fo"A; kahr I mfhaz vtZg; k dk; kzy; kl i klr gks; ki phz eatj dsysk vl Y; keGs vki yk eatj dsysk vtZvkrk ukeatj dj.; kph egkj k"V"ukxjh I ok ¼fuorRhoru½ fu; e] 1982 e/; s d]Bgh rjrn ul Y; keGs vki yk ; k dk; kzy; kl nk[Ay dsysk I mfhaz vtZfudkyh dk<. ; kr ; s vkgs"

7. From the aforesaid communication it seems that the Collector has rejected an appeal on the two grounds i.e.:-

- (a) That the application for voluntary retirement has been rejected since it was already granted.
- (b) There is no provision in Maharashtra Civil Services (Pension) Rules, 1982 to withdraw the application for voluntary retirement.

8. Perusal of the record shows that the application was filed by the applicant before respondent no. 5, S.D.O., Gondia on 15/02/2016 and the application for withdrawal of the said application for voluntary retirement has been filed on 07/05/2016. As per the provisions of Rule 66; an employee can submit an application for voluntary retirement to

the appointing authority, requesting it to accept his notice for voluntary retirement and such notice shall not be of less than three months. Admittedly, the application for voluntary retirement comes into operation at the end of three months' notice and there is a provision that if nothing is communicated to the employee as regards acceptance/rejection of the application for voluntary retirement, it is presumed that the application has been accepted. Such presumption, however, shall come into operation only on completion of three months' notice. In the present case, nothing was communicated to the applicant till the applicant filed application for withdrawal of the notice for voluntary retirement i.e. on 07/05/2016. His resignation was accepted on 13/05/2016, but his application for withdrawal of the request was already submitted to the respondent no. 5 on 07/05/2016. It was, therefore, necessary for respondent no. 5 to take into consideration, the request of the applicant for withdrawal of the application for voluntary retirement. The impugned communication accepting the request for voluntary retirement has been issued on 13/05/2016 and there is no reference to application dated 07/05/2016 for withdrawal of the request for voluntary retirement with said communication.

9. The Id. P.O. submits that as per the provisions of Rule 66 (5) of the Maharashtra Civil Services (Pension) Rules, 1982, the Government servant who is elected to retire and has given necessary application to

that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority. It is material to note that the appointing authority has not at all referred to the applicant's request for withdrawal while accepting the notice of retirement. Rule 66 (5) and particularly its proviso makes it crystal clear that the request for withdrawal shall be made before the intended date of retirement. The said relevant Rule reads as under :-

Retirement on completion of 20 years qualifying service.

(5) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

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

10. In the present case, the applicant has not specifically stated in his application for voluntary retirement as to exactly on what date he wants to get retired voluntarily. Even for argument sake and considering the fact that the said application was filed on 15/02/2016, the three months period of such notice will expire on 14/05/2016 and, therefore, the applicant has to be retire voluntarily on 14/05/2016 after office hours, the application for withdrawal of notice for voluntary retirement has been filed on 07/05/2016 i.e. prior to the expiry period of notice and, therefore, the same should have been considered.

11. The Id. P.O. submits that the applicant has not opted permission for withdrawal of the notice of voluntary retirement. The said argument has no legal force, since the applicant; vide his communication dated 07/05/2016 has informed the competent authority that he was willing to withdraw the application for voluntary retirement and, therefore, his request for voluntary retirement be rejected, since he was withdrawing the application. Such request is nothing but seeking approval for withdrawal of resignation.

12. The Id. P.O. submits that in the application for voluntary retirement, the applicant has stated the reasons that he was unable to do work because of his physical inability and, therefore, the applicant ought to have submitted fitness certificate alongwith the application for withdrawal of the request. These arguments also hold no water for the simple reason that respondent no. 5 was not precluded from directing the applicant to produce fitness certificate and he was even authorised to send the applicant for medical examination, had he has any suspicion about the ability of the applicant to work and, therefore, this reason also cannot be said to be genuine. In fact, the respondent no. 5 has not at all considered the request of the applicant for withdrawal of the application for voluntary retirement. In view of the discussion in foregoing paras, I pass following order :-

ORDER

1. O.A. is partly allowed.
2. The impugned order accepting the application for voluntary retirement filed by the applicant on 15/02/2016 is quashed and set aside.
3. The respondent no. 5, S.D.O., Gondia is directed to take into consideration the application dated 07/05/2016 filed by the applicant for withdrawal of the notice for voluntary retirement as per its own merits. The respondent no. 5 will be at liberty either to call for medical fitness certificate from applicant or may send the applicant for medical test before the Competent Board and shall take appropriate decision on its own merits on the application for withdrawal of the notice for voluntary retirement filed by the applicant on 07/05/2016.
4. Such a decision shall be taken within two months from the date of this order and shall be communicated to the applicant in writing.
5. No order as to costs.

Dated :-22/01/2018

**(J.D. Kulkarni)
Vice-Chairman (J).**

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