

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH; JODHPUR**

**Original Application Nos.210/2009**

**Date of decision:** 29<sup>th</sup> day of October, 2010

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.**

Smt. Sushila Sankhla wife of late Shri Ram Chandra Solanki., aged about 47 years resident of Plot No. 17 A, Panchwati Colony, Near Ratan Vilas, Khadi Bhandar Gali, Bhaskar Choraha, Ratanada, JoDhpur, last employed on the post of Head Clerk, in claims Branch DRM Office, Jodhpur Division, Jodhpur, NWR.

: APPLICANT.

Rep. By Mr. J.K. Mishra : Counsel for the applicant.

**Versus**

1. Union of India through General Manager, North West Railway, Jaipur Zone, Jaipur.
2. Senior Divisional Personnel Officer, North West Railway, Jodhpur Division Jodhpur.

Respondents.

Rep. By Mr. Salil Trivedi : Counsel for the respondents.

**ORDER**

**Per Mr. Justice S.M.M. Alam, Judicial Member.**

Applicant, Smt. Sushila Sankhla, ex-employee ( Head Clerk ) of DRM Office, Jodhpur Division, Jodhpur, NWR, has preferred this application for grant of following reliefs:

- " (i) That the impugned order dated 16.09.2009 ( Annex. A/1) may be declared illegal and the same may be quashed. The respondents may be directed to treat the applicant's notice for retirement (VRS) as accepted and she deemed as retired from dated 11.09.2009. They may be further directed to grant and release forthwith the pension and all other retiral benefits e./g. DCRG, leave encashment, commutation of pension, PF Amount etc to the applicant and the due arrears thereof may be paid along with interest at market rate.
- (ii) That any other direction or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- (iii) That the costs of this application may be awarded."



2. The brief facts of the case are as follows:

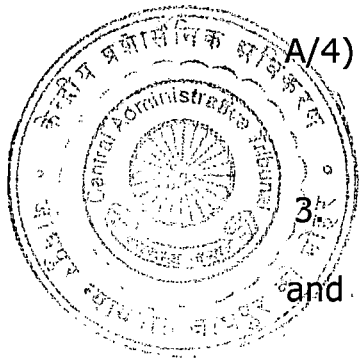
The applicant was initially appointed to the post of Clerk on compassionate grounds. She joined the post on 18.08.1989 in the office of the second respondent. Thereafter, she was promoted to the post of Senior Clerk as per her turn and then promoted to the post of Head Clerk vide order dated 02.12.2004 and since then she was discharging her duties satisfactorily to the best of her efficiency and ability. Vide letter dated 11.06.2009, (Annex. A/2) the applicant gave three months notice to the department seeking voluntary retirement due to her domestic problems. Notice was sent to the appointing authority (the second respondent) through proper channel. The appointing authority vide letter dated 07.07.2009 (Annex. A/3) informed the applicant that her controlling authority, the then Senior Divisional Engineer (CO) Jodhpur, had recommended to withhold the disposal of her application for voluntary retirement on technical grounds and further recommended not to act on the application of the applicant for voluntary retirement till further orders. Thereafter, no communication was received by the applicant from the appointing authority (the second respondent) and in the meantime, three months notice period for voluntary retirement expired on 10.09.2009 and her retirement became effective from 11.09.2009 by operation of law as per proviso to sub Rule 2 of Rule 67 of the Railway Services (Pension) Rules 1993. Thereafter the applicant relinquished the charge of the post held by her vide letter dated 11.09.2009 (annex. A/5). She had also requested for release of



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retiral dues at the earliest but no action was taken by the respondents. However, vide letter dated 16.09.2009, the applicant was informed that through letter dated 07.07.2009, she had already been informed that no action was being taken on her notice for voluntary retirement. This communication of the respondents, which is Annex. A/1 is under challenge in this O.A on the ground that the same cannot be treated as rejection of her application for voluntary retirement as per proviso to sub-Rule (2) of Rule 67 of the Railway Services (Pension) Rules, 1993 (Annex. A/4) (hereinafter will be called as R.S.(Pension) Rules, 1993.

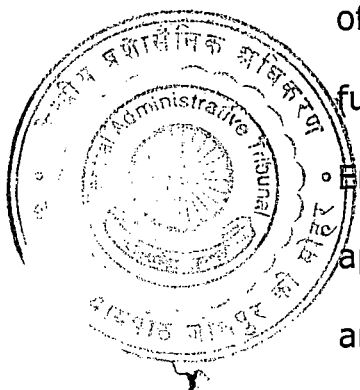


3 On filing of the O.A, notices were issued to the respondents and in compliance of the notices; the respondents made appearance through lawyer and filed reply of the O.A. The main contention of the learned advocate of respondents is that the communication dated 07.07.2009, Annex. A/3, will be deemed to be an order of refusal of the authority to grant permission for voluntary retirement and the said order was duly communicated to the applicant by the appointing authority i.e. the Senior Divisional Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur. The said letter was issued to the applicant much before the expiry of the period specified in the notice i.e. the date on which the retirement of the applicant was to take effect. The further contention is that the communication was duly served upon the applicant, which is established from the fact that the applicant

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herself has annexed the photo copy of the communication dated 07.07.2009 as Annex. A/3.

4. On the other hand the learned advocate of the applicant contended that the communication dated 07.07.2009, (Annex. A/3) cannot be treated as an order of refusal to grant permission for voluntary retirement by the competent authority/appointing authority. He further submitted that the language of the communication shows that the applicant was simply informed that the Senior Divisional Engineer (CO) Jodhpur had recommended through his letter dated 01.07.2009 not to act upon the application of voluntary retirement of the applicant on technical grounds till further orders. He submitted that admittedly, the Senior Divisional Engineer (CO) Jodhpur, is not the appointing authority of the applicant and therefore, he cannot be a competent person to pass any order of refusal on the application for voluntary retirement. The learned counsel of the applicant also contended that the language of the said communication will show that it was simply recommended that no further order be passed on the application of the applicant. But the competent authority i.e. the second respondent never passed any order refusing to grant permission to the applicant for voluntary retirement.



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5. In view of the rival contentions of the parties the only point to be considered in this O.A. is whether the communication dated 07.07.2009 (annex. A/3) can be termed as refusal to grant

permission for voluntary retirement by the competent authority before the expiry of the period specified in the notice given by the applicant as contemplated under sub Rule (2) proviso of Rule 67 of the R.S (Pension) Rules, 1993. If the answer is in the affirmative then the O.A is bound to be dismissed and if the answer is in the negative then the applicant will succeed.

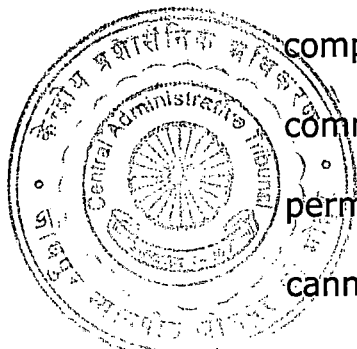
6. It is not disputed that the applicant has rendered 20 years qualifying service required for voluntary retirement as provided under Proviso (2) to Rule 67 of RS (Pension) Rules 1993. But the Rule also requires that an employee who seeks voluntary retirement must inform the authority by giving notice not less than three months in writing about his or her intention to retire voluntarily from service. The Rule also requires acceptance of notice by the competent authority.



7. It is an admitted position that the applicant had served notice dated 11.06.2009 (Annex. A/2 of the O.A) upon the appointing authority about her intention to take voluntary retirement from service. It is also admitted position that the said notice was duly served upon respondent No. 2 who is the appointing authority of the applicant. However, the contention of the respondents is that by communication dated 07.07.2009, (Annex. A/3) the competent authority refused to grant permission to the applicant for voluntary retirement much before the date of expiry of three months period. On the other hand the contention of the learned advocate of the

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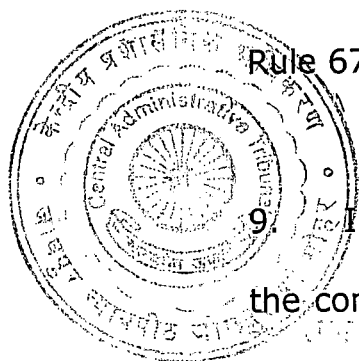
applicant is that Annex. A/3 cannot be treated as an order of refusal to grant permission to the applicant for voluntary retirement by the competent authority/appointing authority. Rather it was a simple communication whereby the applicant was informed that till further order ( i.e. आगामी आदेश तक), the Senior Divisional Engineer (CO), Jodhpur has made recommendation for not taking any action on the application of the applicant. His contention is that the Senior Divisional Engineer (CO), Jodhpur, who was not the appointing authority of the applicant, was not competent authority either to accept or reject the application of VRS. His further contention is that as no order was passed by the competent authority/appointing authority, after the said communication dated 07.07.2009 (Annex. A/3) refusing to grant permission to the applicant for voluntary retirement, so Annex. A/3 cannot be treated as an order of refusal to grant permission for voluntary retirement.



8. I have minutely perused the wordings of the communication dated 07.07.2009 (Annex. A/3) and I have come to the conclusion that this communication cannot be treated as an order of the competent authority/appointing authority as refusal to grant permission to the applicant to take voluntary retirement as contemplated under proviso (2) of Rule 67 of RS ( Pension) Rules 1993 as the communication simply says that the Senior Divisional Engineer (CO) Jodhpur had recommended not to take any action

on the application of the applicant for voluntary retirement till further orders. In this regard I would like to mention that the Senior Divisional Engineer (CO) Jodhpur was not a competent person to pass any order of refusal to grant permission to the applicant for voluntary retirement, as such his communication to the Senior Divisional Personnel officer (Second respondent) recommending that no action be taken on the application of the applicant for voluntary retirement till further orders can be simply said to be an official correspondence between two authorities and it will not have any legal sanctity as required under proviso (2) to

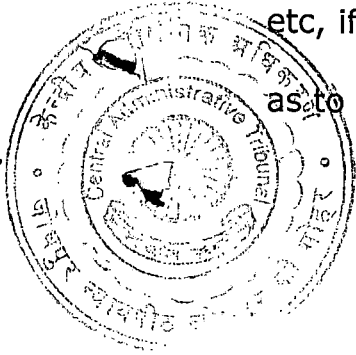
Rule 67 of RS ( Pension) rules, 1993.



9. In view of the circumstances mentioned above, I hold that the communication dated 07.07.2009 (Annex. A/3) is not an order of refusal to grant permission to the applicant for voluntary retirement as provided under proviso (2) to Rule 67 of RS (Pension) Rules, 1993 and therefore the applicant is bound to succeed. I further hold that after expiry of the period specified in the notice dated 11.06.2009 (Annex. A/2), the applicant shall be deemed to be retired voluntarily. In support of my contention I place reliance on the decision of the Apex Court given in the case of **State of Haryana and others vs. S.K. Singhal** [ AIR 1999 SC 1829]

10. In the result, I find merit in this application and so the O.A is allowed and the impugned order dated 16.09.2009 (annex. A/1) is

hereby quashed and the respondents are directed to treat the applicant's notice as accepted and she will be deemed to be retired from service voluntarily with effect from 11.09.2009. It is further ordered that the applicant will be entitled to all retiral benefits such as DCRG, leave encashment, commutation of Pension PF amount etc, if not found legally disentitled in future. There will be no order as to costs.



jsv

*S.M.M. Alam*  
**[Justice S.M.M. Alam]**  
**Judicial Member.**



दिनांक 7/12/15 के आदेशानुसार  
मेरी उपस्थिति में दिनांक 11/12/15  
को भाग-II व III बट्ट किए गए ।

कानूनशास्त्र अधिकारी  
केंद्रीय प्रशासनिक अधिकरण  
जोधपुर न्यायपीठ, जोधपुर