

**Central Administrative Tribunal
Principal Bench**

OA No.3163/2018

New Delhi, this the 21st day of August, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Mohd. Jamshed, Member (A)**

Arun Mishra, IAS (Group A)
Age 56 years
S/o Late Dr. Lakshmi Kant Mishra
R/o 78 Poorvi Marg,
C/o Mrs. K. Jha, Vasant Vihar
New Delhi 110 057. Applicant.

(By Advocates: Shri Vimal Kirti Singh Ms. Anamica Satvik
Issar and Shri Abu Unmesh)

Vs.

1. Union of India through
Secretary
Department of Personnel and Training,
North Block,
New Delhi 110 001.
2. The Chief Secretary
Government of West Bengal
"NABANNA" HRBC Building, 325,
Sarat Chatterjee Road,
Howrah 711 102,
West Bengal. ... Respondents.

(By Advocates : Ms. Madhumati Bhattacharjee with Ms. Srija
Choudhary and Shri Rajeev Kumar)

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant is an IAS Officer of 1986 batch and of the West Bengal cadre. He went on central deputation in the year 2004 and held various positions, mostly in the Ministry of Civil Aviation. Initially, he was in the Cabinet Secretariat as

Director, and thereafter functioned as Joint Secretary in the Ministry of Civil Aviation. At the request made by the Ministry of Civil Aviation, Government of West Bengal, the 2nd respondent herein, extended the deputation period of the applicant, and he was appointed as Director General of Civil Aviation for a period of one year from 26.07.2012.

2. The applicant received an offer of assignment in the International Civil Aviation Organization (ICAO) as Regional Director for a period of four years. The permission sought by the applicant for that purpose was negatived by the 2nd respondent. On completion of the central deputation on 31.12.2013, the applicant was granted two months tenure end leave.

3. The applicant did not join the cadre in West Bengal but made a representation dated 31.01.2014 with a request to permit him to take voluntary retirement w.e.f. 31.03.2014 under Rule 16 (2) of All India Service (Death cum Retirement Benefits) Rules, 1958 (for short, the Rules). Since the rules stipulated a notice period of 90 days, he made a request for relaxation. No steps were taken thereon and in the meanwhile Rule 16 (2) was amended. On 13.03.2018, the 2nd respondent passed an order expressing its inability to accept the request of the applicant. The same was communicated to the applicant

from the 1st respondent through order dated 16.07.2018. This OA is filed challenging the said orders.

4. The applicant contends that the request made by him for voluntary retirement ought to have been accepted by the respondents, particularly, when there is nothing adverse against him, in the entire service record. It is stated that on fulfillment of the conditions stipulated under the Rules, the request becomes acceptable without any hindrance. He further contends that the discretion, if at all, of the State Government was only in the context of relaxation of the period of notice, and once no step in that direction was taken till the expiry of normal period of notice, the right had accrued to him to go on voluntary retirement.

5. Respondent Nos.1 & 2 filed separate counter affidavits. They did not dispute the service particulars furnished by the applicant. The 2nd respondent stated that the applicant did not report to duty on expiry of the deputation period, and he does not have any right to insist on being permitted to take VRS.

6. We heard Shri Vimal Kirti Singh, Ms. Anamica Satvik Issar and Shri Abu Unmesh, learned counsel for the applicant and Ms. Madhumati Bhattacharjee with Ms. Srija Choudhary and Shri Rajeev Kumar, learned counsel for the respondents.

7. The applicant was part of the West Bengal Cadre of IAS. After serving the state for about eighteen years, he went on Central Deputation. For some time, he was in the Cabinet Secretariat and thereafter he continued in the Ministry of Civil Aviation. At that stage, he got an offer from ICAO. Accordingly, he made a representation to the State Government to accord permission. Since the offer was a time bound one, and the applicant did not have any option, he has chosen to join ICAO, by submitting an application on 31.01.2014 seeking voluntary retirement w.e.f. 31.03.2014. Rule 16 (2) (A) governs the issue of voluntary retirement in respect of a member of IAS. It reads as under:-

“16 (2) (A) A member of the service may, after giving three months' previous notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice:

Provided that a notice of retirement given by a member of the service shall require acceptance by the Central Government if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the Service could have retired from service under sub-rule (2):

Provided further that a member of the Service, who is on deputation to a cooperation or company wholly or substantially owned or controlled by the Government or to a body controlled or financed by the Government, shall not be eligible to retire from the service under this rule for getting himself permanently absorbed in such corporation, company or body.

Provided also that a member of the Service borne on the Cadres of Assam-Meghalaya, Manipur-Tripura, Nagaland and Sikkim may retire from service on the date on which he/she completes 15 years of service.”

This rule has some salient features. The first is that the officer must have completed 20 years of service by the time he applies for VRS. The second is that three months’ prior notice must be given for this purpose. The requirement as to the acceptance of VRS by the State Government would arise only if the notice period is less than three months. In other words, if the notice of three months is issued, no acceptance is needed from the State Government. At the most, an order of rejection can be passed within that period, duly stating the reasons. We are not concerned with the 2nd and 3rd provisos.

8. It is not in dispute that the notice issued by the applicant was of less than three months period. Therefore, he made a request for relaxation. The 2nd respondent did not take any decision on the request made by the applicant, before expiry of the three months notice period. Since no steps were taken by the 2nd respondent before expiry of the period of three months, nor the applicant had withdrawn his request for VRS, it emerges that a notice of three months existed. It is also necessary to take note of the fact that Rule 16 (2B) (2C) and (2D) were added through notification dated 27.02.2017. They read as under:-

“16 (2B) (a) The notice of voluntary retirement given in writing by the member of the service under sub-rule (2) and (2A) may be withdrawn by the member of service.

(b) Request for withdrawal of notice of voluntary retirement shall be submitted to the Competent Authority within the period specified in the said notice.

(2C) Where a notice of voluntary retirement is given by a member of service under sub-rule (2) and the competent authority does not issue any order before the expiry of the period specified in the said notice, the voluntary retirement shall become effective from the date of expiry of the said period.

Provided that, where no order is issued by the competent authority, then after the expiry of the period specified in the notice, the Central Government may issue orders.

(2D) For the purpose of this rule the expression ‘competent authority’ shall mean the authority which is empowered to accept notice of voluntary retirement under sub-rules (2) and (2A).”

An element of deemed acceptance is brought into existence. In a way, what was implied was made explicit. It is only after the amended rule came into force, the impugned orders were passed. The one passed by the 2nd respondent on 13.03.2018, reads as under:-

“No.784-HR/O/IAS/7P-113/2011 Dated, Howrah, the 13th March, 2018

From : Prabhat Kumar Mishra, IAS
Principal Secretary to the Government of West Bengal

To: The Secretary
Department of Personnel and Training,
Government of India,
North Block,
New Delhi.

Subject: Representation of Shri Arun Mishra, IAS (WB:1986) for VR-regarding.

Ref: No.2412/03/2016-AIS-II dated 26.02.2018 of DoP&T

Sir,

With reference to above matter, this is to inform that the representation of Shri Arun Mishra, IAS (WB:1986) for Voluntary Retirement is not acceptable to the State Government.

This is issued with approval of the Competent Authority.

Yours faithfully,

Sd/

(P. K. Mishra)
Principal Secretary”

That in turn was communicated by the 1st respondent to the applicant through a letter dated 16.07.2018. It reads as under:-

“To

Shri Arun Mishra, IAS (WB: 1986)
C/o-Mrs. K. Jha, 5/20, Sarva Priya Vihar,
New Delhi 110 016.

Subject : Request for Voluntary Retirement of Shri Arun Mishra, IAS (WB:1986)-reg.

Sir,

I am directed to refer to your e-mail dated 06/07/2018 addressed to Secretary, DoPT on the above mentioned subject requesting to be informed of the decision taken by Competent Authority in this regard.

2. Government of West Bengal vide their Letter No.784-HR/O/IAS/7P-113/2011 dated 13/3/2018 have communicated to this Department that the proposal of Voluntary Retirement of Shri Arun Mishra, IAS (WB:1986) is not acceptable.

3. As such, no further action in the matter is called for, on part of this Department.

Yours faithfully,

Sd/

(Jyotsna Gupta)
Under Secretary to Govt. of India”

Even under Rule 16 (2) (A), before the amendment came into force, the power was conferred on the State Government to reject the request in the context of relaxation of the notice period. Such power could have been exercised before the expiry of 90 days from the date of application. Once the period of 90 days expired from the date of application, not only the request for relaxation becomes redundant but also the State Government stands stripped off its power to reject the same. It is also necessary to take note of the fact that the rule never provided for the acceptance of the application for VRS. It is almost self operative. As observed earlier, the acceptance, if at all, was only of the request for relaxation and not the request for VRS.

9. Obviously with a view to remove uncertainty or the possibility of the rule being incorporated as the one that needed acceptance of the State Government, the amendment has drawn curtains to it by incorporating sub rule 2 (C) of Rule 16 of the Rules.

10. Much before the amendment was carried out, the right of an IAS Officer to seek VRS and the consequences that flow from such a right, was dealt with by the Hon'ble Supreme Court in ***State of Haryana vs. S. K. Singhal*** (1999) (4) SCC 293. The Hon'ble Supreme Court took note of various judgments rendered on the subject and observed as under:-

“9. The employment of Government servants is governed by rules. These rules provide a particular age as the age of superannuation. Nonetheless, the rules confer a right on the Govt. to compulsorily retire an employee before the age of superannuation provided the employee has reached a particular age or has completed a particular number of years of qualifying service in case it is found that his service has not been found to be satisfactory. The rules also provide that an employee who has completed the said number of years in his age or who has completed the prescribed number of years of qualifying service could give notice of (say) three months that he would voluntarily retire on the expiry of the said period of three months. Some Rules are couched in language which results in an automatic retirement of the employee upon the expiry of the period specified in the employee's notice. On the other hand, certain Rules in some other departments are couched in language which makes it clear that even upon expiry of the period specified in the notice, the retirement is not automatic and an express order granting permission is required and has to be communicated. The relationship of master and servant in the latter type of rules continues after the period specified in the notice till such acceptance is communicated; refusal of permission could also be communicated after 3 months and the employee continues to be in service. Cases like *Dinesh Chandra Sangma vs. State of Assam* (1977) 4 SCC 441; *B. J. Shelat v. State of Gujarat* (1978) 2 SCC 202 and [Union of India vs. Sayed Muzaffar Mir](#) (1995) Supp. (1) SCC 76 belong to the former category where it is held that upon expiry of the period, the voluntary retirement takes effect automatically as no order of refusal is passed within the notice period. On the other hand *H. P. Horticultural Produce Marketing & Processing Corpn. Ltd. v. Suman Behari Sharma* (1996) 4 SCC 584 belongs to the second category where the Bye-laws were interpreted as not giving an option "to retire" but only provided a limited right to "seek" retirement thereby implying the need for a consent of the employer even if the period of the notice has elapsed. We shall refer to these two categories in some detail.”

“13. Thus from the aforesaid three decisions it is clear that if the right to voluntarily retirement is conferred in absolute terms as in *Dinesh Chandra Sangma's* case by the relevant rules and there is no provision in 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's* case and as in *Sayed Muzaffar Mir's* 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 inquiry is pending or is contemplated, the mere pendency of the suspension or departmental inquiry or its contemplation does not result in the notice of voluntary retirement not coming into effect on 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's* case and in *Sayed Muzaffar Mir's* 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.”

11. In ***Mahendrabhai Bhavanishankar Mehta vs. State of Gujarat*** 2011 SCC Online Guj 1908, the Hon’ble Gujarat High Court discussed the issue at length and held that there is no necessity of acceptance, having regard to the text of the rule. Even where the rule provides for acceptance of the request, the judicial pronouncements are to the effect that if the concerned authority fails to communicate its decision before the expiry of the notice period, the request shall be deemed to have been accepted. The uncertainty in this behalf stood removed with the inclusion of sub rule (2) (C) under Rule 16 of the Rules. Though quite large numbers of cases were cited by the learned counsel for the applicant, we do not feel the necessity of referring them in detail.

12. The OA is accordingly allowed and the application for voluntary retirement submitted by the applicant shall be deemed to have been accepted on expiry of 90 days from the date of application, and the applicant shall be extended all the benefits under the relevant provisions of law within a period of three months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

(Mohd. Jamshed)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/