

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL****NAGPUR BENCH NAGPUR****ORIGINAL APPLICATION No. 310 of 2017 (D.B.)**

Santosh S/o Jagdishsingh Gautam,  
Aged about 46 years, Occ. Service (now retired),  
r/o MHADA Colony Tahsil ward Hinganghat,  
District Wardha.

**Applicant.**

**Versus**

- 1) The State of Maharashtra,  
through its Additional Chief Secretary,  
Home Department, Mantralaya,  
Mumbai-400 032.
- 2) Superintendent of Police,  
Wardha.

**Respondents.**

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**Shri S.P. Palshikar, Advocate for the applicant.**

**Shri P.N. Warjurkar, P.O. for the respondents.**

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**Coram :- Shri Shree Bhagwan,  
Member (A) and  
Shri A.D. Karanjkar, Member (J).**

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**JUDGMENT**

**Per : Member (J).**

**(Delivered on this 17<sup>th</sup> day of December,2018)**

Heard Shri S.P.Palshikar, learned counsel for the  
applicant and Shri P.N. Warjurkar, learned P.O. for the respondents.

2. The applicant was serving as a Police Head Constable in the Motor Transport Division, Police Head Quarter, Wardha. The applicant submitted application on 27/12/2014 for voluntary retirement. The respondent no.2 immediately on 01/01/2015 informed the applicant that as Court case was pending against the applicant, his request for voluntary retirement was rejected.

3. The applicant was placed under suspension in the month of August, 2015 in relation to the offence under the Money Lending Act, the suspension was continued for about 1 year. On 5/10/2016 the suspension was revoked and the applicant was posted at Police Station, Arvi, but the applicant did not join at Arvi Police Station.

4. The applicant thereafter again submitted application for voluntary retirement on 25/10/2016 vide Annex-A-4, the application was received by the respondent no.2 on 24/10/2016. Similar application was submitted by the applicant on 06/12/2016 and thereafter similar application was submitted on 19/01/2017. It is grievance of the applicant that as per Rule 66 (2) of the MCS (Pension) Rules, it was duty of respondent no.2 to take decision on the applications for voluntary retirement and inform it before expiry of 90 days. It is submitted that the period of 90 days expired on 25/01/2017 and before expiry of 90 days, the rejection of the request for voluntary retirement was not communicated to the applicant,

consequently, as per the statutory provisions the applicant shall be deemed to be retired from the service w.e.f. 25/01/2017.

5. It is submission of the applicant that thereafter, he received letter from respondent no.2 dated 13/02/2017 and learnt that his request for voluntary retirement was rejected. It is contention of the applicant that as the rejection of the request for the voluntary retirement was not communicated to him within a period of 90 days, therefore, the intimation given after expiry of 90 days is not valid in law. In these circumstances, the applicant is claiming that the communications dated 13/02/2017 and 20/04/2017 are bad in law and it be declared that the applicant stood retired from the service with effect from 25/01/2017.

6. The application is opposed by the respondent no.2 vide reply at page no.60. It is submitted by respondent no.2 that e-mail as well as the written application were received from the applicant containing the proposal for the voluntary retirement. The respondent no.2 in pursuance of the request of the applicant issued letter dated 02/11/2016 and it was forwarded to the Police Head Quarter, Wardha for service of the applicant. It is contended that the applicant was already relieved on 07/10/2016 due to his transfer to Police Station, Arvi, therefore, the letter was returned back on 03/11/2016. Thereafter the letter was sent to Police Station, Arvi on 17/11/2016

for the service on the applicant, but as the applicant did not join the posting at Arvi, he was absent without permission, therefore, that letter was returned back. Ultimately the letter was served on the address of the applicant which was mentioned in his service book i.e. Hinganghat, Dist. Wardha. It is submitted that the applicant did not join his posting at Arvi after his suspension, he remained absent due to which the Department was unable to inform the rejection and therefore, there is no substance in this application and it is liable to be dismissed.

7. We have heard submissions on behalf of the applicant and respondent no.2. In this case the material question is whether the applicant whose first request for voluntary retirement was rejected was entitled to submit second application for V.Rs., though the cause for rejection of the first application was in existence.

8. So far as the contention of the applicant that there was no communication of the rejection within 90 days after receiving the application is concerned, I would like to point out that there is no dispute about it and that legal position is very much settled. It is now settled that if the rejection is not communicated to the Government servant within a period of 90 days after receiving application for voluntary retirement, then on expiry period of 90 days the retirement is automatic.

9. After perusing the record, there appears no substance in contention of respondent no.2 that the applicant could not be served as he was not present at Police Head Quarter, Wardha or at Police Station, Arvi. As the respondent no.2 had also received the application for voluntary retirement on mail, therefore, the rejection of the request could have been communicated to the applicant on the same email-id from which he submitted the request for voluntary retirement.

10. In this case relief can not be granted to the applicant only for the reason that rejection of request was not communicated to the applicant before expiry or 90 days from 24-10-2016, in view of the other circumstances. The crucial point is on 27/12/2014 application for voluntary retirement was submitted by the applicant and it was rejected by respondent no.2 vide communication dated 01/01/2015 for the reason that Court case was pending against the applicant. It appears from the allegations made in O.A. that in the month of August, 2015 the applicant was placed under suspension. Thereafter on 05/10/2016 the suspension was revoked and the applicant was posted at Police Station, Arvi, District Wardha. It is important to note that the first request of the applicant for voluntary retirement was rejected as the Court case was pending against him and the applicant was aware about the rejection.

11. The applicant has produced at Annex-A-7 the copy of the Judgment delivered by the JMFC, 1<sup>st</sup> Class, Hinganghat in Criminal Case No.397/2014. On perusal of this judgment, it seems that the applicant was prosecuted in Criminal Case No.397/2014 along with his brother Mr. Ranjit, the prosecution was for the offences punishable under sections 452,504 and 506 r/w 34 of IPC. As the prosecution witnesses turned hostile, the JMFC acquitted the applicant and his brother vide order dated 08/05/2017. On perusal of the judgment, it is clear that the charge sheet was presented against the applicant on 02/12/2014 and case was pending till 08/05/2017. As the criminal case was pending the first request for the voluntary retirement was turned down by respondent no.2. As the cause for which the first application for voluntary retirement was rejected was in existence even when the applicant submitted the second application for the voluntary retirement, therefore in our opinion the applicant had no right to call upon the respondent no.2 to consider his second application for the voluntary retirement. It seems that the applicant successively made so many written requests to respondent no.2 for voluntary retirement, but the criminal case pending against him was the hurdle. Once it was informed to the applicant that his request for the voluntary retirement could not be considered as the Criminal Case was pending, it was duty of the part of the applicant to remain silent till decision of the Criminal Case, but instead of doing so the

applicant submitted successive applications for the voluntary retirement. In our opinion such method adopted by the applicant is not contemplated by the service rules. As per the official discipline once the rejection of the application for voluntary retirement was communicated to the applicant, he should have remained silent till decision of the criminal case. The government servant cannot move successive application in similar situation and compel the higher authorities to grant him the relief. In view of this discussion, we do not see any merit in the application. Hence, the following order :-

**ORDER**

The application stands dismissed with no order as to costs.

**(A.D. Karanjkar)**  
**Member(J).**

**(Shree Bhagwan)**  
**Member (A).**

**Dated :- 17/12/2018.**

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