

MAHARASHTRA ADMINISTRATIVE TRIBUNAL,

NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO.198/2017.

(S.B.)

Dr. Purushottam Shrawan Rakhade,
Aged about 56 years,
Occ-Retired,
R/o 46, Keshavnagar Khat Road,
Khakarla, Tehsil & District-Bhandara.

Applicant.

-Versus-

1. The State of Maharashtra,
Through its Principal Secretary,
Public Health Department, 10th floor,
Gokuldas Tejpal Hospital Campus,
Mumbai-01.
2. The Director of Health, (M.S.),
Arogya Bhavan, St. Georges Hospital Compound,
Dmello Road, Fort, Mumbai-01.
3. The Deputy Director of Health Services,
Matakacheri Compound,
Shraddhanand Peth, Nagpur.
4. The Chief Executive Officer,
Zilla Parishad, Bhandara.
5. The District Health Officer,
Zilla Parishad, Bhandara.

Respondents

Shri N.D. Thombre, the learned counsel for the applicant.
Shri A.M. Ghogre, the Ld. P.O. for the respondent Nos. 1 to 3.
Shri A.Y. Kapgade, Ld. counsel for respondent Nos. 4 and 5.

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

JUDGMENT

(Delivered on this 17th day of November 2017).

Heard Shri N.D. Thombre, the learned counsel for the applicant and Shri A.M. Ghogre, the learned P.O. for the respondent Nos. 1 to 3. Shri A.Y. Kapgate, learned counsel for respondent Nos. 4 and 5.

2. The applicant was appointed as Medical Officer (Pure Ayurved), Maharashtra Medical and Health Services, Class-II and joined the said post on 15.12.1987. The applicant was suffering from Ischemic heart disease and hypertension and, therefore, he tendered the notice of voluntary retirement on 6.9.2016. On 1.12.2016, the applicant gave reminder, as no communication was received as regards acceptance of his notice of voluntary retirement. The applicant submitted that he shall be presumed to be retired from 6.12.2016 as per rules after completion of three months notice period. However, nothing was informed to him.

3. On 31.1.2017, the applicant received a communication that the voluntary retirement of the applicant has not been sanctioned by the Government and that since the Government was initiating departmental enquiry against the applicant and, therefore, the applicant was not allowed to retire. Being aggrieved by the said communication,

the applicant has filed this O.A. He has claimed that the communication dated 20.1.2007 (Annexure A-5) issued by respondent No.4 i.e. the Chief Executive Officer, Zilla Parishad, Bhandara be quashed and set aside and it be declared that the applicant stood retired from 5.12.2016 after office hours in view of the provisions of sub-rule (2) of Rule 66 of the Maharashtra Civil Services (Pension) Rules, 1982 (in short Pension Rules). The applicant has also claimed directions to the respondents to release his pension and all pensionary benefits.

4. Respondent Nos. 1 and 2 have filed reply affidavit and submits that it is mandatory for an employee who opt for voluntary retirement to tender his notice to the appointing authority / competent authority and as per the Pension Rules, giving of three months notice in writing is mandatory. In the present case though the applicant notice dated 6.9.2016 in the name of the Principal Secretary, Public Health Department, Mantralaya, Mumbai, but till today the Principal Secretary of Public Health Department has not received the said notice. The notice was submitted to the office of respondent No.5 i.e. the District Health Officer, Zilla Parishad, Bhandara and the respondent No.5 forwarded the said application / notice to the office of the Deputy Director of Health Services, Nagpur vide covering letter dated 28.9.2016 and thereafter respondent No.3 had forwarded the said notice to respondent No.2 vide letter dated 24.10.2016.

Respondent No.2 thereafter raised some objection which was communicated to the applicant vide letter dated 19.11.2016. The application for voluntary retirement is not accepted because of pendency of departmental enquiry against the applicant.

5. It is further stated that rejection or non acceptance of notice of voluntary retirement of the applicant has been received by respondent No.3 i.e. the Deputy Director of Health Services, Nagpur on 22.11.2016. Respondent No.3 thereafter issued a letter dated 13.12.2016 directing respondent No.4 to communicate the said fact to the applicant. The said communication was received by respondent No.4 on 23.12.2016 and was conveyed to the applicant on 20.1.2017. But the applicant received the said communication on 31.1.2017. The applicant has not given three months clear notice.

6. Respondent Nos. 4 and 5 have also filed reply affidavit. It is stated that as per communications dated 14.7.2015 and 11.3.2016, a proposal for departmental enquiry was sent by Zilla Parishad to respondent No.1 through respondent No.3 and applicant's suspension was also recommended. Article of charge dated 14.7.2015 was forwarded by Zilla Parishad to the Government for initiating the departmental enquiry against the applicant. But in the meantime, the applicant submitted an application for voluntary retirement on 6.9.2016. It is stated that respondent No.2 vide

communication dated 19.11.2016 informed the respondent No.3 i.e. Deputy Director of Health Services, Nagpur that since the matter pertaining to departmental enquiry was pending at State level, application for voluntary retirement of the applicant was disapproved. Thus, the decision has been taken not to accept the applicant's application for voluntary retirement within 90 days. The said decision dated 19.11.2016 could reach Zilla Parishad, Bhandara on 23.12.2016 alongwith the communications dated 13.12.2016 issued by the Deputy Director of Health Services, Nagpur.

7. The learned counsel for the applicant submits that, the applicant has filed an application for voluntary retirement on 6.9.2016. But he was not communicated anything prior to 90 days i.e. prior to the expiry of notice period and he was informed for the first time about rejection of his claim vide impugned communication dated 20.1.2017. The impugned communication is placed on record at Page 26 (Annexure A-5) of the O.A. The learned counsel for the applicant submits that, this communication clearly shows that the applicant was not intimated about the acceptance or refusal of his application for voluntary retirement prior to 90 days. The said communication is as under:-

शुद्ध सेवाशुद्धी मंजुरी कर्ता द. ६.९.२०१६ या
उपरोक्त संदर्भात तीवेदनावये या कायान्यामाफ्त मा. धान सचव,

सावजाजक आरोप्य व्रभाग, मंालय, मुंबई यांना व्रनंती केली होती. ळयाअनुषंगाने या कायाल्लयाचे संदभल्य पळी . २ अळवये उपसंचालक, आरोप्य सेवा, नागपूर मंडळ, नागपूर यांचे माफ्फत ळताव पाठल्लयात आले होते.

उपसंचालक, आरोप्य सेवा, नागपूर मंडळ, नागपूर यांनी ळयांचे कायाल्लयीन पळी .ब-३मवैआसे/आळथा/ऐसेनी-डॉ. राखडे/२६६३२/३६/१६ ळ. २४.१०.२०१६ अळवाये सदर ळताव सहसंचालक, आरोप्य सेवा, मुंबई यांचेकडे पाठल्लयात आले असून सहसंचालक, आरोप्य सेवा, मुंबई यांनी ळयांचे कायाल्लयीन पळी . १६७१ ळ. १९.११.२०१६ अळवये उपसंचालक, आरोप्य सेवा, नागपूर मंडळ, नागपूर यांना व्रषयांक्रत ळकरणात ळुटळी पूतत्ता करळयातव कळल्लयात आले असून, डॉ. राखडे यांचे व्रळध व्रभागीय चौकशी सुळी असून सदर व्रभागीय चौकशीया अनुषंगाने अदयाप अंतम ळणल्ल झालेला नाहळी ळयामुळे जोपयत्त व्रभागीय चौकशीचे अनुषंगाने अंतम ळणल्ल होत नाहळी तोपयत्त ळवेळ्ळा सेवाळनवृणी मंजुर करता येणार नाहळी ळयाळमाणे डॉ. राखडे यांना ताळकाळ अवगत करळयाचे ळदाळात केले . ळया अनुषंगाने संदभल्य पळी . ४ अळवये उपसंचालक, आरोप्य सेवा, नागपूर मंडळ, नागपूर यांनी या कायाल्लयास कळल्ले असून सदर पळी ळ. २३.१२.२०१६ ला ळात झालेले आहे.

ळवेळ्ळा सेवाळनवृणी मंजुर करळयाबाबतचे आपले ळसवेदन ळ. ६.९.२०१६ पासून ळ. ५.१२.२०१६ पयत्त ९० ळवसांचा कालावधी पूणळ झाले असले तर ळवेळ्ळा सेवाळनवृणी मंजुर करळयात आले नसळयाने आपणास ळिळहा पळषद ळतरावळन कायळुळत करता येणार नाहळी

करता पुढल्ल ळदळ्ळा ळात होईपयत्त आपण आपले कतळयावर कायळत राहावे याची नाढ ळयावी.”

8. The learned P.O. has invited my attention to the application for voluntary retirement of the applicant. He submits that the applicant has not given any specific period as regards the voluntary retirement and the said communication does not disclose as to exactly when and from which date the applicant wanted to proceed for voluntary retirement. The said communication is at Annexure A-3 dated 6.9.2016. It seems that the applicant has addressed his

application for voluntary retirement to the Principal Secretary, Public Health Department, Mantralaya, Mumbai through the District Health Officer, Zilla Parishad, Bhandara. The said letter is as under:-

वषय:- वेछा सेवावृषी घेत असयाबाबतचे वूसूचना अज महोदय, वरल वषयानुसार सवनय अज करत आहे क, मी महारा लोकसेवा आयोगाया शफारशी नुसार वैयकय अधिकार वगए या पदावर द. १५.१२.१९८७ पासून सावजक आरोय सेवेत कायात आहे.

माझी कृती बर राहत नसयाने व मला दय आजार असयामुळे (D/Ischeic Heart Ds * Hypertension) आता मला वैयकय अधिकार या पदावरकाम करयाची मानसकता नसयाने व वतःया कृतीकडे आण घराकडे दुल होत असयाने मी वेछा सेवावृषी घेत आहे. तर माझी वेछा सेवावृषी मंजूर करयात यावी ह वनंती.”

9. Plain reading of the aforesaid letter clearly shows that the applicant has not mentioned specifically as to from which date he wanted to take voluntary retirement. On the contrary, plain reading of the aforesaid letter shows that the applicant wanted to opt for voluntary retirement with immediate effect, though in the %subject+column shows that it was prior intimation regarding voluntary retirement.

10. The Honble High Court of Judicature at Bombay in the case of **Nilkanth Ramji Akarte V/s State of Maharashtra and others reported in 2006 (5) Mh.L.J. 132** has observed in para Nos. 10 and 11 as under:-

10. Before we consider the issue on merits, it will be appropriate for us to consider the purport of Rule 66 of the M.C.S. Rules. The relevant part of Rule 66 reads this :-

Rule 66- Retirement on completion 20 years qualifying service.-

(1) At any time after a Govt. 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 of the appointing authority :

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

11. The plain reading of the above referred Rule makes it implicitly clear that the person who is entitled to get voluntary retirement has to fulfill the following conditions :

(1) On the date of issuance of notice of voluntary retirement, such employee must have completed 20 years of qualifying service;

(2) The notice must be in writing; and

(3) Period of notice is three months.

12. Similarly, though sub-rule (2) stipulates that the notice of voluntary retirement given under sub-rule (2) shall require acceptance by the competent

authority, however, proviso to Rule 66 makes it clear 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. It is, therefore, evident that in absence of refusal by the appointing authority on or before the expiry of the period of notice, the employee automatically stands retired voluntarily from service on the date such period of notice expires.+

11. From the aforesaid observation, it will be clear that the person opts for voluntary retirement has to fulfill three conditions as mentioned in para 11 as above. It seems that the applicant has completed 20 years qualifying service and has given notice in writing and, therefore, first two ingredients have been fulfilled. The third ingredient, however, shows that the notice shall be of a period of three months. In the present case, notice does not state any specific period i.e. from which date the applicant wanted to opt for voluntary retirement. It merely states that, the applicants wants to opt for voluntary retirement and, therefore, it cannot be said that the notice for voluntary retirement given by the applicant was strictly as per Rule 66 of the M.C.S. (Pension) Rules, 1982 as stated above. At the most, it

can be said that the applicant only declared his intention that he wants to opt for voluntary retirement, but not from which exact date. The notice of voluntary retirement has become effective from the date of expiry of notice period mentioned in the notice. Though, as per Rule 66 of the Pension Rules, three months notice is required, it was necessary for the applicant to mention the exact date on which he wanted to opt for voluntary retirement.

12. Though, a specific form is not provided to opt for voluntary retirement as per Rule 66 of the Pension Rules, it is definitely obligatory on the applicant to mention the notice period in the notice.

13. From the communication dated 20.1.2017, it seems that the competent authority to accept the applicant's notice for voluntary retirement, was the Principal Secretary, Public Health Department, Mantralaya, Mumbai and notice was sent to him through the respondent No.5, the District Health Officer, Zilla Parishad, Bhandara. It seems that the notice did not reach to the office of respondent No.1 at all. It was sent to the Joint Director of Public Health, Mumbai by the Deputy Director of Health Services, Nagpur vide letter dated 24.10.2016 and the Joint Director of Public Health, Mumbai intimated vide letter dated 19.11.2016 to the Deputy Director of Health Services, Nagpur to answer some queries. It was intimated that the departmental enquiry was initiated against the applicant and, therefore,

till the decision of the said enquiry, the applicant cannot be allowed to retire voluntarily. Such intimation was received by the Deputy Director of Health Services, Nagpur on 23.12.2016. There is nothing on record to show that, the application for voluntary retirement of the applicant was received by respondent No.1. In such circumstances, the applicant cannot take benefit of the presumption of proviso to sub-rule (2) of Rule 66 of the Pension Rules. If the appointing authority i.e. respondent No.1 did not receive the notice of voluntary retirement of the applicant at all, there was no question for respondent No.1, granting or refusing permission for retirement to the applicant. Though, it seems from the communication dated 20.1.2017 (Annexure A-5) that respondent No.1 was intimated about the voluntary retirement of the applicant, it was only regarding rejection of applicant's request by the Joint Director of Public Health, Mumbai and there is nothing on record to show that, the applicant's notice of voluntary retirement ever reached to respondent No.1.

14. The learned counsel for the applicant invited my attention to one letter dated 1.12.2016 (Annexure A-4) at page 25 of the O.A. whereby the applicant intimated the District Health Officer, Zilla Parishad, Bhandara that he did not receive any intimation within time i.e. prior to 5.12.2016 as regards his application for voluntary retirement and, therefore, he will not attend the office since

6.12.2015. This letter was not addressed to the respondent No.1 nor its copy was ever forwarded to respondent No.1 by the applicant.

15. From the circumstances discussed in foregoing paras, it will be thus crystal clear that the applicant issued a notice for voluntary retirement on 6.9.2016 and the said notice does not disclose the period of notice or in other words, the exact date from which the applicant wanted to opt for voluntary retirement. No documents are placed on record to show that this notice was ever received by respondent No.1. In such circumstances, though the applicant has received communication about refusal of his notice for voluntary retirement on 20.1.2017, it cannot be said that the notice for voluntary retirement was received or refused by respondent No.1.

16. As already discussed, a person who is entitled to get voluntary retirement, has to fulfill three conditions which include that the period of notice shall be of three months. In the present case, period of notice has not been mentioned in the notice at all and the notice has not reached to the competent authority and, therefore, the presumption for Rule 66 of the Pension Rules cannot be made applicable in this case.

17. The learned counsel for the applicant has placed reliance on the judgment delivered by this Tribunal in **O.A. No. 95/2005 in case of Dr. G.D. Anjankar V/s State of Maharashtra and others**

dated 25.4.2017 another judgment in O.A. No. 584/2005 in case of S.J. Paidalwar V/s State of Maharashtra and others dated 25.4.2017. Facts of both these cases are not analogous with the present set of facts. In the present case, as already stated, the applicant has not issued proper notice giving three months time for voluntary retirement as required under Rule 66 of the Pension Rules and secondly the notice has not reached to the competent authority i.e. respondent No.1 and, therefore, the applicant cannot base his claim on presumption that since no communication was issued to him before expiry of 90 days from the date of issuance of notice, his application for voluntary retirement shall be presumed to have been accepted, cannot be considered in this case.

18. It has been held in the case of **Dr. Baljit Singh V/s State of Haryana, AIR 1997 SC 2150** that the jural relationship ceases on acceptance of request for voluntary retirement and not merely on expiry of three months notice period. In the said case, criminal case was pending against the employee and during such pendency, the employee gave an application for voluntary retirement with three months notice. It was held that the employee cannot be said to be voluntarily retired merely by handing over the charge and he will retire voluntarily only on acceptance of his request by the concerned authority. In the present case, the learned P.O. stated that the

departmental enquiry is pending against the applicant and, therefore, the Joint Director of Public Health, Mumbai was justified in refusing the voluntary retirement of the applicant or even not forwarding his application to the competent authority. In fact the Dy. Director i.e. R.3 should have forwarded applicant's notice to R.1 with his remarks so as to reach to R.1 within stipulated period, but he has failed in his duty and rejected applicant's request on its own. However, this will not entitle the applicant to take any disadvantage. Hence, the following order:-

ORDER

O.A. stands dismissed with no order as to costs.

Dt. 17.11.2017.

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