

IN THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL
NAGPUR BENCH, NAGPUR

ORIGINAL APPLICATION NO 85 OF 2010

DISTRICT : NAGPUR

Ushabai Manohar Koche,)
Occ : Service, R/o: Plot no. 42,)
Vishwakarma Nagar,)
Nagpur.)...**Applicant**

Versus

1. The State of Maharashtra)
Medical Education and Drugs)
Department, Mantralaya,)
Mumbai 400 032.)
2. The Director,)
Medical Education and)
Research, St. Georges')
Hospital Compound,)
Near C.S.T, Mumbai 400 001.)
3. The Dean,)
Government Medical College)
and Hospital, Nagpur.)...**Respondents**

Shri S.M Khan, learned advocate holding for Shri P.C Marpakwar, learned advocate for the Applicant.

Shri S.A Sainis, learned Presenting Officer for the Respondents.

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

DATE : 07.07.2017

PER : Shri Rajiv Agarwal (Vice-Chairman)

ORDER

1. Heard Shri S.M Khan, learned advocate holding for Shri P.C Marpakwar, learned advocate for the Applicant and Shri S.A Sainis, learned Presenting Officer for the Respondents.

2. This Original Application has been filed by the Applicant challenging the order dated 23.4.2008 terminating the services of the Applicant. The Applicant is also seeking that her notice of voluntary retirement dated 16.10.2000 may be treated as being accepted.

3. Learned Counsel for the Applicant argued that the Applicant was working as Staff Nurse in Government Medical College, Nagpur. She gave a notice of voluntary

retirement on 16.10.2000. The Applicant did not receive any reply till 16.1.2001. The Applicant is, therefore, deemed to have retired from service w.e.f 16.1.2001. The Respondents, however, started a D.E against her and passed the impugned order dated 23.4.2008 terminating her services retrospectively w.e.f 7.12.2003. Learned Counsel for the Applicant argued that on this count only the impugned order is bad and the services of the Applicant could not have been terminated retrospectively. Moreover, the Enquiry Report was never supplied to the Applicant and as such the order of punishment is illegal.

4. Learned Presenting Officer (P.O) argued on behalf of the Respondents that the Applicant had given notice of voluntary retirement on 16.10.2000. The same was rejected by the Competent Authority and the Applicant was informed on 15.1.2001 accordingly. The Applicant, thereafter, remained absent unauthorizedly from duty. A D.E was already started against her. The Applicant never remained present before the Enquiry Officer and a notice was published in Daily Hitavada, Nagpur on 22.11.2003. Even after that notice, the Applicant remained absent and did not attend the inquiry or the office. As the Applicant never attended the enquiry, nor reported for duties, her services were terminated by impugned order dated 23.4.2008. Learned Presenting Officer argued that the Applicant remained absent unauthorizedly and did not attend the enquiry

proceedings. It does not lie in her mouth to challenge the punishment imposed upon her.

5. We find that the Applicant is mixing two issues, viz. her application for voluntary retirement dated 16.10.2000 and punishment imposed on her by impugned order dated 23.4.2008 (though in O.A date is mentioned as 23.1.2008).

6. Let us first examine the issue of voluntary retirement. There appears to be no doubt that the Applicant had given notice of voluntary retirement on 16.10.2000. The Applicant claims that she was not given any reply to the said notice for 90 days and therefore, she is deemed to have retired from service. The Respondents have placed a copy of letter dated 15.1.2001 addressed to the Applicant on record, (Annexure R-1). By this letter, the notice of voluntary retirement was rejected as a Departmental Enquiry was pending against the Applicant. The letter was sent to the Applicant through a Peon who reported that the Applicant refused to accept the letter. This amounts to service of letter dated 15.1.2001 upon the Applicant. Her claim that she did not receive any reply to her notice of voluntary retirement dated 16.10.2000 cannot be accepted. In any case, if she was aggrieved that her notice was deemed to have been accepted and no action in pursuance to her voluntary retirement was being taken by the Respondents, she

should have approached this Tribunal for redressal of her grievances. However, she approached this Tribunal in 2010, after 9 years. Though the Applicant claims that she made representations on 20.5.2001, 15.7.2003, 20.2.2004, 13.9.2005 and 12.5.2008 regarding grant of pensionary benefits, the Respondents in their affidavit in reply dated 19.7.2010 have denied having received any representation, except dated 20.5.2001. The Applicant has not substantiated her claim that she had sent subsequent representations. Even if she did send such representation, she cannot revive a dead issue (decided in 2001) by making repeated representations. A dead/stale issue cannot be revived by repeated representations. In the present case, there is substantial evidence on record to show that the notice of voluntary retirement of the Applicant was rejected before expiry of 90 days period citing cogent reasons.

7. The next issue is regarding the Departmental Enquiry against the Applicant. The same was started before she had submitted her notice of voluntary retirement on 16.10.2000. The Applicant had admitted that she was absent from duty from 1.7.1995 to 26.3.2000. She was allowed to resume duties on 3.6.2000 and 16.10.2000, she submitted notice of voluntary retirement which was refused. She has claimed that she had earlier given another notice of voluntary retirement on 10.7.2000. However, that fact is

denied by the Respondents. In any case, when notice of 16.10.2000 was submitted, earlier notice dated 10.7.2000, is not relevant at all. It is clear that at least from 16.1.2001 onwards the Applicant remained absent from duty. The Respondents issued a public notice in newspaper asking the Applicant to remain present for duties. However, the Applicant did not take cognizance of the aforesaid notice. She never attended the Departmental Enquiry proceedings. In a Departmental Enquiry proceedings, a delinquent Government servant is required to specifically admit or deny every Article of charge. As the Applicant never attended D.E proceedings, there was no necessity of holding a detailed enquiry and contentions raised by the Applicant about shortcomings in the enquiry have no basis and have to be rejected.

8. The Applicant has challenged termination of her services by retrospective effect. Hon'ble Bombay High Court in **Shri A.R DHAGE Vs. EXECUTIVE ENGINEER & ORS in W.P 2012/1986** by judgment dated 26.10.1988 has held that termination with retrospective effect is invalid and illegal. Considering the ratio laid down by the Hon'ble High Court, the impugned order dated 23.4.2008 will be held to be effective from 23.4.2008.

9. There is no merit in the Original Application. It is specifically held that her notice of voluntary retirement dated 16.10.2000 was rejected by the Applicant on 15.1.2001 within time and also, the order dated 23.4.2008 is valid, except that it will be effective from the date of order, i.e. from 23.4.2008. This Original Application is disposed of accordingly with no order as to costs.

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

(Rajiv Agarwal)
Vice-Chairman (A)

Place : Nagpur
Date : 07.07.2017
Dictation taken by : A.K. Nair.