

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

O.A.No.3140/2017

Order reserved on 17th April 2018

Order pronounced on 23rd April 2018

Hon'ble Mr. K.N. Shrivastava, Member (A)

Mrs. Anju, aged 47 years
w/o Sh. Sunil Bhatia
working as Primary Teacher
SDMC Primary School No.1
Dr. Ambedkar Nagar, Sector V
New Delhi – 110 062
r/o 3F/120, NIT, Faridabad (Haryana)

..Applicant

(Mr. Yogesh Sharma, Advocate)

Versus

1. South Delhi Municipal Corporation
Through the Commissioner
Civic Centre, J L N Marg
Minto Road, New Delhi – 2
2. The Additional Commissioner (Education)
South Delhi Municipal Corporation
Civic Centre, J L N Marg
Minto Road, New Delhi – 2
3. The Asstt. Director of Education
South Delhi Municipal Corporation
South Zone, Green Park, New Delhi 110 016
4. The Principal
Municipal Corporation Primary School
A N Sector 5, No.1 (Girls), New Delhi

..Respondents

(Mr. R K Jain, Advocate)

O R D E R

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:-

“(i) That the Hon’ble Tribunal may graciously be pleased to pass an order of quashing the impugned order dated 18.4.2017 and order dated 21.7.2017 (Annex.A/1 & A/2), declaring to the effect that the same are illegal, arbitrary, against the rules and against the principle of natural justice and consequently, the applicant deemed Vol. retired w.e.f. 19.1.2017 with all the consequential benefits.

(ii) That the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to finalize the request of the applicant for conversion of the EOL on medical ground of daughter of the applicant and EL of applicant into CCL as per rule 10 of the CCS (Leave) rules, 1972 read with OM dated 7.9.2010.

(iii) That in case of not granting the prayer (i) above for any reason, the Hon’ble Tribunal may graciously be pleased to pass an order directing the respondents to treat the entire period from 19.1.2017 to 9.8.2017 as on duty and qualifying service for all the purposes including the pay and allowances.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant was appointed as a Primary Teacher in the erstwhile Municipal Corporation of Delhi (MCD) on 18.10.1995. On trifurcation of MCD in the year 2012, she was allocated to South Delhi Municipal Corporation (SDMC).

2.2 Vide her Annexure A-3 representation dated 30.09.2016 on completion of 21 years of service, the applicant applied for voluntary retirement from service (VRS) due to her family circumstances and health conditions. In her representation, the applicant had clearly indicated that the representation may be treated as three months’ notice w.e.f. 19.10.2016.

2.3 As per CCS (Pension) Rules, 1972, a Government servant, on completing 20 years of qualifying service, can apply for VRS after giving a

notice of not less than 3 months to the appointing authority. The relevant Rule 48-A of Pension Rules is extracted below:-

“(1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

- (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,
- (ii) posted abroad in foreign based offices of the Ministries/Departments,
- (iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority :

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.”

2.4 On completion of the notice period of three months, the applicant requested to the Principal, SDMC No.1 (G), Dr. A.N. Sec-V, New Delhi vide letter dated 18.01.2017 (Annexure A-4), under whom she was then working, to relieve her from her duties. In the said letter, it was also mentioned that as per the instructions from DEO, South Zone on 16.01.2017, she was advised that her VRS notice had been accepted and official orders would be sent through Post in the due course. She was also advised to handover the charge to the Principal. Accordingly, the applicant was relieved of her

duties by the Principal and the charge of the post was handed over by the applicant to the Principal.

2.5 Vide her Annexure A-5 letter dated 24.04.2017, the applicant requested the Additional Commissioner/Director (Education), Education Department, SDMC, New Delhi to release her pensionary benefits. The said letter was followed by several reminders, viz. Annexure A-6 dated 27.04.2017, Annexure A-7 dated 28.04.2017, Annexure A-8 dated 02.05.2017, Annexure A-9 dated 15.05.2017, dated 01.06.2017 (p.41) and 19.06.2017 (p.43).

2.6 Vide impugned Annexure A-1 letter dated 18.04.2017, the applicant was informed by respondent No.3 as under:-

“In consonance of your request for VRS submitted vide diary no.4032/30.09.2016, you are hereby informed that your request for VRS has not been approved by competent authorities, moreover, it is also to inform you that the qualifying service rendered by you till date also does not complete a period of 20 years. You are hereby directed report to Principal, MC Primary School, A.N. Sec-05, No.01 (Girls) for duties, with immediate effect, under intimation to this office.”

2.7 Annexure A-1 impugned communication was followed by Annexure A-2 order dated 21.07.2017 whereby applicant’s request for VRS was rejected by the Additional Commissioner (Education). The reason for rejection was mentioned in the said order as under:-

“However, in your case you have not completed 20 years of qualifying service since the EOL taken on medical grounds of your daughter does not qualify as qualifying service, thus reducing the total number of qualifying service to 18 years and 3 months instead of 21 years (as presumed by you). Thus, you are once again directed to report to Principal, MC Primary School, A.N. Sec-05, No.01 (Girls) for

duties, with immediate effect, under intimation to this office or else to tender your resignation, with immediate effect.”

Aggrieved by the impugned Annexure A-1 communication dated 18.04.2017 and Annexure A-2 order dated 21.07.2017, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. The applicant has pleaded the following important grounds in support of the reliefs claimed:-

3.1 She had served 3 months' notice effective from 19.10.2016 and the appointing authority had not refused the same, as such in terms of Rule 48-A of the Pension Rules, her VRS had become effective from the date of expiry of the notice period, i.e., 18.01.2017.

3.2 The Hon'ble Punjab & Haryana High Court in the case of **Kulwant Kaur v. State of Punjab** [2002 (3) ATJ 545] has held as under:-

“8. In the present case also, the petition was allowed to proceed on Vol. retirement. She actually proceeded on voluntary retirement and now the respondent authorities cannot take a somersault by saying that the petitioner's qualified service was less than 20 years and for that alleged reason, she is not entitled to draw pension.”

3.3 She was granted child care leave (CCL) from 19.10.2010 to 15.02.2011 (120 days). She, vide her Annexure A-11 letter dated 03.02.2011, had requested for extension of her CCL from 16.02.2011 to 31.03.2012 due to medical problem of her daughter. She followed it up by her another representation dated 24.02.2011 (Annexure A-12) requesting that in case the CCL is not extended, then she may be granted leave without pay. It is

stated that the competent authority instead of granting her CCL, chose to sanction extra-ordinary leave (EOL) from 16.02.2011 to 31.03.2012 in spite of the fact that there was 610 CCL still available to her credit.

3.4 The applicant requested to the competent authority vide her representations dated 30.05.2011 (Annexure A-14) and 05.08.2014 (Annexure A-15), which was followed by reminders, to convert her EOLs into CCL, but no action was taken.

3.5 It is trite law that the notice given for VRS to the appointing authority does not require acceptance and that after the expiry of the notice period of three months, employee is deemed to have retired on the date of completion of the three months' notice period. In this regard, reliance is placed on the following two judgments of the Tribunal:

- i) **Raj Pal Gaindh v. Union of India**, 1987 (2) ATJ 116; and
- ii) **P.N.M. Elayadham v. Union of India**, 1994 (1) ATJ 73

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have made the following important averments:

4.1 The O.A. is not maintainable, as the applicant has claimed multiple reliefs.

4.2 The applicant has already re-joined her duties on 10.08.2017 (Annexure A-20). She has not exhausted the departmental remedies

available to her, and hence under Section 20 of the Administrative Tribunals Act, 1985, the O.A. is not maintainable.

4.3 The applicant was not relieved of her duties by the respondents, nor has she annexed any order of relieving issued by the respondents.

4.4 Applicant's request for conversion of EOLs from 16.02.2011 to 31.03.2012 and thereafter from 01.04.2012 to 31.03.2014 to CCL is barred by limitation of time.

4.5 The applicant had not completed 20 years of qualifying service to be eligible for VRS. After deducting the EOLs availed by her on three different occasions, her effective qualifying service comes to 18 years and 3 months (details given at p.75).

5. On completion of pleadings, the case was taken up for hearing the arguments of the parties. Arguments of Mr. Yogesh Sharma, learned counsel for applicant and that of Mr. R K Jain, learned counsel for respondents were heard on 17.04.2018.

6. Mr. Yogesh Sharma, learned counsel for applicant, besides reiterating the averments made in the O.A., submitted that no entry in applicant's service book has been made by the respondents in regard to her availment of EOLs. The learned counsel drew my attention to the decision of Govt. of India dated 28.02.1976 (p.62) to the effect that unless specific entries are made in regard to the availment of EOLs, such leaves cannot be treated as non-qualifying for computation of qualifying period of service for the

purpose of pension. The applicant re-joined her duties on 10.08.2017 not her own volition but due to duress and pressure from the respondents.

7. Concluding his arguments, Mr. Sharma, learned counsel for applicant submitted that the applicant would be satisfied if relief 8 (i) of the O.A. is granted, and that she is not pressing for other reliefs:

8. *Per contra*, Mr. R K Jain, learned counsel for respondents pleaded that the applicant had availed EOLs in three different spells, i.e., 01.04.2011 to 31.03.2012, 01.04.2012 to 31.03.2014 and 01.04.2014 to 05.05.2016, totaling to 1130 days, and hence her qualifying years of service got reduced to 18 years and 3 months, *albeit* she had rendered service for 21 years and 3 years. He thus argued that the applicant was not entitled for VRS and the respondents have correctly rejected her request for VRS vide their Annexures A-1 & A-2 orders.

9. Concluding his arguments, the learned counsel stated that since the applicant has re-joined her duties on 10.08.2017, this O.A. has become infructuous.

10. I have considered the rival contentions of the parties and perused the materials placed on record.

11. It is not in dispute that on 30.09.2016 when the applicant applied for VRS, she had already put in 21 years and 3 months of service. She had availed CCL earlier and had requested for further extension of the same, but, for reasons best known to the respondents, they did not accede to her request and instead they regularized the period of her absence beyond the

CCL period by sanctioning EOL, notwithstanding the applicant having 610 days of CCL to her credit. Such an action of the respondents was not only harsh but unjustifiable as well. Be that as it may. The respondents have not denied the averments of the applicant that the EOLs sanctioned in three different spells to her have not been entered into her service book.

12. The Govt. of India's decision dated 28.02.1976, relied upon by the applicant, clearly indicates that if EOLs have not been recorded in the service book, such leaves cannot be treated as 'non-qualifying' for the purpose of calculation of the qualifying years of service for retiral benefits. The relevant part of the letter dated 28.02.1976 of the Govt. of India is extracted below:-

"Extraordinary leave taken on other grounds is treated as non-qualifying and, therefore, a definite entry is to be made in the service records to that effect. Entries regarding service being qualifying or otherwise are required to be made simultaneously with the event. Even where this is not done, it should still be possible to rectify the omission during the period allowed for preparatory action, i.e., from two years in advance of the retirement date up to eight months before retirement. At the end of that period, however (i.e., when the actual preparation of the pension papers is taken in hand), no further enquiry into past events or check of past records should be undertaken. Specific entries in the service records regarding non-qualifying periods will be taken note of and such periods excluded from the service. All spells of extraordinary leave not covered by such specific entries will be deemed to be qualifying service."

13. From the sequence of events, noticed hereinabove, I am inclined to believe that the applicant never voluntary re-joined her duties on 10.08.2017 (Annexure A-20). It is apparent that she was compelled to do so. The respondents, in their reply, have averred that they had not issued any formal relieving order to the applicant and hence, it could not be

construed that she was ever relieved of her charge officially. But then, Annexure A-4 letter dated 18.01.2017, written by the applicant to the Principal, SDMC No.1 (G), Dr. A.N. Sec-V, New Delhi, under whom she was then working, would indicate that the Principal had relieved the applicant from her duties and he had taken over charge from her. If the Principal had any kind of doubt, nothing prevented him from checking the factual position regarding the fate of applicant's application for VRS with respondent No.3 or other higher authorities.

14. Furthermore, as per Rule 48-A of the Pension Rules, after expiry of three months' notice period, the VRS is deemed to have become effective. In such a situation, I hold that the applicant had got herself relieved in a legal manner and such a relieving should not be viewed with any different angle.

15. In the conspectus of discussions in the preceding paragraphs, I am of the view that the applicant was entitled for availing VRS w.e.f. 18.01.2017 in accordance with Rule 48-A of the Pension Rules and the respondents were not justified in rejecting her request. Accordingly, I allow this O.A. in the following terms:-

(i) Relief contained in 8 (i) of the O.A. is granted to the applicant. The respondents are directed to pass necessary orders granting VRS to the applicant w.e.f. 18.01.2017. This shall be done within a period of three months from the date of receipt of a copy of this order. The applicant shall be entitled to all consequential benefits but without interest.

(ii) The applicant shall continue in service till the order, as directed in (i) above, is passed by the respondents and would continue to get her salary / emoluments for the period of service rendered till she gets formally relieved by the respondents.

There shall be no order as to costs.

**(K.N. Shrivastava)
Member (A)**

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