

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

ORIGINAL APPLICATION NO. 95 OF 2005

DISTRICT : GADCHIROLI

Dr Gajanan Digambar Anjankar,)
Occ : Retd Live Stock Development)
Officer Permanent address :)
R/o: House of Shri Datar, Subhash)
Chowk, Wshim,)
Tal & District Washim.)
Local add : C/o House of)
Shri Ramesh Nagose,)
At Post Mulchera,)
Tal-Mulchera, Dist-Gadchiroli.)...**Applicant**

VERSUS

1. State of Maharashtra,)
Through its Chief Secretary,)
Agriculture, Animal Husbandry)
Dairy Development & Fisheries)
Department, Mantralaya,)
Annexe, Mumbai 400 032.)



2. The Commissioner,)
 Animal Husbandry Directorate,)
 Central Building, Pune-1.)
3. The Regional Joint)
 Commissioner,)
 Animal Husbandry,)
 Nagpur Region, in front of)
 Maharajbaug, Nagpur.)
4. The District Animal Husbandry)
 Officer, Zilla Parishad,)
 Gadchiroli,)
 Tal & Dist-Gadchiroli.)....**Respondents**

Dr Mrs R.S Sirpurkar with Shri R.V Shivalkar, learned Advocate for the Applicant.

Shri A.M Ghogre, learned Presenting Officer for the Respondent Nos. 1 to 3.

None for the Respondent no. 4.

**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 Dr Mrs R.S. Sirpurkar with Shri R.V Shivalkar, learned Advocate for the Applicant, Shri A.M Ghogre, learned Presenting Officer for the Respondent Nos. 1 to 3. None for the Respondent no. 4.

2. This Original Application has been filed by the Applicant challenging the order dated 5.1.2005 issued by the Respondent no. 1, refusing to accept his request for voluntary retirement w.e.f 6.1.2005. By judgment dated 3.11.2014, this Tribunal dismissed the Original Application. The Applicant filed Writ Petition no 207/2015 before Nagpur Bench of Hon'ble Bombay High Court and by order dated 28.3.2016, Hon'ble High Court quashed the order dated 3.11.2014 and the Original Application was restored on the file of this Tribunal. The Applicant was given liberty to raise additional challenges in this Original Application. Accordingly, the Applicant was allowed to amend the Original Application.

3. Learned Counsel for the Applicant argued that the Applicant had given application for voluntary retirement dated 7.10.2004 to the Respondent no. 1 under Rule 66(1)(a) of the Maharashtra Civil Services (Pension) Rules, 1982. It is an admitted fact that the Applicant had completed 20 years of service. Though the application of the Applicant was rejected on 5.1.2005, the


order was not actually passed on 5.1.2005. Even if, for the sake of argument, it is accepted that order was issued on 5.1.2005, the order should have been communicated to the Applicant on or before 5.1.2005. There is evidence on record to show that the order dated 5.1.2005 issued by the Respondent no. 1 was received in the office of the Respondent no. 2 on 21.1.2005. This is as per entry in the inward register of the Respondent no. 2. The Applicant was communicated the decision on 23.2.2005. Learned Counsel for the Applicant relied on the judgment of Hon'ble Supreme Court in the case of **STATE OF HARYANA & ORS Vs. S.K SINGHAL (1994) 4 SCC 293**. It was held by Hon'ble Supreme Court that order refusing permission to retire voluntarily has to be passed and communicated within the notice period. Otherwise, the voluntary retirement takes effect automatically.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondent nos 1 to 3 that the Applicant had given a notice of voluntary retirement dated 1.2.2004, which was refused by the Respondent no. 1 on the ground of public interest by letter dated 29.4.2004. The Applicant again sent request for voluntary retirement by letter dated 14.7.2004, which was also rejected. The Applicant again submitted application for voluntary retirement on 7.10.2004. By letter dated 5.1.2005, the request of the Applicant was rejected by the Government. As the application for voluntary retirement was rejected



before the expiry of 3 months' notice period, there is no question of its becoming effective. The Applicant was informed by letter dated 17.2.2005 about refusal of the Respondent no. 1 to accept his request for voluntary retirement. The Applicant was already informed on 29.12.2004 and 6.1.2005 that his request for voluntary retirement was not accepted. Learned Presenting Officer argued that the Applicant had remained absent from duty from 7.1.2005 unauthorisedly. He should join duties immediately and get his absence regularized.


5. We find that the Applicant had applied for voluntary retirement by application dated 7.10.2004. If the Applicant had earlier also applied for voluntary retirement and those requests were refused, these facts are not at all relevant in deciding the present Original Application. As the Applicant had completed 20 years of service, he was entitled to seek voluntary retirement and the Competent Authority, the Respondent no. 1, in this case, was required to reject it within the notice period of 3 months, if it did not want to the Applicant to retire voluntarily. If no decision was taken within 3 months, the notice of voluntary retirement is deemed to be accepted under Rule 66 of Maharashtra Civil Services (Pension) Rules, 1982. In the present case, the Respondent no. 1 issued a letter dated 5.1.2005, refusing to accept the request of the Applicant for voluntary retirement. This letter is addressed by the Respondent



no. 1 to the Respondent no. 2. The Respondents in their affidavit in reply dated 6.10.2016 in para 3 admitted that the order dated 5.1.2005 was communicated to the Applicant by letter dated 17.2.2005:

“But in this case before completion of notice period it was informed to the Applicant that his application for voluntary retirement had been refused on the administrative ground vide letter dated 5.1.2005, i.e. date on which the notice become effective this communication to the Applicant by letter dated 17.2.2005.”


The Respondents, however, claim that the Applicant was informed about rejection on 29.12.2004 and 6.1.2005. Letter dated 29.12.2004 was issued before the Respondent no. 1 had decided not to accept the notice of voluntary retirement of the Applicant. It was done on 5.1.2005. This letter has no legal validity, in so far as refusal to accept notice of voluntary retirement of the Applicant is concerned. Letter dated 6.1.2005 is annexed as Annexure R-4. This letter is issued by the Respondent no. 4 with the approval of the Respondent no. 3. Both of them are not the Competent Authority to accept or reject the notice of voluntary retirement of the Applicant. This contention of the Respondents is without merit.



6. The moot question remains, what is the effect of the decision taken on 5.1.2005 (though the Applicant has denied that, but we need not consider his objection about the date of letter at present) and admittedly communicated to the Applicant by letter dated 17.2.2005. The Applicant has relied on the judgment of Hon'ble Supreme Court in the case of S.K SINGHAL (supra). Hon'ble Supreme Court has held in para 13 that:-

“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 Sayed Muzaffar Mir case before the expiry of notice period.” (emphasis added).

It is clear that Hon'ble Supreme Court has held that order of refusal to accept notice of voluntary retirement should be passed and also communicated within the notice period. In the present case, though the order was passed on 5.1.2005 within the notice period, it was communicated to the Applicant by letter dated 17.2.2005. The Applicant is, therefore, deemed to have retired voluntarily on 6.1.2005. It is not necessary to examine other issues raised by the Applicant.



7. Having regard to the aforesaid facts and circumstances of the case, it is held that the Applicant stood voluntarily retired from service on 6.1.2005. The Respondents are directed to settle the pensionary dues of the Applicant expeditiously, preferably within a period of three months from the date of this order. This Original Application is allowed accordingly with no order as to costs.

sd/-

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

sd/-

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

Date : .04.2017

Place : Nagpur

Dictation taken by : A.K Nair

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