

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL**  
**NAGPUR BENCH AT NAGPUR**  
**ORIGINAL APPLICATION NO. 758/2014**

Avachit s/o Baburao Gadekar,  
Aged about 54 years,  
Occu: Service,  
R/O 122, Sevadal Nagar, Besa Road,  
Manewada, Nagpur  
Applicant.

Versus

1. Director of Medical Education and Research,  
St Georges Hospital Building,  
Near CST, P Demello Road,  
Mumbai 400001
2. Govt Medical College, Nagpur, through  
its Dean, Medical Square, Nagpur
3. State of Maharashtra, through its Secretary,  
Mantralay, Mumbai 01.

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Shri R P Masurkar: Advocate for the applicant  
Shri A M Ghogare: P.O. for the respondents

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CORAM: B. Majumdar, Vice Chairman and  
S S Hingne, Member ( J )

DATE : 14<sup>th</sup> Jan, 2016.

ORDER

PER VICE-CHAIRMAN

The applicant is a Clerk Typist with the Govt Medical College and Hospital (GMCH), Nagpur. His grievance is that his application for withdrawal of notice of volunteer retirement (VR) was not accepted.

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2. The applicant's date of birth is 1.1.1961. He was appointed as a Clerk Typist at GMCH on 8.3.1983. On 10.6.2014, on completing service of 31 years, he applied for VR w.e.f. 7.9.2014 under Rule 65 (1) of the MCS (Pension) Rules, 1982. On 13.8.2014 the Director, DMER (R/1) issued an order retiring him w.e.f. 7.9.2014. According to the applicant, prior to that, on 7.8.2014 he had applied for withdrawal of his notice of VR. On 29.9.2014 Dean, GMCH (R/2) informed the applicant that his VR has been accepted w.e.f. 7.9.2014. The applicant has challenged the legality of this communication in the OA.

3. The applicant submits that the impugned communication dated 29.9.2014 was issued by ignoring his application of withdrawal dated 7.8.14 which he had submitted prior to 7.9.14, the date from which he was to proceed on VR. Hence in terms of Rule 65(3) it should have been accepted.

4. The respondents have filed two affidavits in reply. The affidavit dated 9.1.15 has been filed by Shri P M Deshpande, Chief Administrative Officer, GMCH. The second affidavit dated 3.9.15 is filed by Dr A K Niswade, Dean, GMCH (R/2).

a) According to the first affidavit:

- R/2 forwarded the application for VR to R/1 on 26.6.14.
- R/1 received it on 7.7.14.
- R/1 issued the order of acceptance of VR on 13.8.14.
- R/2 forwarded the applicant's application dtd 10.6.14 for withdrawal of notice to R/1 on 5.9.14. This was received by R/1 on 20.9.14, when the date of effect of VR, that is, 7.9.14, was already over.

b) According to the second affidavit,


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- The applicant submitted his application dated 7.8.14 for withdrawal of notice of VR to the HOD, Dept of Preventive and Social Medicine, on 25.8.14. R/2 received it 28.8.14. He outwards it to R/1 on 5.9.14.
- The order dated 13.8.14 was received in his office on 16.9.14.

5. Shri R P Masurkar, Id Counsel for the applicant submitted that as per admission of the respondents, the order of R/1 dtd 13.8.14 accepting the applicant's notice of VR was received by R/2 on 16.9.14. Hence the effective date of this order is 16.9.14 and not 13.8.14. The applicant's application for withdrawal was received by R/2 on 28.8.14. Hence it is clear that in terms of Rule 65(2)(3) the respondents should have accepted his request for withdrawal.

6. Shri A M Ghogare, Id PO submitted that R/1, the competent authority, had accepted the applicant's notice of VR well before expiry of the period of notice and the applicant applied late for withdrawing the notice. Hence in terms of various provisions of Rule 65 the question of accepting the request for withdrawal did not arise.

7. We find that according to the respondents, the order accepting the applicant's notice of VR w.e.f. 7.9.14 was issued on 13.8.14, that is, before the above date. The applicant's application dated 7.8.14 for withdrawal was received by his HOD on 25.8.14 and my R/2 on 28.8.14. He forwarded it to R/1 on 5.9.14. By that time R/1's order dated 13.8.14 accepting the notice of VR was issued. As the merits of the OA rest on the issue whether the applicant applied for withdrawal after the notice of VR was accepted by the competent authority, that is, R/1. After perusing the affidavits of R/1 and R/2 and after examining the outward register in the office of R/ and inward register of R/2 for the relevant period we find the following.

- a) The order dated 13.8.14 of R/1 was outwards/despached by his office on 21.8.14.
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- b) The applicant's letter dated 7.8.14 of withdrawal was 'initialled' by his HOD on 11.8.14, who sent it to R/2 on 25.8.14. R/2 received it on 28.8.14 and forwarded it to R/1 on 5.9.14.


8. From the above chronology of the events it is clear to us that the HOD, Preventive and Social Medicine received the applicant's letter dated 7.8.14 on 11.8.14, that is, before the order of acceptance of notice of VR was actually issued on 21.8.14. It was the applicant's responsibility to submit the application for withdrawal to his superior and head of office/department and it cannot be said that he is similarly responsible for ensuring that it is expeditiously submitted to R/1. Hence it can be said with impunity that the applicant had applied for withdrawing his notice of VR well before the expiry of its period and also before the notice was accepted by R/1.

9. Rule 65(3) states as follows:

**"A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority: Provided that the request for withdrawal shall be before the intended date of his retirement."**

As per the above rule, if the government servant applies for withdrawal of his election to proceed on VR before the expiry of the period of notice (3 months), the concerned disciplinary authority is required to consider it and take a decision whether to accept it or otherwise.

10. According to the respondents, the applicant applied for withdrawal after R/1 had accepted his notice of VR. The order dated 13.8.14 of R/1 states that the applicant should have applied for withdrawal before the period of expiry of the notice, that is, 7.9.14. We now find that these assumptions are factually not true. Hence in terms of the above Rule, it was incumbent on the R/1 to consider the



applicant's application for withdrawal without summarily rejecting it as time barred. Hence the order dated 13.8.14 as also the impugned order dated 29.9.14 are bad in law and require to be quashed. We therefore dispose of the OA in terms of the following directions.

- 1) The orders dated 13.8.14 and 29.9.14 are quashed and set aside.
- 2) The respondents are directed to reinstate the applicant in service forthwith. The applicant will not be entitled to salary and allowances for the period he was out of service. He will however be entitled to count this period for increments, seniority and other benefits of continuity in service.
- 3) R/1 is at liberty to consider the applicant's application for withdrawal of notice of VR on its merits in terms of Rule 65(3).
- 4) No orders as to cost.

(S S Hingne)

Sd/-  
(B Majumdar)