

**MAHARASHTRA ADMINISTRATIVE TRIBUNAL MUMBAI,
BENCH AT AURANGABAD**

ORIGINAL APPLICATION NO. 26 OF 2024

**DISTRICT : CHATRAPATI
SAMBHAJINAGAR**

Chandrakant Girjaram Ubale,)
Age : 57 years, Occu: Retired (VRS) as)
Stenographer (Higher Grade-Marathi),)
R/o 37-B, Auditor Society, Harsool T Point,)
Jalgaon Road, Chatrapati Sambhaji Nagar,)
(Aurangabad).)

.... **APPLICANT**

V E R S U S

1. The State of Maharashtra,)
Through : The Secretary,)
Revenue and Forest Department,)
Mantralaya, Mumbai-32.)

2. The Divisional Commissioner (Revenue),)
Chatrapati Sambhaji Nagar (Aurangabad) Division,))
Chatrapati Sambhaji Nagar (Aurangabad)))

... **RESPONDENTS**

APPEARANCE : Shri K.B. Jadhav, Counsel for Applicant.

: Smt. Resha Deshmukh, Presenting Officer for
respondent authorities.

CORAM : Hon'ble Justice Shri V.K. Jadhav, Member (J)

DATE : 20.08.2024

O R D E R

1. Heard Shri K.B. Jadhav, learned counsel for the applicant and Smt. Resha Deshmukh, learned Presenting Officer for respondent authorities.

2. The present Original Application is disposed of finally with the consent of both the parties at admission stage.

3. By filing the present Original Application, the applicant is seeking quashing and setting aside order dated 31.10.2023 passed by respondent No. 2, thereby granting voluntary retirement (V.R.S.) to the applicant from service on the post of Stenographer (Higher Grade). The applicant is also seeking quashing and setting aside order dated 29.12.2023 passed by respondent No. 2, thereby rejecting review application dated 03.11.2023 submitted by the applicant for reconsideration of the decision of granting V.R.S to the applicant. The applicant is also seeking direction to consider and accept the application dated 27.10.2023 submitted by the applicant for withdrawal of V.R.S. application dated 02.08.2023 and to continue the applicant to work on the post of Stenographer (Higher Grade) with the establishment of respondent No. 2 till the date of his superannuation.

4. Brief facts as stated by the applicant giving rise to the Original Application are as follows :-

- (i) The applicant was initially appointed on the post of Clerk by order dated 03.10.1986 in the office of

Government Dental College and Hospital, Chatrapati Sambhajinagar (Aurangabad). Thereafter, the applicant came to be appointed on the post of Stenographer (Lower Grade) in the office of respondent No. 2 on 20.11.1991 through selection board. Thereafter, the applicant came to be promoted on the post of Stenographer (Higher Grade-Marathi) by respondent No. 2 on 11.11.2016 and posted him in the office of Additional Commissioner No. 1, Chatrapati Sambhajinagar (Aurangabad).

(ii) It is the further case of the applicant that respondent No. 2 called the options from the applicant for General Transfers of the year 2023 and accordingly, the applicant has submitted options to respondent No. 2 on 16.05.2023 requesting therein that he is due for retirement on attaining the age of superannuation within 01 year and 06 months. The applicant also submitted that though he was promoted on the post of Stenographer (Higher Grade) on 11.11.2016, but he was posted on deputation on 20.03.2019 in the office of Town Planning (Niwada Branch) and therefore, he has completed only 02 years, 03 months and 10 days. Thus the applicant requested to transfer him in the office of Planning Department in the office of the respondent No. 2

with the further request to exclude him from the General Transfers and continue him on the same place of posting. However, the respondent No. 2 has declared the applicant due for transfer along with other two Stenographers by observing that the applicant has completed 06 years and 06 months on the present post. Thus the respondent no. 2 issued transfer order dated 30.05.2023, transferring thereby the applicant from the post of Stenographer (Higher Grade), Appeal No. 1. Divisional Commissioner, Chatrapati Sambhajinagar (Aurangabad) to the office of Planning Branch, Divisional Commissioner and further deputation in the office Maharashtra Revenue Tribunal, Chatrapati Sambhajinagar (Aurangabad). In fact, there is no Higher Grade Stenographer post available, but the applicant came to be deputed on the lower post. Further there is no requirement of Stenographer (Marathi) in the office of Maharashtra Revenue Tribunal. The applicant has thus requested respondent No. 2 to cancel the deputation order. The respondent no. 2 has not agreed for the same.

(iii) The applicant further contends that he has become mentally disturbed due to the same and therefore, submitted an application on 02.08.2023 for cancellation of

his deputation order and alternatively prayed for Voluntary Retirement (hereinafter referred as 'VRS'). The applicant has requested that, his consent is not taken before issuing the deputation order. The applicant is working as Higher Grade Stenographer-Marathi, but he is posted on deputation on the post of Lower Grade Stenographer.

(iv) It is the further case of the applicant that on 20.09.2023, the respondent No. 2 has issued letter to the applicant and again called options from the applicant for Transfer. Thus, the details of vacant posts of Stenographers (Higher Grade) are also supplied by respondent No. 2. On 04.10.2023, the applicant has submitted application to respondent No. 2 requested therein that he is due for retirement within 14 months and his father and mother are old aged persons at the age of 86 and 79 respectively. It is thus not possible to give the options for transfer out of district. Thus, he has requested to accept the VRS application dated 02.08.2023 and allow him to retire voluntarily.

(v) It is the further case of the applicant that respondent No. 2 has not considered the request of the applicant for cancellation of deputation order nor accepted the VRS

application of the applicant till 27.10.2023. Before completion of 90 days period for submission of VRS application, the applicant has submitted application dated 27.10.2023 with the respondent No. 2 requested therein that he has submitted the application for VRS on 02.08.2023 and now he is withdrawing the said application dated 02.08.2023 (Annexure A-8). However, without considering the application dated 27.10.2023 submitted by the applicant, the respondent No. 2 accepted the VRS application dated 02.08.2023 submitted by the applicant and issued Voluntary Retirement order dated 31.10.2023, thereby retiring the applicant from service w.e.f. 31.10.2023. Further by separate order dated 29.12.2023 the respondent no. 2 has rejected the application dated 03.11.2023 submitted by the applicant and confirmed the order dated 31.10.2023. It is stated in the said order that application submitted by the applicant for withdrawal of VRS is conditional and the same cannot be considered. Hence, the present Original Application.

5. Learned counsel for the applicant submits that orders dated 31.10.2023 and 29.12.2023 respectively passed by respondent No. 2 are illegal, irrational and without application of

mind and thus the same are liable to be quashed and set aside. Learned counsel submits that the applicant has withdrawn the request of voluntary retirement before expiry of 90 days period from the date of application and it was submitted before acceptance of application for voluntary retirement. Therefore, the impugned orders issued by respondent No. 2 cannot be sustained and the same are liable to be quashed and set aside.

6. Learned counsel for the applicant submits that the impugned order dated 31.10.2023 is passed by respondent No. 2 is in violation of provisions of Rule 65 of Maharashtra Civil Services (Pension) Rules, 1982 (hereinafter referred as the Rules of 1982), which provide that the request of withdrawal of request of voluntary retirement shall be before the intended date of retirement. The applicant has made the same before acceptance of application for VRS. Learned counsel thus submits that the present Original Application deserves to be allowed.

7. Learned counsel for the applicant in order to substantiate his contentions placed his reliance on following cases :-

- (i) Shambhu Murari Sinha Vs. Project & Development India and another, reported in (2000)5 Supreme Court Cases 621.

- (ii) J.N. Shrivastava Vs. Union of India and another, reported in (1998) 9 Supreme Court Cases 559.
- (iii) O.A. No. 499/2017 (Shri Pradipkumar Yashwant Bhurke Vs. The Chairman /Secretary, MPSC, Mumbai), decided on 13.02.2019 (Mumbai).
- (iv) Balram Gupta Vs. Union of India and Another, reported in 1987 (Supp) Supreme Court Cases 228.

8. Learned Presenting Officer on the basis of affidavit in reply filed on behalf of respondent No. 2 submits that the applicant has completed 06 years in the office of Additional Divisional Commissioner's office. Thus on 30.05.2023, the respondent No. 2 issued the order of transfer of the applicant in terms of the provisions of the Maharashtra Government Servants Regulation of Transfers and Prevention of Delay in Discharge of Official Duties Act, 2005 and transferred him to the Planning Department of the Divisional Commissioner's office on the available vacant post and at the same time, posted him on deputation in the office of Maharashtra Revenue Tribunal, Chatrapati Sambhajinagar.

9. Learned Presenting Officer submits that in terms of transfer order dated 30.05.2023, the applicant has not joined the

transferred post till 02.08.2023. Thereafter on 02.08.2023, the Upper Divisional Commissioner informed to respondent No. 2 through a letter that the applicant has applied for voluntary retirement on request dated 02.08.2023 and accordingly forwarded the said request application dated 02.08.2023 to respondent No. 2 for further necessary action. The applicant has raised specific contention that his deputation from Planning Department to Maharashtra Revenue Authority has disturbed his mental balance and he has decided to take voluntary retirement. However, at the same time the applicant has requested in the said voluntary retirement application itself to maintain his transfer and cancel his post transfer deputation to Maharashtra Revenue Tribunal Chhatrapati Sambhajinagar or if that is not possible, allow him to take voluntary retirement from the post. The applicant was informed that for more than 06 years he had been in the Divisional Commissioner's office, Aurangabad and therefore, he has been transferred to Planning Department. Further deputation of service of the applicant is due to exigencies in the office of Maharashtra Revenue Tribunal. However, the applicant has not joined his deputation posting. Thus by communication dated 20.09.2023, the details of the vacant posts were made available to the applicant to transfer him elsewhere

and the applicant was directed to submit preferences immediately. Learned P.O. submits that it was expected from the applicant to submit his preference on the vacant posts. However, the applicant has submitted application 04.10.2023 to respondent No. 2 stating therein that his application for voluntary retirement was not processed and without processing the same, the applicant was asked to submit the preference order to another district for transfer. The applicant has once again requested that if it is not possible to cancel the deputation of the applicant, then he should be permitted to voluntarily retire from the existing post.

10. Learned Presenting Officer submits that the applicant is trying to pressurize the Government. Learned P.O. submits that the request for voluntary retirement cannot be conditional. Learned P.O. submits that there is no substance in the present Original Applicant and the same is liable to be dismissed.

11. It is not disputed that the applicant has submitted application dated 02.08.2023 for voluntary retirement contending therein that in case his deputation order is not cancelled, his request for VRS may be accepted. The applicant

has withdrawn the said request application for VRS within stipulated period of 90 days.

12. Rule 65 of the Maharashtra Civil Services (Pension) Rules, 1982 prescribes the provisions about retirement on completion of 30 years' qualifying service. The said Rule 65 of the Rules of 1982 is reproduced herein below :-

“65. Retirement on completion of 30 years qualifying service. (1) *At any time after a Government servant has completed thirty year's qualifying service, he may retire from service, or he may be required by the appointing authority to retire in the public interest:*

Provided that-

- (a) *a Government servant shall give a notice in writing to the appointing authority[] three months before the date on which he wishes to retire; or*
- (b) *the appointing authority shall give a notice in writing [in Form 32] to a Government servant[] three months before the date on which he is required to retire in the public interest, on three months' pay and allowances in lieu of such notice;*

[Provided further that where the Government servant who gives notice under clause (a) of the preceding proviso is under suspension, it shall be open to the appointing authority to withhold permission to such Government servant to retire under this rule:

Provided also that where a Government servant giving notice under clause (a) of the first proviso to this rule is placed under suspension after he has given notice of retirement as above, it shall be open to the appointing authority to withdraw permission, if already granted or, as the case may be, to withhold permission to such Government servant to retire voluntarily under this rule.]

[2(a) A Government servant referred to in clause (a) of the proviso to sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefore;

(b) on receipt of a request under clause (a), the appointing authority may consider such request for the curtailment of the period on notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority, with the concurrence of the Finance Department, may relax the requirement of notice of three months on the condition that the Government servant shall not apply, for commutation of a part of his pension before the expiry of the period of notice of three months.]

(3) 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.”

13. In the context of subject matter of this Original Application, sub-rule 1(a) and sub-rule (3) of Rule 65 of the Rules of 1982 are important. In terms of sub-rule (1) proviso (a) of Rule 65 of the Rules of 1982, a Government servant shall give a notice in writing to the appointing authority three months before the date on which he wishes to retire and in terms of sub-rule (3) of Rule 65 of the Rules of 1982, 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.

14. In the instant case, it appears that the applicant was not satisfied due to his deputation order on the lower post and thus, he has lost his mental balance. The word /phrase “Voluntary Retirement” is not specifically used in Rule 65 of the Rules of 1982. However, the very word used “Voluntary Retirement” denotes that the same has been submitted on one's own accord or by free choice. In the instant case, however, it appears that out of frustration and losing of mental balance due to deputation order, the applicant has constrained to file an application for Voluntary Retirement. In terms of proviso to sub-rule (3) of Rule 65 of the Rules of 1982, the applicant has made request application for withdrawal of his VRS before intended date of his retirement and the same is not disputed by the respondents. However, withdrawal of his election of VRS is qualified with an exception that such withdrawal shall be dependent about the approval of the competent authority.

15. In the instant case, though the applicant has submitted application for withdrawal of his VRS dated 27.10.2023 with some conditions, however, it is expected from respondent No. 2 to consider his difficulties with some different approach, but not by way of refusing to accord specific approval for withdrawal of such VRS.

16. In a case of **Balram Gupta Vs. Union of India and Another, reported in 1987 (Supp) Supreme Court Cases 228**, in the almost identical facts of the case in para Nos. 13 and 14, the Hon'ble Supreme Court has made the following observations :-

"13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.

14. In the aforesaid view of the matter, we are unable to sustain the judgment and order of the High Court of Delhi dated 13th of July, 1981 and the same are, therefore, set aside. The appeal is accordingly allowed with costs and the appellant is entitled to be put back to his job with all the consequential benefits being treated as in the job from 31st of March, 1981."

17. In a case of **Shambhu Murari Sinha Vs. Project & Development India and another, reported in (2000)5 Supreme Court Cases 621**, in para No. 5 the Hon'ble Supreme has made the following observations :-

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by

his letter dated 18.10.1995 was accepted by the respondent-management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta vs. Union of India & Anr. 1987 (Supp.) SCC 228; [J.N. Srivastava vs. Union of India & Anr. \(1998\) 9 SCC 559](#) and [Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia](#) (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

18. In a case of **J.N. Shrivastava Vs. Union of India and another, reported in (1998) 9 Supreme Court Cases 559**, in the similar set of facts the Hon'ble Supreme Court has observed that *"even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India, 1987 Supp SCC 228"*.

19. The Division Bench of this Tribunal in **O.A. No. 499/2017 (Shri Pradipkumar Yashwant Bhurke Vs. The Chairman**

/Secretary, MPSC, Mumbai), decided on 13.02.2019 in almost similar set of facts in para Nos. 28, 29 & 30 the Principal Seat of this Tribunal at Mumbai has made the following observations :-

“28. In the result, we hold that the power of “approval” connoted by Rule 66(5) of MCS (Pension) Rules does not presuppose absoluteness of refusal to approve. The term approve means and presupposes assent based on legitimate reasons and any power or absolute right of refusal does not find place in the scheme of Rule 66(5) supra. The power of approval to include “disapproval” has to be guided by fairness than by personal views and ideas else it would mean an absolute and unchanalised and unbridled power to refuse which cannot be the scheme of law. If absoluteness of power to “disapprove” is assumed it shall be openly violative of Article 14 of the Constitution of India.

29. While answering para 6.15 of OA, MPSC has pleaded in para 22 as follows:-

“22. With reference to para 6.15, I say and submit that, as per rule 66(5) of the MCS (Pension) Rules, 1982, the request for the withdrawal of notice for voluntary retirement can be accepted only with the specific approval of the appointing authority, and the right to withdraw cannot be construed as absolute.” Respondents plea that right to withdraw notice of voluntary retirement is not “absolute”, however, it is amazing as to how right to “disapprove” is absolute as a corollary.”

30. In view of the foregoing, OA is allowed in terms of prayer clause 9(a) and the impugned order is set aside, as if not issued.”

20. In the instant case, the applicant has made his grievance about the unreasonable deputation order on the lower post. It further appears that the applicant has been transferred and posted on deputation as per the exigencies in existence at that time, however, the same may not in existence as on today. Further the applicant is required to take care of his old aged

parents of 86 and 79 years respectively and the applicant further is also due for retirement within a short period. In view of the same, it would have been appropriate on the part of respondent No. 2 to continue the applicant on the post of Stenographer (Higher Grade) with the establishment of respondent No. 2 till the date of his superannuation.

21. In view of the discussions as above, the present Original Application deserves to be allowed. Hence, the following order :-

ORDER

- (i) The Original Application is hereby allowed.
- (ii) The orders dated 31.10.2023 and 29.12.2023 passed by respondent No. 2 are hereby quashed and set aside.
- (iii) The respondent No. 2 is hereby directed to consider the application dated 27.10.2023 submitted by the applicant for withdrawal of VRS application dated 02.08.2023 and to continue the applicant to work on the post of Stenographer (Higher Grade) with the establishment of respondent No. 2 till the date of his superannuation.
- (iv) In the circumstances, there shall be no order as to costs.
- (v) The Original Application is accordingly disposed of.

PLACE : Aurangabad.

DATE : 20.08.2024

KPB S.B. O.A. No. 26 of 2024 VKJ Voluntary Retirement

(Justice V.K. Jadhav)

Member (J)