**(2002) 07 DEL CK 0065**

**In the Delhi High Court**

**Case No :** C.W.P. No. 4412 of 2001

Ms. Pratibha Lalwani APPELLANT

Vs

Union of India (UOI) and Another RESPONDENT

**Date of Decision :** 09-07-2002

**Acts Referred:**

Central Civil Services (Leave) Rules, 1972 — Rule 19(3)
Central Civil Services (Pension) Rules, 1972 — Rule 12, 48A, 48A(2), 56K, 56K(2)

**Citation :** (2002) 07 DEL CK 0065

**Hon'ble Judges :** S.B. Sinha, C.J;A.K. Sikri, J

**Bench :** Division Bench

**Advocate :** J. Chaudhari, Rahul Srivastava and Suparna Srivastava, for the Appellant; Sarabjit Sharma and R. Veena, for the Respondent

**Final Decision :** Dismissed

## Judgement

S.B. Sinha, C.J.—Interpretation of Rule 56K of the Central Civil Services (Pension) Rules, 1972 (hereinafter referred to as ''the said Rules'') falls for consideration in this writ petition, which arises form a judgment dated 25.05.2001 passed in O.A. No 1828 of 2000 by the Central Administrative Tribunal Principal Bench, New Delhi (hereinafter referred to as ''the Tribunal'').

2. The petitioner was an Income Tax Officer. She had been suffering from chronic spastic Colt is and chronic endogenous depression. She was admittedly on leave from 05.06.1991 till 23.10.1992 wherein she had been granted extraordinary leave by an order dated 11.12.1992. Because of her continued ill-health she got this leave extended from time to time as under:-

"1. 24.10.92 to 30.4.93 on her application dt. 17.5.93

2. 1.5.93 to 31.8.93 vide order dt. 1.10.93

3. 1.9.93 to 31.8.94 vide order dt. 11.8.94"

On 04.07.1997, she had again been diagnosed as having been suffering from agitated depression and phobia ad was medically advised to take complete rest.

3. It is not in dispute that she sent a telegram and a letter, which is in the following terms:-

:TO THE COMMISSIONER OF INCOME TAX CITY AIKAR BHAVAN

UNABLE TO RESUME DUTY RESIGNATION APPLICATION ALONG WITH NECESSARY PAPERS FOLLOWS SORRY FOR THE DELAY

MRS. PRATIBHA LALWANI"

To,

The Commissioner of income tax

Ayakar Bhavan,

Bombay.

Subject: Extension of Extraordinary Leave on medical grounds for period of 1.9.95 to 29.2.96.

Sir,

I am submitting herewith the necessary leave applications and may certificates as required for Extraordinary Leave on health grounds for the above-mentioned period.

There has been delay in my submitting the necessary application, as I have been extremely unwell.

Owing to ill health I was admitted to hospital twice from 23.03.95 to 6.10.95 and 17.11.95 to 15.1.96 with severe hypertension, depression, Jaundice & Dehydration. I am still under medical supervision of Senior Specialists.

I am sending the medical certificate countersigned by the Medical Officer, C.G.H.S. in-charge, along with the other necessary papers. I am seeking further leave till the end of February in case I am not fit by then I shall seek voluntary retirement.

I am extremely sorry for all the inconvenience caused. Kindly grant me the leave and oblige.

Thanking you,

Yours faithfully

Sd/-

(Smt. P. Lalwani)

Encl: Original medical certificates Leave application."

On her aforementioned representation, her leave application was deferred, but as no notice for voluntary retirement or any other communication was received from her, which was considered to be a lack of willingness on her part to continue in Government service. She sought for voluntary retirement w.e.f. 04.07.1997 by a notice dated 07.07.1997, which reads thus:-

"Dated: 7.7.1997

To,

The Chairman,

Central Board of Direct Taxes,

North Block,

Parliament Street,

New Delhi

THROUGH C.C.I.T. BOMBAY

Respected Sir,

This is in response to the communication received from the office of the Chief Commissioner of Income Tax Bombay as directed by you, letter dated 24.6.1997 received by me on 05/07/97.

I am extremely grateful to the Chairman Central Board of Direct Taxes for having considered my case on humanitarian grounds and given me the opportunity to put in my papers for voluntary retirement under Rule 56(k) of F.R.

Since I am unable to serve the department as required for health reasons I submit herewith this letter or resignation seeking voluntary retirement with effect 04/07/97.

I am extremely sorry for the inconvenience caused to the C.B.D.T. on my account.

Thanking you,

Yours faithfully

Sd/-

(Smt. P. Lalwani)"

4. After lapse of more than one year, she however, sought to withdraw the same by letter dated 05.08.1998 stating:-

"Date: 5/8/98

To,

THE CHAIRMAN

CENTRAL BOARD OF DIRECT TAXES

 

MINISTRY OF FINANCE

NORTH BLOCK

NEW DELHI.

THROUGH : CHIEF COMMISSIONER OF INCOME TAX BOMBAY.

Respected Sir,

I would like draw your attention to the fact that as directed by the Board I had put in my papers for Voluntary Retirement under Rule 56 K vide letter dated 07/07/97. Till date I have had no communication from the Board in this regards. Fortunately in the mean time I have recovered from my illness and now the Doctors treating me have certified that I have recovered from my illness and I am fit to resume my duties and hence if the Board permits I would like to withdraw my resignation and rejoin my duties once again.

Fitness certificates are enclosed herewith.

Hoping for a favorable response.

Thanking You,

Yours faithfully

Sd/-

(Mrs. P. LALWANI)

5. Having regard to the provisions of Rule 12 of the said Rules, the matter was referred to the Department of Personnel & Training and the said period, namely, 05.06.1991 to 04.07.1997 was treated as unauthorized absence.

6. The Department left the matter at the option of the appointing authority as to whether her offer of voluntary retirement should be accepted or the said period would be treated as unauthorized absence from duty.

By an order dated 07.08.1998 only extraordinary leave was granted.

7. On or about 03.05.1999, however, the respondent no.1 by a letter informed her to appear before the Medical Board for medical examination in the following terms:-

"Smt. Pratibha Lalwani, IRS,

Commissioner of Income Tax,

63/2, Koregaon Park,

Pune - 411001

Madam,

Sub: Constitution of Medical Board under Rules 19(3) of CCS (Leave) Rules:

 

Kindly refer to the letters to Chairman, CBDT, New Delhi, in connection with your leave as also the request for withdrawal of your application for voluntary retirement.

2. In this Connection, it is desired by the CBDT to refer your case to Medical Board. You are Therefore requested to appear before you Medical Board on 05th May, 1999, at 10.00 a.m. at Gokuldas Tejpal Hospital, Lokmanya Tilak Marg, Crawford Market (Near commissioner of Police''s Office), Mumbai, for Medical examination.

Yours faithfully,

Sd/-

(Akhilesh Ranjan)

Jt. Comm. of Income Tax (HQ)

Administration, Mumbai"

Whereupon, she appeared before the Medical Board.

8. On or about 01.11.1999, the respondent issued an Order which is in the following terms:-

"F. NO. A-24012/6/92-Ad. VIA

Government of India

Ministry of Finance

(Department of Revenue)

(Central Board of Direct Taxes)

*****

New Delhi, the 1st November, 1999

ORDER

Subject: Notice for voluntary retirement under Rule 56 (K) of the CCS (Pension) Rules, 1972-Smt. P. Lalwani (IRS : 1966) - Acceptance of Regarding.

Smt. P. Lalwani (IRS : 1966) who was on leave with effect form 5th June, 1991 and who had completed more than 31 years of Government Service and attained the age of 54 years had sought voluntary retirement under Rule 56 (K) of CCS (Pension) Rules, 1972, from service with effect from 4th July, 1997 vide her letter dated the 7th July 1997.

2. The undersigned is directed to convey the approval of the President to the acceptance of the request of Smt. P. Lalwani giving notice for voluntary retirement. The competent authority has also decided to treat the entire period from 5th June, 1991 to 4th July, 1997 as dies non.

 

3. Accordingly, Smt. P. Lalwani stands retired from service with effect from 4th July, 1997.

4. It is certified that no vigilance clearance is either pending or contemplated against her.

Sd/-

(Bimal Kujar)

Under Secretary to the

Government of India"

9. Questioning the validity of the said letter, the original application was filed by the before the Tribunal. By reason of the impugned judgment dated 25.05.2001, the learned Tribunal allowed the said original application in part in terms whereof that part of the order whereby and whereunder the period form 05.06.19991 to 04.07.1997 was directed to be considered as dies non was set aside, where for a direction was issued to the respondents to give an opportunity of hearing to the petitioner for regularization of the said period within 2 months from the date of the receipt of the copy thereof. However, that part of the impugned order, whereby the voluntary retirement of the petitioner was accepted, was held to be valid.

10. Ms. J. Chaudhari, the learned senior counsel appearing on behalf of the petitioner would contend that it is a trite law that a letter of voluntary retirement can be withdrawn before the same is accepted and, thus, as in the instant case the petitioner had withdrawn her offer of voluntary retirement before its acceptance, the impugned judgment must be held to be illegal.

The learned counsel would contend that Rules 56(K)(2) of the said Rules does not come in the way of the petitioner in withdrawing the letter of voluntary retirement, as nothing had been heard in that behalf from the respondents. Reliance in this connection has been placed on Shambhu Murari Sinha Vs. Project and Development India and Another, , Balram Gupta Vs. Union of India (UOI) and Anr, ; and J.N. Srivastava Vs. Union of India (UOI) and Another,

11. Dr. Sarabjit Sharma, the learned counsel appearing on behalf of the respondents, on the other hand, would submit that having regard to the fact that the petitioner voluntarily retired from a particular date, it was not a case where the resignation / offer of voluntary retirement could be withdrawn.

12. The petitioner for reasons best known to her had not annexed a copy of he offer of resignation dated 07.07.1997. The same has, however, been annexed with the counter affidavit filed on behalf of the respondents.

13. From a perusal of the said offer of resignation, it appears that prior to submission thereof, there had been correspondences and/or telegraphs whereby the Chairman, Central Board of Direct Taxes instead of taking any disciplinary

 

action against her offered that she may make an offer of voluntary retirement in terms of Rule 56(K). The parties, Therefore, had arrived at a settlement that instead of taking action against her in terms of the said Rules, she should be allowed to retire voluntary on medical grounds. The petitioner had resigned w.e.f. 04.07.1997. She did not keep her option open for retirement from a letter date so as to enable her to withdraw her resignation, if any contingency arises therefore.

14. Rule 56(K) of the said Rules reads thus:-

"56(K)(1) Any government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years, if he is in Group ''A'' or Group ''B'' service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of, fifty-five years:

Provided that-

(b) Nothing in the clause shall also apply to a Government servant, including scientist or technical expert who (i) is on assignment under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid Programmes, (ii) is posted abroad in a foreign based office of a Ministry/Department and (iii) goes 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 and

(c) It shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause.

(1-A)(a) A government servant referred to in Sub-clause (1) may make a request in writing to the appointing authority to accept notice of less than three months giving reasons therefore;

(b) On receipt of a request under Sub-clause (1-A) (a), 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 servant shall not apply for commutation of a part of his pension before the expiry of the period of three months.

(2) A Government servant, has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement."

15. It is not in dispute that the petitioner fulfills the requirements of Clause (1)

 

of Sub-rule (K) of Rule 56 of the said Rules. Clause (2) of Sub-rule (K) of Rule 56 of the said Rules clearly states that an employee intending to retire voluntary would not be allowed to withdraw the same subsequently except with the specific approval of the competent authority. If no approval is granted, the action of the respondent cannot be said to be arbitrary. The proviso appended to Clause (2) of Sub-rule (K) of Rule 56 of the said Rules categorically states that such request for withdrawal must be made within the intended date of his retirement. The intended date of his retirement being 04.07.1997, i.e., prior to the date of resignation by way of voluntary retirement, the same, thus, could not have been withdrawn.

It, Therefore, is not a case where the learned Tribunal can be said to have committed any illegality in holding that the petitioner could not have withdrawn her resignation in terms of the said Rules.

16. The Apex Court in Tek Chand Vs. Dile Ram, has categorically held that there are three categories of resignations in the following terms:-

"33. It is clear from Sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under Sub-rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the period specified in the notice. The proviso the Sub-rule (2) is clear and certain in its terms. If the appointing authority doe snot refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before the expiry of the period specified in the notice dated 5-12-1994. The learned Senior Counsel for the respondent argued that the acceptance of voluntary retirement by appointing authority in all case is mandatory. In the absence of such express acceptance the government servant continues to be in service. In support of this submission, he drew our attention to Rule 56(k) of the Fundamental Rules. He also submitted that acceptance may be on later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso in Sub-rule (2) of Rule 48 - A is clear in itself and the said Rule 48-A is self contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a government servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a government servant could continue in service till the voluntary retirement is accepted. This proviso to Sub-rule (2) of Rule 48 - of the Rules does not admit such situation.

34. This Court in a recent judgment in the case of State of Haryana and Others Vs. S.K. Singhal, after referring to few earlier decisions of this Court touching the very point in controversy in para 13 of the judgment has held thus: (SCC p. 303)

"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntary retire is conferred in absolute terms as in Dinesh Chandra Sangma Vs. State of Assam and Others, by the relevant rules and there is no provision in the 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 Vs. State of Gujarat and Others, and as in Union of India and others Vs. Sayed Muzaffar Mir, the authority concerned is empowered to withhold permission to retire if certain conditions exists, viz., in case the employee is under suspension or in case a departmental enquiry is pending or is contemplated, the more pendency of the suspension or departmental enquiry or its contemplation does not result in the notice for voluntary retirement for coming in effect on the 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 case (supra) and in Sayed Muzaffar Mir case (supra) 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 of withholding of permission.

"35. In our view, this judgment fully supporters the contention urged on behalf of the appellant in this regard. In this judgment, it is observed that there are three categories of the rules relating to seeking of voluntary retirement after notice. In the first category, voluntary retirement automatically comes into force on expiry of notice period. In the second category also, retirement comes into force unless an order is passed during notice period withholding permission to retire and in the third category voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. In such a case, refusal of permission can be communicated even after the expiry of the notice period. It all depends upon the relevant rules. In the case decided, the relevant Rule required acceptance of notice by appointing authority and the proviso to the Rule further laid down that retirement shall come into force automatically if the appoint authority did not refuse permission during the notice period. Refusal was not communicated to the respondent during the notice period and the Court held that voluntary retirement came into force on expiry of the notice period and subsequent order conveyed to him that he could not be deemed to have voluntary retired had no effect. The present case is almost identical to the one decided by this Court in the aforesaid decision."

17. In the facts and circumstances of the case, the date of voluntary retirement is specifically notified and as noted hereinbefore the resignation could be withdrawn only with the approval of the competent authority before expiry of the said date. It is, Therefore, not a case where the voluntary retirement was required to be specifically accepted.

18. In Balram Gupta''s case (Supra), whereupon the learned counsel for the petitioner relied upon, the Apex Court was concerned with interpretation of Rule 48 A of the said Rules, Sub-rule (2) whereof clearly stated that the notice of voluntary retirement would require acceptance by the appointing authority subject to the condition that in the event the refusal to grant permission is not communicated within the period of he specified in the notice, retirement would become effective from the date. Therefore, the said decision cannot be said to have any application in the instant case.

19. In J.N. Srivastava''s case (Supra), the order of voluntary retirement was withdrawn before expiry of the period of three months. In that case, the Apex Court followed Dile Ram Gupta''s case (Supra), which as indicated hereinbefore was concerned with interpretation of Rule 48A of the said Rules.

20. In Shambhu Murari Sinha''s case (Supra), whereupon the learned counsel for the petitioner placed strong reliance, the fact of the matter was that although the option of voluntary retirement exercised by the appellant therein by his letter dated 18.10.1995 was accepted by the respondent management by their letter dated 30.07.1997, he was to be relieve from service on 26.09.1997 but allowed to continue in service on 26.09.1997, and as the appellant had already withdrawn offer of voluntary retirement by his letter dated 07.08.1997, it was held that the date from which the voluntary retirement could be held to have become effective was 26.09.1997.

21. For the reason aforementioned, we are of the opinion that in the instant case the aforementioned decisions of the Apex Court cannot be said to have any application whatsoever.

22. The submission of the learned counsel for the petitioner to the effect that by reason of the constitution of the Medical Board, the respondent must be held to have permitted the petitioner to withdraw the offer of resignation cannot be accepted. The Medical Board was constituted in terms of Rule 19(3) of the said Rules, which reads thus:-

"19. Grant of leave on medical certificate to gazetted and non-gazetted Government servants.--

(3) The authority competent to grant leave may, at its discretion, secure a second medical opinion by requesting a Government Medical Officer not below

 

the rank of a Civil Surgeon or Staff Surgeon, to have the applicant medically examined on the earliest possible date."

23. The Board was constituted in reference to the petitioner''s letter in connection with her leave as also the request for withdrawal of the application. Having regard to the fact that the Medical Board was constituted in terms of Rule 19(3) of the said Rules, we are of the opinion that thereby it cannot be inferred that the respondents had indirectly made consideration of the petitioner''s case for allowing her to withdraw her offer of the voluntary retirement subject to the condition of her being found medically fit therefore.

24. For the reasons aforementioned there is no merit in this writ petition, which is accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

 