

**(2017) 01 RAJ CK 0100**  
**In the Rajasthan High Court**  
**Case No : 7729 of 2003**

Jagdish Singh Shekhawat

APPELLANT

Vs

The Union Of India & ors.

RESPONDENT

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**Date of Decision :** 12-01-2017

**Acts Referred:**

[Border Security Force Act, 1968](#), [Section 10](#) - Termination of service by Central Government  
[Central Civil Services \(Pension\) Rules, 1972](#), [Rule 48A](#) - Rule 48A -  
[Rule 48A](#)

**Citation :** (2017) 01 RAJ CK 0100

**Hon'ble Judges :** Sanjeev Prakash Sharma

**Bench :** SINGLE BENCH

**Advocate :** R.S. Bhadauria, Manjeet Kaur, R.D. Rastogi

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## Judgement

1. The counsel for the petitioner by way of this writ petition pointed out that the petitioner who was working on the post of Assistant Commandant In BSF has sought voluntary retirement and served notice dated 17.8.1991 accordingly. He had already completed more than 25 years of service and was eligible to move such an application in terms of Rule 48A of the Rules of CCS (Pension) Rules, 1972. The said application was however not dealt with and no decision was taken by the respondents on the said application within the stipulated period as provided and therefore as per the deeming clause under Rule 48A (2) Proviso, he was required to be treated as retired from service and was also entitled to all the pensionary benefits. It is stated that having moved such an application for voluntary retirement, the petitioner also at the same time sought casual leave and proceeded on leave for 6 days but on account of having become unwell he informed the authority that he would not be able to join as he has undergone surgery. He therefore, applied for 30 days extension of leave and after he rejoined back. He again submitted fresh application leave as respondents informed the period of 90 days was over and the earlier application would not be

applicable. The said application was however not dealt within the stipulated period. He again requested on 20.1.1992 for early disposal of his application for voluntary retirement. The respondents sought fresh application from the petitioner which he again submitted on 9.3.1992 and that too remained undecided. The petitioner again submitted another application on 7.4.1992 seeking release of pensionary benefits also. The petitioner was called for completion of pensionary documents on 9.5.1992 and he submitted complete pension papers but on 8.7.1992 he was intimated that the application dated 7.4.1992 has been rejected.

2. The petitioner filed a writ petition no. 4837/1992 before this court which came to be dismissed by this court on 24.8.1992 in limine. He filed D.B. special appeal 641/1992 which was allowed on 21.3.2002 and the matter was remitted back to the Single Judge. While the said writ petition was pending, the respondents issued orders for arrest of the petitioner and therefore, he moved second stay application before the court seeking interim relief and the court passed an order restraining the respondents from arresting the petitioner. Thereafter, on 27.6.2005, the petitioner was dismissed from service and he moved an application for amendment in the writ petition challenging the order dated 27.6.2005 but the writ petition was allowed to be withdrawn within permission to file a fresh writ petition incorporating the amendments. Accordingly the present petition has been filed. The writ petition was admitted and is pending disposal.

3. It is submitted by the petitioner that the first application, which he had moved for voluntary retirement in itself resulted in his retirement as there was no decision taken on the said application and all the further proceedings which have under gone stand vitiated and could not have been continued against him. He was not required to move one application after another as the provision of law clearly provided that if the application for voluntary retirement is not rejected i.e. no decision is taken on the application within the notice period, from the date of the application for Voluntary retirement having been submitted, the concerned officer/employee shall be treated to have retired from service from the effective date of notice period. Thus, it is a deeming clause and the petitioner can very well presume that he stood retired after expiry of 3 months notice period provided under the proviso of Rule 48A (2).

4. The counsel for the petitioner further submitted that under Rule 48A (4) it has been provided that "A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority: Provided that the request for withdrawal shall be made before the intended date of his retirement."

5. A Government Servant who has moved such an application and elected to Voluntary Retirement would be deemed to have retired himself and therefore, after expiry of 3 months from 17.8.1991, the petitioner ought to be treated as retired and his retiral benefits should be released accordingly. In respect of these

submissions, the counsel has relied upon the Judgment passed in the case of State of Haryana Vs. S.K. Singhal reported in [AIR 1999 SCC P.1829] and submits that the law relevant to the voluntary retirement has been thoroughly dealt with and does not require to be further dealt with by this court.

6. Per contra, the counsel for the respondents states that the Border Security Force Act and the Rules contained therein have to be examined in light of provisions contained under the Pension Rules, 1972, proceedings under Section 10 read with 21(1) of the Rules have been under taken and dismissal order has been passed accordingly. A presumption has to be drawn that disciplinary proceedings were in contemplation as he had over stayed on leave for a period of 91 days initially and thereafter 39 days as he was not present in the unit, his application for voluntary retirement could not be processed and in spite of the fact that several notices were sent to him for joining back the duties, he chose to stay on leave and join much later than the stipulated period. The time for deciding the notice for voluntary retirement also lapsed and therefore, the application could not be decided in time.

7. The petitioner has in rejoinder also pointed out that the dismissal order which has been passed is not in consonance with law as no departmental enquiry was conducted at the time when he joined back on duties after accepting his leave application, no notice was given nor any departmental proceedings was under taken against him. It was only when he filed writ petition before this court which was dismissed and the Division Bench remitted the matter to the Single Bench that the dismissal order was passed. The petitioner withdrew the earlier writ petition and filed the present writ petition against the dismissal order. Thus, it is stated, impugned order suffers from malice in law.

8. Having given thoughtful consideration to the rival submissions made by both the counsel, this court finds that the petitioner has been subjected to unjustified harassment. The fact remains is that the provisions of Pension Rules of 1972 are applicable on BSF employees, and they have to abide by the said Rule 48A, which reads as under:- 48-A. Retirement on completion of 20 years" qualifying services

(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 -

(1) on assignments under the Indian Technical and Economic Co-operation (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.

(3) Deleted.

(3-A).....

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement.

EXPLANATION-For the purpose of this rule, the expression "Appointing Authority" shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.

9. With regard to the manner and method by which a Government Servant may seek voluntary retirement, the same is binding both on the employer as well as on the employee and the proviso of Rule 48 A (2) being deeming clause is in mandatory form making the retirement effected from the date of expiry of the said period. It does not leave any further room for shifting of the date of retirement, neither for the Government Servant who has applied nor for the authority to whom the Government Servant may have applied to continue the said Government Servant after the said date in employment. And the Government Servant cannot withdraw the notice after the expiry of this period and shall be deemed to have retired.

10. In the case of State of Haryana Vs. S.K. Singhal, (Supra) the Supreme Court has specifically dealt with a similar instance as in the present case and it was held in para nos 5, 6, 8, 13 and 19 as under:- 5. It is in the light of the above facts that it has to be considered if the respondent must be deemed to have retired. That is the crucial question. Question also arises whether the allegation that the respondent was "not attending to duties" after notice was relevant and could be a valid ground for refusing to permit the voluntary retirement coming into force under Rule 5.32 (B).

6. The said rule 5.32 (B) of the Punjab Civil Service Rules, (Vol.2) reads as follows :

"Rule 5.32 (B):

(1) At any time a Government employee 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. However, a Government employee may make a request in writing to the appointing authority to accept notice of less than three months giving reason therefore. On receipt of a request, the appointing authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government employee shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(2) The notice of voluntary retirement given under subrule (1) shall require acceptance by the appointing authority subject to Rule 2.2 of Pb. C.S.R. Vol. III

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in sub-rule (1) supra, the retirement shall become effective from the date of expiry of the said period :

Provided further that before a Government employee gives notice of voluntary retirement with reference to sub-rule (1) he should satisfy himself by means of a reference to the appropriate authority that he has, in fact, completed twenty years service qualifying for pension."

8. It will be noticed that under Rule 5.32 B, a government employee who has completed 20 years of qualifying service may, by giving notice of not less than 3 months in writing to the appointing authority, retire from service. There is provision for requesting for relaxation of the notice period of 3 months and for consideration thereof. As to what the appointing authority is to do is governed squarely by sub-clause (2). That sub-clause states that the notice of voluntary retirement given under sub-clause (1) "shall" require acceptance by the appointing authority subject to Rule 2.2 of the Punjab Civil Service Regulation (Vol.II). Acceptance of the request is subject to Rule 2.2 of the Rules. But the proviso to subclause (2) of Rule 5.32B states that if the permission to retire is not refused within the period specified in subclause (1) the retirement shall become effective from the date of expiry of the period. Therefore, it is clear that if a person has completed 20 years qualifying service and has given a notice under rule 5.32B of 3 months (or if his request for relaxation of 3 months is accepted), then the request "shall" be accepted subject to invoking the provision of Rule 2.2 of the Punjab Civil Service Rule (Vol.II). Under Rule 2.2, the "future good conduct" of an employee is an implied condition of every grant of pension. In other words, what all it means is that even if the acceptance of the voluntary retirement is mandatory, there is an obligation cast on the retired employee to maintain good conduct after such retirement. The words "future good conduct" mean good conduct after retirement. If the employee does not continue to maintain good conduct after retirement, then the govt. can withhold or withdraw

the pension or a part of it in case he is convicted of serious crime or in case he be guilty of grave misconduct. Such decision to withhold or withdraw the whole or part of pension would be final and conclusive, that is to say, so far as the governmental hierarchy is concerned. It will be noticed that Rule 2.2 does not obstruct the voluntary retirement to come into force automatically on expiry of 3 months and it only enables withdrawal or withholding of pension subject to certain conditions, to a retired employee.

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 concerned authority 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 concerned authority 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.

13A. Before referring to the second category of cases where the rules require a positive acceptance of the notice of voluntary retirement and communication thereof, it is necessary to refer to the decision of this Court in *Dr. Baljit Singh vs. State of Haryana* 1997 (1) SCC 754 strongly relied upon by the learned counsel for the appellants and to *Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia* 1997 (4) SCC 280. The former case arose under Rule 5.32(b) of the Punjab Civil Service Rules. That rule extracted earlier contains an express provision in the proviso to sub-section (2) that the retirement takes effect automatically if refusal is not communicated within 3 months. In that case, when the employee gave notice for voluntary retirement on 20.9.1993, criminal cases were pending against him. After expiry of 3 months, on 25.2.1994, the competent authority declined to accept the notice. A two Judge Bench of this Court, however, held that the voluntary retirement did not come about automatically on the expiry of the notice period but that it could take effect only upon acceptance of the notice by govt. and that the acceptance must also be communicated and till then the jural relationship of master and servant continues. This Court referred only to the decision of the two Judge Bench in *Sayed Mazaffar Mir's case* 1995 Supp. (1) SCC 76 and stated that case was to be confined to its own facts. The two Judge Bench of this Court in *Dr. Baljit*

Singh's case 1997 (1) SCC 754 did not notice that there were two three Judge Bench cases in Dinesh Chandra Sangma and Shelat taking the view under similar rules that a positive order was to be passed within the notice period withholding permission to retire and that the said order was also to be communicated to the employee during the said period. By stating that an order of acceptance of the notice was necessary and that the said acceptance must be communicated to the employee and till that was done the jural relationship continued and there was no automatic snapping thereof on expiry of 3 months period, the Two Judge Bench, in our view, has gone contrary to the two three Judge Bench cases which were not brought to its notice. In the above circumstances, we follow the two three Judge Bench cases for deciding the case before us.

19. So far as the plea of the State in regard to absence from duty during the notice period is concerned, the High Court has shown that it is unsupportable on facts. In any event, in view of the express provision in the proviso to sub-rule (2) of Rule 5.32B referred to above requiring communication of rejection within the notice period, the said allegations of absence even if true, cannot help the State.

11. For the aforesaid reasons, the writ petition preferred by the petitioner has to be allowed.

12. An argument has also taken by the counsel for the respondents that there is a provision under Rule 28 of the BSF Rules to file an appeal however from the bare reading of the Rule 28, it is clear that the provisions would not be attracted with regard to actions/inactions under Rule 48(A) of the Pension Rules of 1972. The argument therefore is without merit and deserves to be rejected.

13. The question still remains relating to the order of the dismissal. It is however, not required to be examined as the entire action taken by the respondents after the date when the petitioner shall be treated to have retired, will have to be treated as null and void and therefore, all the orders including the order of dismissal have to be treated as not having been passed accordingly.

14. In the case of B.J. Shelat's case [reported in 1978 (2) SCC 202], it was held that:- "It was further made clear that the appointing authority

"has no jurisdiction to take disciplinary action against a government servant who had effectively retired."

It was held that :

"disciplinary action cannot be taken after the date of retirement".

Therefore, it was necessary to communicate the decision of refusal of permission before the expiry of the notice period."

15. The petitioner also entitled to receive the entire benefits of pension and post retiral benefits including commutation and gratuity with effect from 18.11.1991 accordingly. It is directed that the respondents shall take steps to release the entire dues and arrears of amount to which the petitioner was entitled as treated

him as retired as on 18.11.1991. He would also be entitled to receive interest @ 9% per annum both on the arrears and pension as well as on other retiral benefits including the gratuity taking into consideration that the petitioner has been running from pillar to post for his dues since 1991 till date cost of Rs.50,000 which has to be paid to the petitioner by the respondents, the entire exercise will be completed within a period of 3 months from the date of receiving the certified copy of this and failing which the petitioner shall be free to initiate contempt proceedings without giving any further notice to the respondents.