

Central Administrative Tribunal  
Principal Bench

**OA no. 4588/2015**

Reserved on: 16.03.2017  
Pronounced on: 20.03.2017

**Hon'ble Mrs. Jasmine Ahmed, Member (J)**

Kamlesh Rani Bhatia, Aged about 50 years,  
W/o Sh. C.S. Bhatia,  
R/o L-746/II, Block L-II,  
Sangam Vihar,  
New Delhi – 110 062.

...Applicant

(By Advocate: Sh. M.S. Saini)

Versus

Govt. of NCT of Delhi & Ors

1. The Chief Secretary,  
Govt. of NCT of Delhi,  
New Secretariat, IP Estate,  
New Delhi.
2. Directorate of Education,  
Through its Director,  
Govt. of NCT of Delhi,  
Old Secretariat, Delhi.
3. The Dy. Director of Education,  
Govt. of NCT of Delhi,  
Distt. South, Defence Colony,  
New Delhi.
4. Govt. Co-Ed Middle School  
Through its Principal  
J-Block, Sangam Vihar,  
New Delhi – 110 062.

...Respondents

(By Advocate: Mrs. P. K. Gupta)

**O R D E R**

In the instant OA filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following relief(s):-

- “i) *To quash and set aside the impugned order dated 14.05.2015.*

- ii) *To declare the action of the respondents in not allowing the applicant to withdraw her resignation as illegal and direct the respondents to allow the applicant to resume her duty from due date with all consequential benefits including arrears of pay.*
- iii) *To direct the respondents to allow the withdrawal of resignation and treat the applicant on duty for all purposes from the date of submission of application of withdrawal of resignation.*
- iv) *To allow the OA with exemplary cost.*
- v) *To pass such other and further orders which their lordships of this Hon'ble Tribunal deem fit and proper in the existing facts and circumstances of the case.*

2. The brief facts of the case, as may be necessary, are that the applicant was appointed as Assistant Teacher in the Directorate of Education, Delhi Government (respondent no.2) on 23.07.1997. As the applicant was desirous of contesting election of Counselor, Municipal Corporation of Delhi to be held in April, 2012, she tendered her resignation on 22.03.2012, which was accepted by the respondents on 29.03.2012 and she was allowed to contest the MCD election. Counsel for the applicant contends that the applicant contested the election but, unfortunately, as the luck was not in her favour, she lost the election. After facing defeat in election and in the changed circumstances, the applicant submitted an application to the respondents on 21.04.2012 for withdrawal of her resignation tendered on 22.03.2012 and to allow her to join back the post of Assistant Teacher. It is the contention of the counsel for the

applicant that the claim of the applicant for withdrawal of her resignation was considered at appropriate level as per Rule 26 of CCS (Pensions) Rules, 1972 [hereinafter referred to Pension Rules]. It is further submitted that as a number of vacancies of Assistant Teacher were available with the respondent-department to accommodate the applicant and even the absence period was also not more than 90 days as required under the relevant rules, the applicant was hopeful to get her representation considered and accepted. However, despite the clear rule position, no action was taken by the respondents on her representation dated 21.04.2012. Thereafter, the applicant sent several reminders to the respondents i.e. 16.05.2012, 19.07.2012, 20.10.2012, 08.01.2013, to mention a few, but none of the representations were considered by the respondents. Counsel for the applicant states that the applicant also sought information from the respondents under Right to Information Act, 2005 and she was informed by the respondents vide letter dated 18.01.2013 that her case for withdrawal of resignation is under process for decision. When no decision on the representation was conveyed to the applicant, she preferred a Writ Petition (Civil) No.1522/2014 before the Hon'ble High Court of Delhi, which came to be disposed of vide order dated 20.03.2014

with a direction to the respondents to deliberate upon and thereafter decide the request of the petitioner qua withdrawal of her resignation in light of the judgment passed in a similar case of *Nirmal Verma vs. MCD & Ors.* [WP(C) No.3303/2003]. Pursuant to the directions of the Hon'ble High Court in WP(C) No.1522/2014, contends the counsel for the applicant, the respondents arbitrarily and without application of mind rejected the request of the applicant vide order dated 14.05.2015. Counsel for the applicant states that while rejecting the claim of the applicant, the respondents reiterated the rule position, which has already been taken care by the Hon'ble High Court in *Nirmal Verma's* case (*supra*), and tried to distinguish the case of the applicant on a vague issue that she was facing a chargesheet under Rule 14 of CCS (CCA) Rules, 1965 whereas the petitioner in *Nirmal Verma's* case, was not issued with such a chargesheet. Counsel for the applicant states that if there was any chargesheet pending against the applicant then the respondents would not have given the vigilance clearance and accepted her resignation. Counsel for the applicant vehemently states that the applicant fulfills the condition of Rule 26(4) of the Pension Rules, as she had submitted the application for withdrawal of her resignation within the stipulated period of 90 days.

He submits that it is not the case of the respondents that the post vacated by the applicant or such other posts are no more available with them as there are plenty of posts of teachers lying with the Government. Hence, the counsel for the applicant states that in all corners the case of the applicant is fully covered by the decision of the Hon'ble High Court in *Nirmal Verma's* case (supra) and, therefore, the respondents should accept the request of the applicant for withdrawal of her resignation and allow her to join back her services. Counsel for the applicant vehemently argues that not doing so, the respondents are going against the direction of the Hon'ble High Court as well as all the statutory provisions of rules. He also states that in case of *Nirmal Verma*, Hon'ble High Court of Delhi dealt with the rules position in detail, which is equally applicable to the case of the applicant. Hence, the respondents are unnecessarily harassing the applicant by not acceding to her request of withdrawal of resignation and permitting her to join back the post of Assistant Teacher.

3. Per contra, learned counsel for the respondents states that the case of *Nirmal Varma* (supra) and the case in hand is distinguishable as no chargesheet was issued to the applicant in *Nirmal Varma's* case whereas in the present case the applicant was issued with a chargesheet prior to

her resignation. But as the applicant tendered her resignation and the same was accepted, in that eventuality the chargesheet did not get any final shape. Hence, learned counsel for the respondents states that the decision in *Nirmal Verma's* case (Supra) is of no help to the case of the present applicant as the same cannot be weighed in the same yardstick.

4. Heard the rival contentions of the parties and perused the documents on record as well as decision of the Hon'ble High Court of Delhi relied upon by the applicant.

5. The only argument advanced by the counsel for the respondents that a chargesheet was issued to the applicant before her resignation and accordingly the case of the applicant cannot stand on the same footing as that of *Nirmal Verma*, relied upon by her, does not seem to be justified for the simple reason that if a chargesheet was issued to the applicant then it was within the domain of the respondents not to accept her resignation and they could not have issued vigilance clearance. Once the respondents have given the vigilance clearance in respect of the applicant and allowed her to contest MCD election, hence, in my considered opinion, the respondents are estopped from taking the plea of pendency of chargesheet against the

applicant. I am also of the view that the respondents were very much within their capacity not to accept the applicant's resignation pending enquiry, if any, rather they ought to have awaited the decision in the enquiry. Hence, at this stage, taking the above plea of pendency of chargesheet and distinguishing the character of the present case with that of *Nirmal Verma's* case (supra) seems to show their power vested with the respondents to deny or reject the applicant's application for withdrawal of her resignation. Since all the conditions set out under Rule 26 of CCS (Pensions) Rules, 1972 are satisfied by the applicant, the stand of the respondents to deny the applicant to withdraw her resignation is not reasonable in these circumstances apart from being contrary to law.

6. Going through the judgment in *Nirmal Verma's* case (supra), I find that the Hon'ble High Court of Delhi in a similar manner allowed the case of petitioner therein taking into consideration the rule position and directed the respondents to process the request of the petitioner for withdrawal of her resignation and also to allow her to join back her duties. Hence, adopting the same ratio as laid down by the Hon'ble High Court of Delhi in *Nirmal Verma's* case (supra), I allow the instant OA with a direction to the respondents to process the case of the applicant for

withdrawal of her resignation and allow her to join duty as Assistant Teacher and the intervening period be also decided as per existing rule with consequential benefits. However, the respondents are at liberty to proceed with the pending chargesheet, if any, as per rules. No costs.

**(Mrs. Jasmine Ahmed)**  
**Member (J)**

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