

**Central Administrative Tribunal
Principal Bench, New Delhi.**

OA-230/2013

Reserved on : 23.05.2016.

Pronounced on : 27.05.2016.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Dr. Reshma Agarwal,
CMO (SAG)
D/o late Sh. G.R. Hingorani,
Aged about 53 years,
R/o D-9, Mir Dard Marg,
MAMC Campus,
New Delhi-110002.

..... **Applicant**

(through Sh. Nilansh Gaur, Advocate)

Versus

1. Union of India through
Its Secretary,
Central Health Services,
Ministry of Health & Family Welfare,
Government of India, Nirman Bhawan,
New Delhi.

2. Government of NCT of Delhi through
Its Principal Secretary (Health),
Department of Health and Family,
Welfare, 9th Floor, A-Wing,
Delhi Secretariat,
New Delhi.

3. Director,
Directorate of Vigilance,
Government of NCT of Delhi,
4th Level, C-Wing,
Delhi Sachivalaya,
New Delhi.

.... **Respondents**

(through Mrs. Alka Sharma, Advocate)

ORDER

The applicant was working as CMO (SAG Grade) when on 01.08.2012 after completing about 28 years of service, she applied for voluntary retirement

w.e.f. 31.10.2012 after giving 03 months notice. According to her, during the notice period, the competent authority did not refuse permission for voluntary retirement to her. Therefore, as per proviso to Rule-48-A(2) , the applicant has to be deemed to have retired on 31.10.2012. However, vide their letter dated 03.11.2012, the Director, G.B. Pant Hospital intimated the applicant that her request for voluntary retirement has been rejected for want of vigilance clearance. The applicant submitted a representation on 09.11.2012 reiterating her stand. However, vide letter dated 29.11.2012, Director, G.B. Pant Hospital again rejected her request on the same ground. After writing several other letters to Director, G.B. Pant Hospital, the applicant has chosen to file this O.A. before us seeking the following relief:-

- “(i) To set aside the impugned orders at **Annexure A-1 to Annexure A-4**.
- (ii) To direct the respondents to deem the applicant as voluntarily retired on expiry of notice period for voluntary retirement w.e.f. 31.10.2012.
- (iii) To direct the respondents to accord all terminal benefits with arrears as prescribed under rules to the applicant in accordance with law.
- (iv) Any other relief which this Hon'ble Tribunal may deem fit and appropriate, in the circumstances of the case.”

2. The respondents have filed their reply opposing the aforesaid O.A. They have stated that the applicant had given a notice for voluntary retirement vide letter dated 01.08.2012. The case was processed and vigilance status of the doctor concerned was requisitioned from the Director of Vigilance. It was informed that “Disciplinary proceedings are contemplated against Dr. Reshma Agarwal, in the matter of non adjustment of advance and non submission of contingency bills”. The respondents have further stated that since the applicant was not clear from vigilance angle, her request was turned down and the same was communicated to the Director, G.B. Pant Hospital.

3. I have heard both sides and have perused the material on record. Learned counsel for the applicant has relied on proviso to Rule-48-A(2) of the CCS (Pension) Rules, which reads as follows:-

“Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.”

3.1 A mere reading of the aforesaid proviso makes it abundantly clear that if the authorities wanted not to accept the request of the applicant for voluntary retirement then such rejection should have been communicated before expiry of the notice period. Otherwise, in terms of the above proviso, the retirement becomes effective after expiry of the same.

3.2 The applicant has also relied on a judgment of this Tribunal in OA-3206/2014 along with OA-3212/2014, in paras-23 & 29, the following has been held:-

“23. Applicants' counsel has placed reliance on the judgment of the Hon'ble Supreme Court in State of Haryana and others Versus S.K. Singal (supra), which has been reproduced in the OA as follows:-

“Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra Sangma case by the relevant rules and there is no provision in the rules to withhold permission in certain contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat case and as in Sayed Muzaffar Mir case the authority concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat case and in Sayed Muzaffar Mir case before the expiry of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be

said that non-communication of acceptance should be treated as amounting to withholding of permission.

(emphasis supplied)

29. From the foregoing, it is clear that the applicants were neither under legal proceedings nor under any disciplinary proceedings in the absence of any charge sheet having been issued for penalty of removal from service. No averment is made by the respondents that any criminal case has been instituted against either of the applicants. According to the guidelines of the DOP&T referred to above, in the absence of any or one of the conditions mentioned above on the basis of which acceptance of notice for voluntary retirement can be withheld, respondent no.1 could not have withheld acceptance of notice of VRS under Rule 48-A (2) of the CCS (Pension) Rules. It is thus seen that in the absence of any decision having been communicated to the applicants in both OAs to withhold acceptance of the notice of voluntary retirement, the presumption must be that the applicants are deemed to have voluntarily retired with effect from the date of expiry of notice. For the reasons aforesaid, it is also clear that in so far as the order of decadrement dated 02.01.2012 with retrospective effect from 24.11.2010 is concerned, it cannot be held to be operative qua the applicants. The applicants were, therefore, working under respondent no.1 on the date on which the notice for VRS was issued. Respondent no.1, therefore, must be treated as the Appointing Authority for the purpose of relief claimed in these OAs. The order dated 02.01.2012 being not sustainable is quashed and set aside qua the applicants in OA No.3206/2014 and OA No.3212/2014."

3.3 Learned counsel for the applicant argued that mere contemplation of disciplinary proceedings was not sufficient to withhold vigilance clearance and thereby refuse permission for voluntary retirement. Learned counsel has also relied on the judgment of Apex Court in the case of **Dinesh Chandra Sangma Vs. State of Assam and Ors.**, AIR 1978 SC 17.

4. After considering the submissions of both sides, I am of the opinion that the respondents erred on both counts. First of all it was not open to them to withhold vigilance clearance merely on contemplation of disciplinary proceedings. Secondly, refusal for voluntary retirement should have been communicated to the applicant before expiry of the notice period. Since this was not done, the applicant shall be deemed to have voluntary retired w.e.f. 31.10.2012 i.e. the date on which notice period had expired.

5. O.A. is, therefore allowed. The impugned orders at Annexure A-1 and Annexure A-4 are set aside. The respondents are directed to treat the applicant as voluntarily retired w.e.f. 31.10.2012 and settle her terminal benefits as per rules. This exercise shall be completed within a period of 08 weeks from the date of receipt of a certified copy of this order. No costs.

**(Shekhar Agarwal)
Member (A)**

/Vinita/