

**IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
MUMBAI, BENCH AT NAGPUR**

ORIGINAL APPLICATIONS NO 584/2005 & 122/ 2012

DISTRICT : NAGPUR

1) ORIGINAL APPLICATION NO 584 OF 2005

Shri Shankar Janardan Paidlwar,)
Occ – Service, R/o Mahon Nagar,)
Tent line, Nagpur, Dist-Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
Through its Secretary,)
Public Works Department,)
Mantralaya, Mumbai – 32.)
2. Superintending Engineer,)
Special Project Circle,)
Civil Lines, Nagpur.)
3. The Executive Engineer,)
Public Works Division,)
Arvi, Dist-Wardha.)...**Respondents**

1) ORIGINAL APPLICATION NO 122 OF 2012

Shri Shankar Janardan Paidlwar,)
 Occ – Service, R/o Mahon Nagar,)
 Tent line, Nagpur, Dist-Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
 Through its Secretary,)
 Public Works Department,)
 Mantralaya, Mumbai – 32.)
2. Superintending Engineer,)
 Special Project Circle,)
 Civil Lines, Nagpur.)
3. The Executive Engineer,)
 Public Works Division,)
 Arvi, Dist-Wardha.)
4. Shri N.A Telang,)
 Enquiry Officer & Executive)
 Engineer, Office of the)
 Superintending Engineer,)
 Quality Control Circle,)
 Bandhkam Sakul, Civil Lines,)
 Nagpur.)...**Respondents**

Shri S.P Palshikar, learned advocate for the Applicant.

Shri P.N Wajurkar, learned Presenting Officer for the Respondents.

CORAM : Shri Rajiv Agarwal (Vice-Chairman) (A)
Shri J.D Kulkarni (Vice-Chairman) (J)

DATE : 25 .04.2017

PER : Shri Rajiv Agarwal (Vice-Chairman) (A)

ORDER

1. Heard Shri S.P Palshikar, learned advocate for the Applicant and Shri P.N Wajurkar, learned Presenting Officer for the Respondents.

2. These Original Applications have been filed by the Applicant. In O.A no 584/2005 the order dated 6.8.2005 passed by the Respondent no. 1 refusing the request of the Applicant to retire voluntarily on expiry of notice period from 19.4.2005 (O.A no 584/2005) has been challenged. The Applicant has also challenged punishment order dated 3.2.2011, removing the Applicant from service (O.A no 122/2012).

3. Learned Counsel for the Applicant argued that the Applicant was appointed as Junior Engineer on 8.2.1982 and subsequently upgraded as Sectional Engineer. He was working in the Highway Research Division no. 2, Nagpur from 21.12.2002 till 30.6.2003. The Applicant was, thereafter, transferred to Arvi by order dated 27.6.2003. This order was not served on the Applicant. The Applicant had filed O.A no 52/2004 before this Tribunal. There was an earlier order posting the Applicant in some other office in Nagpur. However, the Applicant was not allowed to join in that post on 1.7.2003. This Tribunal, therefore, ordered that the period from 1.7.2003 to 13.1.2004 should be treated as compulsory waiting period. The Applicant was asked to join at Arvi. The Respondents have challenged the decision of this Tribunal in O.A no 52/2004 before Hon'ble High Court. By order dated 16.12.2016 in C.A (W) no 2674/2016 in W.P no 3973/2004, Hon'ble High Court directed this Tribunal to decide two Original Application filed by the Applicant at the earliest.

4. Learned Counsel for the Applicant argued that the Applicant gave a notice of voluntary retirement to the Respondent no. 1 on 17.1.2005. The Applicant had completed 22 years of service and was entitled to seek voluntary retirement in terms of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982. This notice was rejected by the Respondent no. 1 on 6.8.2005,

after the expiry of the period of 3 months. Learned Counsel for the Applicant argued that the Respondent no. 1 has not taken any decision on the application of the Applicant for voluntary retirement within the notice period. As per the proviso to Rule 66(2), the retirement has become effective from 16.4.2005 and the Applicant was ^{-med}dec~~ed~~ to have retired. The reasons for rejecting application given by the Respondent no. 1 were irrelevant as he did not decide the matter within the notice period.

5. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the request of the Applicant for voluntary retirement was rejected on the ground that a D.E for unauthorized absence was pending against the Applicant and the order of this Tribunal dated 2.4.2004 in O.A no 52/2003 was stayed by Hon'ble High Court in Writ Petition no 3973/2004. The Applicant has applied for voluntary retirement with a view to avoid the Departmental Enquiry.

6. We find that the Applicant had applied for voluntary retirement on 17.1.2005. This fact is admitted by the Respondents in the affidavit in reply dated 1.8.2006. It is also stated in the aforesaid reply that the request of the Applicant was rejected on 6.8.2005. Rule 66(2) of Maharashtra Civil Services (Pension) Rules, 1982 reads as follows:-

“66. Retirement on completion of 20 years qualifying service.

- (1) At any time after Government servant has completed twenty years qualifying service, he may, by giving notice of three months in writing to the appointing authority, retire from service.
- (2) The notice of voluntary retirement given under sub rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

In the present case, it is an admitted fact that the Respondent no. 1 passed the order on 6.8.2005 refusing the request of the Applicant for voluntary retirement. In fact, the Respondent no. 1 was required to take a decision within 3 months from the date of notice, viz. 17.1.2005. If no decision was taken till 16.4.2005, the Applicant was deemed to have retired from service w.e.f 16.4.2005. The reasons for rejecting the application for voluntary retirement could have been relevant only if the same was decided within the notice period.


7. Learned Advocate Shri Palshikar has relied on the judgment of Hon. Supreme Court in the case **UNION OF INDIA & ORS Vs. SAYED MUZAFFAR MIR : 1995 Supp (1) SCC 76** and also the judgment of Hon'ble

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Bombay High Court in **N.K PURANIK Vs. STATE OF MAHARASHTRA & ANR : 2007(4) Mh. L.J 384**. It was held by Hon'ble High Court that submission of notice to the immediate superior officer though addressed to the appointing authority is sufficient compliance. It was also held both by Hon'ble High Court as well as Hon'ble Supreme Court that if no decision was taken within 90 days, the Government servant is deemed to retire after expiry of the notice period.

8. In the present case, the facts are not disputed that the Applicant had given notice of voluntary retirement on 17.1.2005 and the refusal of the Respondent no. 1 is dated 6.8.2005, about 6 months after the date of notice. The Applicant is, therefore, deemed to have retired from service after expiry of three months' notice. The Applicant has sought retirement from 19.4.2005 (AN). Accordingly, he is deemed to have retired on 19.4.2005 (AN).

9. It is seen that the Respondents have started a Departmental Enquiry against the Applicant on 30.6.2004 for unauthorized absence. During the pendency of this D.E, the Applicant had given notice of voluntary retirement on 17.1.2005, which was not decided by the Respondents till 6.8.2005. We have already held that the Applicant is deemed to have retired from service on 19.4.2005 (AN). After his retirement, no



punishment under Rule 5 of the Maharashtra Civil Services (Discipline & Appeal) Rules, 1979 could have been imposed on the Applicant. At the most, he could have been punished under Rule 27 of the Maharashtra Civil Services (Pension) Rules, 1982, which the Respondents failed to do. Considering this legal position, the impugned order dated 3.2.2011 imposing penalty of removal from service upon the Applicant cannot be sustained. This order is accordingly quashed and set aside. It is not necessary to consider any other issue raised by the parties.

10. Having regard to the aforesaid facts and circumstances of the case, these Original Applications are allowed. The Respondents are directed to take further action to settle retirement dues of the Applicant, expeditiously as per rules. There will be no order as to costs.

sd/-

**J.D KULKARNI
(VICE-CHAIRMAN) (J)**

sd/-

**RAJIV AGARWAL
(VICE-CHAIRMAN)(A)**

Place : Nagpur

Date : .04.2017

Dictation taken by : A.K. Nair.