
(1998) 09 DEL CK 0112
In the Delhi High Court
Case No : C.W. No. 3757/94

Divakar Mishra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 14-09-1998

Acts Referred:

Central Reserve Police Force Rules, 1955 — Rule 43

Citation : (1998) 47 DRJ 689

Hon'ble Judges : K. Ramamoorthy, J;Devinder Gupta, J

Bench : Division Bench

Advocate : Vibha Datta, for the Appellant; K.C. Mittal and S.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Devinder Gupta, J.—The petitioner has sought quashing of the two Office Memorandums dated 4.2.1994 (Annexure P17) and 7.2.1994 (Annexure P18) and further to declare that he stood retired on 27.8.1993, after expiry of 90 days" notice period w.e.f. 27.5.1993 with further directions to release his retirement benefits with interest thereupon. The petition was instituted on 5.9.1994.

2. It is alleged that the petitioner joined Indian Military Academy for training on 20.1.1996 and was commissioned in Indian Army as Emergency Commissioned Officer on 2.8.1964, from where he was relieved on 30.6.1970. On 24.8.1970, the petitioner was selected through Selection Board in Central Reserve Police Force and was posted as Deputy Superintendent of Police with 31st Battalion at Kohima. He was promoted as Commandant (Selection Grade) w.e.f. 17.10.1991 and remained posted in various stations mostly in the North East region of the country. The petitioner states that he remained posted in North East region for almost 12 years, where after he was posted in Srinagar and Anantnag (J&K). On request, he was posted as Commandant (Staff) in the Office of Deputy Inspector General of Police, Rapid Action Force, R.K. Puram, New Delhi on 10.6.1991, but

within a period of eight months, he was arbitrarily transferred to which he lodged a protest slating that it would adversely effect education of his children and also pointed out that within a span of 14 months, it was his third shifting of residence. After his representation dated 20.1.1993 was rejected, again through representation dated 13.2.1993, he requested for deferment of his transfer for 3 to 4 months. The petitioner states that he was on leave from 15.1.1993 to 22.5.1993.

3. Due to serious ailment, he had to be hospitalised in Mool Chand Khairati Lal Hospital, New Delhi. Instead of showing any sympathy towards the petitioner for serious illness and rendering any help, his request for cancellation/deferment of his transfer was rejected and the payment of salary was stopped since March, 1993. As the request of petitioner for staying his transfer and deferment of his posting was not considered favourably, in response to the petitioner's representation, respondent No. 2 on 27.5.1993 suggested the petitioner that in case he would apply for voluntary retirement, his application will be considered sympathetically. Accordingly, the petitioner on 27.5.1993 through letter (Annexure P11) applied unconditionally for voluntary retirement and also asked for condensation of 3 months' period within which according to the petitioner, the competent authority was required to communicate its approval or refusal as per rules. The petitioner's case is that no communication was received by him on his request for voluntary retirement. As such, on 29.7.1993, he again requested for condensation of the notice period of 3 months and to issue further notification relieving him from service and also prayed for release of his service benefits. Decision regarding acceptance/rejection of petitioner's request was not conveyed despite lapse of 5 months. It is alleged by the petitioner that in terms of statutory Rule 56-K of Fundamental Rules as well as Rule 48-A of the CCS (Pension) Rules, in the absence of any communication regarding rejection of petitioner's request, the petitioner automatically and impliedly stood retired from service on 27.8.1993.

4. It is also the petitioner's case that on 15.11.1993, he was surprised to receive a communication (Annexure P16) conveying to him adverse remarks in his ACR from 12.6.1992 to 12.1.1993. On 4.2.1994, for the first time the petitioner was served with a Memorandum (Annexure P17) calling upon him to join his duty on the transferred post within three days, failing which, the respondents threatened to initiate disciplinary action against him. It is alleged that such a show cause notice was arbitrary, illegal and uncalled for and in clear violation of Rule 48-A of CCS (Pension) Rules and Rule 56-K of Fundamental Rules in as much as in the absence of any communication as to rejection of his request for voluntary retirement within statutory period of 90 days, the petitioner stood automatically and impliedly retired on 27.8.1993. The petitioner was served with another Memorandum dated 7.2.1994 (Annexure P18) threatening him to initiate departmental action if the petitioner does not join his duties. It was only on 18.4.1994 that through Annexure P19, the petitioner's request for voluntary retirement was rejected. This communication was received after expiry of period

of 90 days. In this background, the petitioner sought the aforementioned reliefs.

5. The respondents in their reply stated that the petitioner remained posted as Commandant, 19th Battalion, CRPF from 13.1.1991 to 10.6.1992. While commanding 19th Battalion stationed at Delhi, due to exigencies of service he was posted in the Office of Deputy Inspector General of Police, Rapid Action Force, CRPF, R.K.Puram, New Delhi as a Staff Officer. He took charge on 10.6.1992. He was shifted, due to exigencies of service to 121 Auxiliary Battalion, CRPF, Delhi. The petitioner made representation against transfer, which was sympathetically considered, but the same could not be accepted. However, the petitioner was kept in Delhi though only his office was shifted. On 22.1.1993 other incumbent joined. The petitioner ought to have relinquished the charge, but the petitioner failed to hand over charge till 28.1.1993. He applied for 2 days' casual leave. The petitioner was informed that since he was under orders of transfer, he should relinquish the charge and apply for leave. The petitioner refused to accept this communication. Time and again petitioner was asked to submit his charge, but he did not comply with the directions. The petitioner's request for cancellation/deferment of his transfer had been duly considered and rejected. The petitioner was informed that disciplinary action could be initiated against him. He was also informed that if he applies for voluntary retirement, his application will be considered sympathetically.

6. The petitioner through his letter dated 27.5.1993 addressed to the President of India, requested for conditional voluntary retirement from service. A reply was sent to the petitioner on 29.7.1993 (Annexure RV) in which it was desired by the IGP/S, CRPF, being the Administrative IGP of petitioner, that the petitioner be asked whether under the given circumstances his voluntary retirement should be processed and sent to the competent authority. Copy of this letter was sent at his two residential addresses. A copy was also sent through special messenger, but the petitioner's wife informed that the petitioner was away from Delhi. Therefore, letter was received undelivered. The petitioner thereafter was time and again directed to submit his charge report. In his application dated 19.7.1993, the petitioner wanted to ascertain the progress of his voluntary retirement. The petitioner was informed on 26.8.1993 that his request for voluntary retirement could not be processed, as it was conditional one. He was advised to submit fresh unconditional application for voluntary retirement if he was interested. In the meanwhile, two departmental proceedings were contemplated against the petitioner for misutilisation of manpower by abusing his official position, in recruitment of one person as Water Carrier and unauthorised absence from duty during January, 1993 in Delhi. In addition to the two departmental proceedings, a CBI case for alleged theft/extortion of Rs. 1 lakh by the petitioner from one Mohd. Yusuf Shah, while commanding 19th Battalion, CRPF on 3.6.1991, was also under investigation by CBI. The petitioner through his letter dated 30.8.1993 again addressed to the President of India, requested for acceptance of his voluntary retirement, in which he added that since 3 months' notice period has expired, the petitioner stands retired from

service. His representation was placed before the competent authority and the Ministry of Home Affairs through letter dated 18.11.1993 (Annexure RX1) informed that the representation dated 30.8.1993 addressed to the President of India had been considered and rejected by the competent authority. The competent authority further desired that CRPF may take expeditious action on the two departmental proceedings pending and contemplated against the petitioner and also the inquiry conducted by CBI against the petitioner for confiscation of car and money. In the light of the aforementioned pleadings, the parties were heard on merits.

7. According to the petitioner, Rule 48-A of CCS (Pension) Rules, which is applicable to him. It provides for a Government servant's right to retire, if the authority does not refuse to grant permission within the stipulated period of 3 months. The proviso to such Rule (2) of Rule 48-A over-rides the requirement of acceptance of the request if the appointing authority does not reject the application within 3 months. Reasonable time within which the appointing authority must take a decision and communicate to the employee is 3 months. Delay thereafter cannot be condoned. As per Sub-rule (2) of Rule 48-A, it is mandatory for the appointing authority to communicate to the Government servant the refusal to grant permission for voluntary retirement before expiry of 3 months" period from the date of notice, in the absence of which, retirement will be deemed to have taken effect from the date specified in the notice. Thus according to the petitioner, as no communication of refusal was sent to him, he will be deemed to have retired on the expiry of the period of 3 months. It was urged that the letter dated 26.8.1993, asking for an unconditional application was fabricated one. It was not sent to the petitioner. In any case, this communication is not a communication of rejection of the petitioner's application. The only communication of rejection, which was sent to the petitioner was in April, 1994 (Annexure P19). It was much beyond the period of 3 months. The other two communications dated 18.11.1993 and 24.11.1993 are also fabricated and beyond the cut-off date of 27.8.1993. The petitioner states that his letter dated 30.8.1993 was not his application seeking voluntary retirement, but was his intimation to the department that he stood voluntarily retired on 27.8.1993. As departmental inquiry against the petitioner were started after the petitioner will be deemed to have voluntarily retired, the same has to be adjudged as mala fide and must be quashed. The first inquiry was contemplated to be instituted only in April, 1994. The other two inquiries were instituted in May, 1994 and October, 1994. The same were not instituted within a reasonable time. The inquiry carried mala fide motive in order to harass the petitioner. Therefore, the petitioner was entitled to equitable relief under Article 226 of the Constitution of India that he stood retired from service and was entitled to pensionary dues.

8. Learned counsel for the respondents vehemently contended that Rule 43 of CRPF Rules is the relevant provision, which is applicable. Under this Rule, notice to retire voluntarily, after completion of 20 years of qualifying service requires

acceptance of the appointing authority, in case the date of retirement on the expiry of the period of notice would be earlier than the date on which member of CRPF would have retired under Sub-rule (a) of said Rule 43. Since there was no acceptance of the request for voluntary retirement, there is no question of petitioner automatically retiring on expiry of period of 90 days.

9. The petitioner being the member of the Force would be governed by CRPF Rules. The relevant portion of Rule 43 regarding superannuation, contained in Chapter VIII, under the heading ""Pay, Allowances, Pension, Superannuation and Financial Power", reads:-

43. SUPERANNUATION:

(a) Recruitment of a member of the Force shall take effect from the afternoon of the last day of the month in which such member attains the age of 55 years. In case, the first, day of birth of a member of the Force falls on the first day of a month, his retirement shall take effect from the afternoon of the last day of the month preceding the month in which the member of the Force attains the age of 55 years.

XXX XXX XXX

(c) Notwithstanding anything contained in this rule-

(i) The appointing authority shall, if it is of opinion that it is in the public interest to do so, have absolute right to retire any member of the Force who has attained the age of 50 years or put in 25 years of qualifying service, by giving him notice of not less than three months in writing or three month's pay and allowances in lieu of such notice.

(ii) Any member of the Force, may by giving notice of not less than three months in writing to the appointing authority, retire from service after he has attained the age of 50 years or put in 25 years of qualifying service.

(d)(i) any member of the Force who has put in not less than 20 years of qualifying service may, by giving notice of not less than three months in writing to the appointing authority, retire from service voluntarily and unless the exigencies of service require otherwise he shall be permitted to retire.

(ii) the benefit of retiring pension shall be admissible to members of the Force retiring under, Clause (i);

(iii) A notice of less than three months may also be accepted by the appointing authority in appropriate cases on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(iv) a notice of voluntary retirement may be withdrawn with the approval of the appointing authority provided the request for such withdrawal is made before the expiry of the period of notice.

(v) before a member of the Force gives notice of voluntary retirement with reference to this sub-rule, he should satisfy himself by means of a reference to the appropriate administrative authority that he has, in fact completed 20 years of service qualifying for pension.

(vi) a notice to retire voluntarily under Clause (i) after completion of 20 years of qualifying service shall require acceptance by the appointing authority if the date of retirement on the expiry of the period notice would be earlier than the date on which the member of the Force concerned could have retired under Sub-rule (a). Such acceptance may be generally given in all cases except where:

(a) any disciplinary proceedings are pending or contemplated against the member of the Force concerned for the imposition of a major penalty and the disciplinary authority having regard to the circumstances of the case, is of the view that the imposition of the penalty of removal or dismissal from the service would be warranted in the case or

(b) any prosecution is contemplated or may have been launched in a court of law against the member of the Force concerned : Provided that

(i) in cases, referred to in item (a) and item (b) above approval of the Government in the case of Superior Officers, of the Inspector General in the case of subordinate and under officers, of the Deputy Inspector General in the case of other members of the Force except enrolled followers and of the Commandant in the case of enrolled followers shall be obtained:

(ii) in other cases, acceptance by the appointing authority may be presumed and the retirement of the member of the Force concerned may take effect in the terms of the notice, unless the appointing authority passes an order to the contrary before the expiry of the period of notice.

(vii) and (viii) omitted vide GSR 690 dated 27/07/85)

(ix) The weightage admissible under Clause (i) of Sub-rule (c) shall only be an addition to the qualifying service for purpose of pension and gratuity, but shall not entitle the member of the Force retiring voluntarily to any notional fixation of pay for purpose of determining the pension and gratuity based on the actual emoluments calculated with reference to the date of retirement.

(Sub-rule (c) (d) added vide GSR-636 dt. 14/6/80)

(c)(i) The qualifying service on the date of intended retirement of a member of the Force retiring under Rule 43(c)(ii) or Rule 43(d)(i) with or without permission shall be increased by the period not exceeding five years, subject to the conditions that the total qualifying service rendered by him does not in any case exceed thirty three years and it does not take him beyond the date of superannuation.

(ii) The weightage of five years under Clause (i) shall not be admissible in cases of those members of the force who are prematurely retired in the public interest

under Rule 43(c)(i). (inserted vide GSR-690 dated 27/7/85).

10. The petitioner's application dated 27.5.1993 wherein request for voluntary retirement on compassionate ground was made is Annexure P11 at p-48 of the paper-book. It reads:-

"From: Divakar Misra

Commandant (Staff)

O/o Dy. IGP, RAF

CRPF (ON LEAVE)

To,

The Hon'ble President,

Union of India,

NEW DELHI.

(THROUGH PROPER CHANNEL)

SUB : REQUEST FOR VOLUNTARY RETIREMENT ON COMPASSIONATE GROUNDS

Respected Sir,

I am presently serving in CRPF in the rank of Commandant. I joined Indian Army as Commissioned Officer in the year 1964 and on my release from Indian Army I joined CRPF in the year 1970. I was last posted as Staff Officer to Dy. IGP, RAF, New Delhi i.e. Sh. A.A. Siddiqui from where I have been ordered to be posted to 121 Aux. Bn. (Sultan Pur Mazra, New Delhi). Earlier I served as Commandant 19 Bn., located at Mehrauli, New Delhi from 17th August, 1991 to 10th June, 1992. Since this was my second transfer within a short span of fourteen months, I requested my Director General to reconsider my transfer but unfortunately my request did not find favour. My sole aim to ask for Delhi posting after having served in North-East and J&K on most sensitive assignments was to look after the education and future prospects of my children who are studying in school/college in Delhi and their studies were being hampered/adversely effected due to my long absence from Delhi on posting at the crucial juncture when my presence with them was most essential. Therefore, I intended to utilise my present posting in Delhi for education of my children and for my own treatment as I am an old case of Angina and Geoclinical Ulcer for which I have to remain under close medical treatment.

2. Since it has not been possible for the administration to retain me as Staff Officer to Dy. IGP, RAF, New Delhi or any other staff job at Delhi as requested by me in my application dated 20th January, 1993 addressed to Director General, CRPF (copy enclosed for ready reference), I have decided to seek voluntary retirement from service after giving 30 years of my life to the Nation having

served in Army/CRPF for the sake of education of children.

3. My this application may kindly be considered as three months notice as provided for in service rules. I, however, request for condoning the requirement period as I have already intimated my Director General, CRPF on 13th February, 1993 of my intention to proceed on voluntary retirement in the event of my request for retention as Staff Officer to Dy. IGP, RAF, New Delhi not been considered favourably (copy enclosed).

4. Lastly, it is submitted that I have already put-in more than twenty years i.e. 26 years+ 5 days qualifying service as on 30th September, 1990 as al- ready verified by PAO, CRPF vide letter No.IRLA-694/Estt.(PAO) dated January 01, 1991 (copy enclosed for ready reference).

Thanking you,

Yours faithfully,

Sd/-

27/5/93

(DIVAKAR MISRA)"

11. It is the case of the respondents that on 29.7.1993, letter (Annexure RV) was sent to the petitioner through which communication, Deputy Director (Establishment) asked the Inspector General of Police to ascertain from the petitioner whether under the given circumstances, his request for voluntary retirement should be processed and sent to the competent authority for approval. The letter reads:-

"To

The Inspector General of Police,

Northern Sector, CRPF

New Delhi.

Subject:- VOLUNTARY RETIREMENT

Sir,

I am directed to refer to your letter No.T.IX.16/93-Estt.I dated 19/7/93 and request you to inform Shri Divakar Mishra Commandant that no other posting in Delhi, except the posting of Delhi already given to him is possible.

2. It may also be ascertained from officer whether under the given circumstances, should his voluntary retirement request be proceeded and sent to the competent authority for approval.

3. In the meantime departmental action against him for his unauthorised absence from duty may also be initiated.

Yours faithfully,

Sd/-

(Mohd.Izhar Alam)

Deputy Director(Estt)"

12. The petitioner's case is that he did not receive this communication and since no action had been taken on this request for voluntary retirement, this letter is fabricated. Therefore, on 30.8.1993, he informed that since the required period of 3 months had expired, he stood voluntarily retired and prayed that his dues be paid. This letter dated 30.8.1993 reads:-

"To,

The Hon"ble President,

Union of India,

NEW DELHI.

(THROUGH PROPER CHANNEL)

SUB : REQUEST TO ISSUE EARLY ORDERS ON APPLICATION SUBMITTED FOR VOLUNTARY RETIREMENT ON COMPASSIONATE GROUND AND PENALISATION OF PENSION.

Respected Sir,

It is most humbly submitted that I had applied for voluntary retirement from service on compassionate ground vide my application dated 27th May, 1993 submitted through proper channel (Dy. I.G.P., RAF) to your honour, with the request to condone the three (3) months notice period required as per the rules (copy enclosed for ready reference please as Appendix A).

2. That as per the advice/suggestion of Director General CRPF and as per his assurance vide para 5 of their letter No.O.II-626/70-Estt.I dated 27th May, 1993 (copy enclosed as Appendix B) that my request for voluntary retirement shall be considered sympathetically I requested Deputy Director (Estt.), Directorate General CRPF vide my letter No.T.IX-1/93-PF(DM) dated 18th June, 1993 (copy enclosed for ready reference as Append.C) for early consideration of my voluntary retirement by condoning notice period and as well as intimated the factual position of illness hospitalization (copy of my letter dated 21st May, 1993 enclosed as Append.D with reference to Para 3 of Append.C).

3. Having awaited the order of early consideration of my case as assured by Directorate General for two months I requested once again Director General CRPF through my application dated 29th July, 1993 for early issuance of orders and simultaneously approached IGP, RAF to sanction leave kind due corresponding with the date of required notice period for voluntary retirement

vide my application dated 29th July, 1993 (both applications are enclosed as Append.E and F respectively for ready reference).

4. Since the required three (3) months notice period has also expired and as per existing rules of Govt. of India on the subject I stand retired from the service. My qualifying service has already been verified.

5. As no orders/communication on my request for voluntary retirement on compassionate ground have been received by me till date I, earnestly request your honour to kindly issue necessary orders at the earliest to release my pension/dues so that I do not face further financial hardship considering my almost thirty (30 years long service I have rendered to Nation while serving in Indian Army and Central Reserve Police Force in most difficult times, due to any administrative delay at this stage which I have already been made to face due to stoppage of my pay and allowances since April'93 particularly when I was suddenly taken ill hospitalized and had to pay heavily for treatment.

Thanking you, Sir,

Yours faithfully,

Sd/-

30/8/93

(DIVAKAR MISRA)

COMMANDANT

CRPF (on leave)

End: Append. A to E"

13. On this representation, the decision which was conveyed to the petitioner in April, 1994, is Annexure P19, which reads:-

"To

Shri Divakar Misra,

Commandant,

Flat No. 9160, Sector-C,

Pocket 9, Vasant Kunj,

New Delhi,

Subject:- VOLUNTARY RETIREMENT FROM SERVICE

Sir,

I am directed to refer to your letter No.O.II/1/93-PF(DM) dated 21.3.94, addressed to the DG, CRPF, on the above subject, and to state that the

Competent Authority has considered your representation dated 30.8.93, addressed to the President, on the above subject, and has rejected the same. An intimation to this effect was sent to you, vide this Dte. letter of even No. dated 1.2.93. A photocopy of the same is enclosed for your needful action.

2. Since, your voluntary retirement has not been accepted by the Competent Authority, there is no question of releasing any pensionary benefits to you.

Yours faithfully,

Sd/-

(R.C. TAYAL) Asstt. Director(Estt-1)"

14. The aforementioned communication (Annexure P19) is accompanied by letter dated November, 1993 which reads:-

"To

Shri Divakar Misra,

Commandant,

Type IV Spl. Flats,

F-15, Andrews GanJ.

New Delhi.

Subject:- VOLUNTARY RETIREMENT FROM SERVICE

In continuation to this D.O. endorsement of even number dated 16.11.93.

2. The MHA have intimated that the Competent Authority has considered your representation dated 30.8.93, addressed to the President, on the above subject and has rejected the same,

3. Please ack. receipt.

(Deepa Mehta)

Asstt, Director (Estt)."

15. Learned counsel for the petitioner has placed reliance upon the decision in Dinesh Chandra Sangma Vs. State of Assam and Others, that there is right of the Government servant under FIR 56(c) to voluntarily retire from service by giving the Government 3 months" notice in writing and there is no question of acceptance of the request of voluntary retirement by Government, when the Government servant exercises his right under FR 56(c). Therefore, the petitioner contends that since he had completed 20 years of qualified service under Sub-clause (2) of Clause (c) of Rule 43 of the Rules, on giving 3 months" notice irrespective of its acceptance, the petitioner stood retired on expiry of the period of notice. It was contended in the alternative that in case Clause (d) of Rule 43

would apply, the decision ought to have been communicated to the petitioner within 3 months and in case decision is not communicated, the petitioner will be deemed to have retired. Reliance for this preposition was placed on the decision in *Dr. A.S.N. Swamy v. State of Karnataka*, 2986 (1) S L R 76, contending that the right conferred on the petitioner cannot be denied by not taking a decision on his request. Voluntary retirement after qualifying service of 20 years is generally accepted except in cases where disciplinary proceedings are pending or are contemplated. As on the relevant date, neither any disciplinary proceeding was pending nor contemplated by applicability of this provision, the petitioner would stand retired on expiry of the period of notice. Reliance was also placed on the decision of Division Bench of this Court in *Union of India v. Harendra Lal Bhattacharya*, 1984 (1) S L R 1 that Rule 56-K of the Fundamental Rules gives to a Government servant right to retire by giving notice of not less than 3 months in writing. The said sub-rule lays no requirement that the notice must be accepted. It is implied by proviso (b) that except when a Government servant is under suspension, appropriate authority has no power to withhold permission to retire. The irresistible conclusion is that notice given under Sub-rule (k) of Rule 56 is effective *pro prior vigore* and needs no acceptance.

16. Having considered the submissions made at the Bar, we are of the view that the petitioner's case is neither covered by the authorities cited at the Bar nor as is contended by learned counsel for the petitioner. The petitioner's service is governed by C.R.P.F. Rules and as such, Rule 43 of the said Rules is applicable and not the Fundamental Rules. Sub-clauses (i) to (vi) of Clause (d) of Rule 43 is the relevant provision, which along would be applicable to the facts of the case. The petitioner joined the service only on 24.8.1970. It is not shown that under what provision, the petitioner's earlier service, as a Short Service Commissioned Officer in Indian Army could be tagged on or added to the service rendered in CRPF. Nothing is stated in the appointment letter that the period of service rendered by the petitioner in Indian Army as an Emergency Officer would stand automatically added to or tagged on to the service in CRPF. As such, Clause (c) would not be applicable. It could apply only in case the petitioner's service rendered in Indian Army would get tagged on to the service rendered in CRPF. As such, Clause (c) of Rule 43 would not apply. It is only Clause (d), which would apply.

17. Admittedly, the petitioner had put in not less than 20 years of qualifying service and was entitled to seek voluntary retirement. Sub-clause (i) of Clause (d) of Rule 43 enables the competent authority to decline request for voluntary retirement, in case the exigencies of service require otherwise. In other words, unless the exigencies of service require otherwise, a member of Force, having put in not less than 20 years of service shall be permitted to retire. Here the emphasis is laid on the words "permitted". In case Sub-clause (i) of Clause (d) is read with Sub-clause (vi), it makes abundantly clear that a notice to retire voluntarily under Clause (i), after completion of 20 years of qualifying service shall require "acceptance" of the appointing authority. Such requirement of

acceptance by the competent authority is only in those cases in which the date of retirement, on the expiry of the period of notice would be earlier than the date on which the member of the Force concerned could have retired under Sub-rule (a). Sub-rule (a) says that the retirement of a member of Force shall take effect from the afternoon of the first day in which the member attains the age of 55 years. Admittedly, taking the petitioner's date of birth into consideration, the petitioner's date of retirement on expiry of the notice period definitely would be earlier than the date of his attaining the age of 55 years. As such, reading Sub-clauses (i) and (vi) of Clause (d) together, the notice required acceptance of the appointing authority. Without acceptance, there is no question of there being automatic acceptance of voluntary retirement, as contemplated.

18. Reference be made to the decision of Supreme Court in Himachal Pradesh Horticultural Produce Marketing and Processing Corporation Ltd. Vs. Suman Behari Sharma, interpreting bye-law 3.8 of Himachal Horticulture Produce Marketing and Processing Corporation Bye-laws. The Court held that the employee had a right to make request, but the request would become effective only if he is permitted to retire. Similar interpretation will have to be given to Clause (d) that a member of the Force having put in not less than 20 years, has a right to seek retirement, but request if not accepted and permission if not granted, a member of the Force will not be able to retire, as desired by him, which interpretation is clear by use of the word "he shall be permitted" in Clause (a) and of the words "shall require acceptance" in Sub-clause (vi).

19. In view of the ratio of decision in Suman Bihari Sharma's case (supra), the petitioner's contention that he stood retired on expiry of period of three months from the date of period of his notice, cannot be accepted since there was no permission accorded and there was no severance of relationship of Master and Servant and for that reason, the other prayers in the writ petition cannot be allowed that disciplinary proceedings could not be initiated against the petitioner. Consequently, this writ petition, which is devoid of force, is dismissed.