

**Surendra Kumar Agarwal Vs. Engineer-in-chief, P.W.D. and anr.**

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**SooperKanoon Citation :** [sooperkanoon.com/485131](http://sooperkanoon.com/485131)

**Court :** Allahabad

**Decided On :** Nov-06-2003

**Reported in :** 2004(1)AWC412

**Judge :** M. Katju and ;Umeshwar Pandey, JJ.

**Appeal No. :** C.M.W.P. No. 36867 of 2002

**Appellant :** Surendra Kumar Agarwal

**Respondent :** Engineer-in-chief, P.W.D. and anr.

**Advocate for Def. :** S.C.

**Advocate for Pet/Ap. :** Ashok Khare and ;Ramesh Upadhyaya, Advs.

**Disposition :** Petition allowed

**Judgement :**

**M. Katju and Umeshwar Pandey, JJ.**

1. Heard learned counsel for the parties.

2. In this case on 10.9.2002 one month's time was granted to the learned standing counsel, but counter-affidavit has not yet been filed. Hence we have treated the allegations in the petition to be correct.

3. The petitioner was appointed as Executive Engineer in U.P., P.W.D. From 7.8.1997 petitioner was on deputation to the Government of Botswana. On 4.12.2000 petitioner submitted a letter dated 2.12.2000, copy of which is Annexure-15 to the petition, in which he prayed that he should be allowed to take voluntary retirement under the Amended Fundamental Rule 56 of the Financial Handbook. No order was passed on this application. Hence the petitioner filed a writ petition, being Writ Petition No. 40937 of 2001. which was disposed of by this Court on 5.12.2001 with a direction to the authority concerned to decide the petitioner's representation praying for voluntary retirement preferably within six weeks. By the impugned order dated 28.11.2001 the petitioner's application had been rejected. Hence this petition.

4. Fundamental Rule 56 (c) and (d) read as follows :

'(c) Notwithstanding anything contained in Clause (a) or Clause (b). the appointing authority may, at any time by notice to any Government servant (whether permanent or temporary), without assigning any reason, require him to retire after he attains the age of fifty years or such Government servant may by notice to the appointing authority voluntarily retire at any time after attaining the age of forty-five years or after he has completed qualifying service of twenty years.

(d) The period of such notice shall be three months :

Provided :

(i) any such Government servant may by order of the appointing authority, without such notice or by a shorter notice, be retired forthwith at any time after attaining the age of fifty years, and on such retirement the Government servant shall be entitled to claim a sum equivalent to the amount of his pay plus allowances, if any, for the period of the notice, or as the case may be, for the period by which such notice falls short of three months, at the same rates at which he was drawing immediately before his retirement.

(ii) It shall be open to the appointing authority to allow a Government servant to retire without any notice or by a shorter notice without requiring the Government

servant to pay any penalty in lieu of notice :

Provided further that such notice given by the Government servant against whom a disciplinary proceeding is pending or contemplated, shall be effective only if it is accepted by the appointing authority, provided that in the case of a contemplated disciplinary proceeding the Government servant shall be informed before the expiry of his notice that it has not been accepted.'

5. A perusal of the impugned order shows that the petitioner's application had been rejected on the ground that a vigilance enquiry is pending,

6. The submission of the learned counsel is that no order has been passed with reference to the second proviso to Clause (d) of Fundamental Rule 56, within 90 days of the submission of the said application, and hence in view of the second proviso to Clause (d) the petitioner will be deemed to have voluntarily retired.

7. No doubt it has not been specifically mentioned in the second proviso to Clause (d) of Fundamental Rule 56 that if the prayer of the employee seeking voluntary retirement is not accepted within three months it will be deemed to have been accepted. However, in our opinion, since the second proviso puts a time limit for intimating the applicant about the refusal of his prayer, this by implication means that if no such intimation is given within three months the prayer will be deemed to have been accepted.

8. In this connection we may refer to the series of decisions of the Supreme Court which have laid down that while ordinarily a probationer will be deemed to have continued on probation even after the period of probation has expired, if the maximum period of probation has been fixed in the service rules then there will be deemed to have been implied confirmation on the expiry of that maximum period, vide *Wasim Beg v. State of U.P.*, 1998 (2) AWC 1342 (SC) : 1998 (3) SCC 321 (vide para 15) ; *State of Punjab v. Dharam Singh*, AIR 1968 SC 1210 ; *State of Gujarat v. Akhilesh Bhargava*, (1987) 4 SCC 482 ; *O. P. Maurya v. U. P. Co-operative Sugar Factories Federation*, 1986 (Supp) SCC 95 and *M. K. Agarwal v. Gurgaon Gramin Bank*, 1987 (Supp) SCC 643, etc.

9. The analogy of these decisions applies in this case too. Here the maximum period within which the intimation of rejection of the application seeking voluntary retirement is fixed by the rules. Hence on the expiry of that period, if no intimation is sent by them, the application will be deemed to have been allowed.

10. No doubt, it has been stated in Annexure-22 to the writ petition that petitioner's application dated 4.12.2000 has not been received by the Chief Engineer and the Government. However, this statement does not appear to be correct because it has been positively asserted in paragraphs 16, 19 and 27 of the writ petition that petitioner served a notice dated 2.12.2000 on respondent No. 2. It has been stated in paragraph 27 of the writ petition that the said application seeking voluntary retirement was received in the office of the Engineer-in-Chief and for this a receipt has also been received by the office, (vide Annexure-15 to the writ petition). Since there is no counter-affidavit these allegations are un-rebutted and have to be accepted.

11. Since the petitioner was not informed before the expiry of the notice period (three months) that his application has not been accepted, it will be deemed to have been accepted and the petitioner would have also be deemed to have voluntarily retired on the expiry of three months.

12. For the reasons given above, the petition is allowed. The impugned orders are quashed. Respondents are directed to treat the petitioner as having voluntarily retired with effect from the expiry of 90 days from 4.12.2000.