

HIGH COURT OF MADHYA PRADESH : JABALPUR

Case No.	W.P. No.12811/2008
Parties Name	Alok Sinha Vs. The New India Assurance and others
Date of order	7 th April, 2022
Bench Constituted	Justice Vivek Agarwal
Order passed by	Justice Vivek Agarwal
Whether approved for reporting	Yes
Name of counsel for parties	Shri Prabhakar Singh, learned counsel for the applicant. Shri Anoop Nair, learned counsel for the respondents.
Law laid down	<p>1. <i>As per Special Voluntary Retirement Scheme floated by the New India Assurance Company, there is sufficient material on record to demonstrate that an enquiry was contemplated, therefore, petitioner was not entitled to claim Special Voluntary Retirement Scheme.</i></p> <p>2. <i>Three categories rule relating to voluntary retirement are that- (a)-Where voluntary retirement automatically comes into force on expiry of notice period; (b) Where voluntary retirement comes into force unless an order is passed during notice period withholding permission to retire; (c) Voluntary retirement does not come into force unless permission to this effect is granted by the competent authority. (See Tek Chand Vs. Dile Ram, (2001) 3 SCC 290). As petitioner's case fall under Clause (c), there cannot be any deemed acceptance of voluntary retirement application.</i></p>
Significant paragraph numbers	6, 11 & 12

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE**

HON'BLE SHRI JUSTICE VIVEK AGARWAL

ON THE 7th OF APRIL, 2022

WRIT PETITION No. 12811 of 2008

Between:-

**ALOK SINHA S/O SHRI I.S.SHRIVASTAVA , AGED ABOUT
49 YEARS, OCCUPATION: DEVELOPMENT OFFICER, THE
NEW INDIA ASSURANCE CO. LTD., BRANCH OFFICE
SIRMOUR CHOWK, REWA, DISTT. REWA (MADHYA
PRADESH)**

.....PETITIONER

(BY SHRI PRABHAKAR SINGH, ADVOCATE)

AND

**THE NEW INDIA ASSURANCE CO.LTD., THROUGH ITS
CHAIRMAN/MANAGING DIRECTOR, NEW INDIA
1. ASSURANCE CO. LIMITED, HEAD OFFICE-87-MAHATMA
GANDHI MARG-FORT-MUMBAI**

**REGIONAL MANAGER, N.I.A.C. LTD., REGIONAL OFFICE
2. 450000), BLOC NO.3 IIND FLOOR PARAYAVAS BHAWAN,
ARERA HILLS, BHOPA (MADHYA PRADESH)**

**BRANCH MANAGER, NIAC LTD., BRANCH OFFICE
SIRMOUR CHOWK OPP. HANUMAN MANDIR, REWA,
3. DISTT. REWA (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI ANOOP NAIR, ADVOCATE)

This writ petition has come up for hearing on admission on this day, the court passed the following :

ORDER

Petitioner is aggrieved of order dated 31st October, 2007 passed by the Chief Regional Manager, Competent Authority of the New India Assurance Co. Ltd. inflicting penalty of removal from service which shall not be a disqualification for future employment on the petitioner-Mr. Alok Sinha. Petitioner's contention is that he had filed an appeal against the said order of removal which too has been rejected by the appellate authority.

2. Learned counsel for the petitioner submits that voluntary retirement scheme was introduced by the respondent-Insurance Company vide notification dated 2nd January, 2003 (Annexure-P/2). In terms of this policy, petitioner had applied for voluntary retirement on 28/02/2003. It is pointed out that voluntary retirement of only those persons was not to be accepted who were either under suspension or against whom disciplinary proceedings were pending or contemplated. It is submitted that there is a proviso to this condition that a case of Development Officer who is under suspension or against whom disciplinary proceeding is pending or contemplated shall be

considered by the Board of Directors of the Company having regard of facts of each case.

3. It is submitted that as per Clause-5(4) of the General Conditions of the policy, a Development Officer shall not be eligible to withdraw the option once made for Special Voluntary Retirement Package. It is submitted that since petitioner had submitted his option for Special Voluntary Retirement Package, therefore, there was no justification to issue a charge sheet to him on 22/11/2005. Petitioner, awaiting the decision on his application for voluntary retirement, did not participate in the enquiry, as a result, Enquiry Officer had given his findings ex-parte which resulted in the impugned order dated 31st October, 2007. When asked, learned counsel for the petitioner submits that he had not received any charge sheet.

4. On the other hand, Shri Anoop Nair, learned counsel for the respondents, submits that instead of contacting the Enquiry Officer, petitioner approached Manager of Regional Office vide Annexure-P/8 to P/11 asking them to supply copy of documents relating four charges which were levelled upon him. Shri Nair, learned counsel for the respondents further submits that petitioner's denial that he had not received charge sheet is contrary to Annexure-P/10, whereby petitioner, himself,

admitted that he is facing four charges for which he had asked certified copies of documents pertaining to the charges, but, till 26/04/2007 he received documents only in relation to charge No.1 and 3. Petitioner demanded documents pertaining to charge No.2 and 4.

5. Thus, it is evident that petitioner was in receipt of the charge sheet. It was open to the petitioner to have approached the enquiry officer in terms of the provisions contained in General Insurance (Conduct, Discipline & Appeal) Rules, 1975, It is submitted that petitioner was served with copy of enquiry report and thereafter disciplinary authority had taken a decision to inflict punishment of removal from service. Once it has come on record that there was no illegality in the impugned proceedings of departmental enquiry, then impugned enquiry cannot be quashed.

6. Learned counsel for the petitione places reliance on the judgment of Single Bench of this High Court in the cases of **S.S. Nafde Vs. State of M.P. and others, 2013 (1) MPLJ 396 and Harendra Jaseja (Dr.) Vs. State of M.P. & another, I.L.R. (2016) M.P., 384**, wherein ratio is that in terms of provisions contained in Rule 42 of M.P. Civil Services

(Pension) Rules, 1976, voluntary retirement can be presumed if no action is taken within six months or the period prescribed.

7. After hearing learned counsel for the parties and going through the record, it is evident from the record that charge sheet was issued to the petitioner on 22nd November, 2005.

8. Annexure-B to the charge sheet contains statement of imputation of misconduct in support of Articles of charges framed against Mr. Alok Sinha. In para-1, charges are pertaining to events dated 29/09/2000, In para-2, charges are of poaching of insurance business. It is mentioned that on inquiry with UBI, Pachma, Mr. Vohra, BM, UBI vide letter dated 14/11/2002 confirmed the fact that petitioner had come to collect the renewals, which was confirmed by the petitioner vide statement dated 25/03/2003.

9. There are other allegations of earning, agency commission by not showing name of the financier though business was placed by the financier inasmuch as business placed by the financier did not attract any commission. These transactions took place on 06/11/2000, 06/01/2001 and 28/02/2001.

10. Admittedly Voluntary Retirement Scheme was notified on 02/01/2003. Petitioner applied for Special Voluntary

Retirement Scheme (SVRS) on 28/02/2003. Date of acceptance was 31/03/2003, but prior to that, material to form opinion to initiate disciplinary enquiry was available with the competent authority. Thus, petitioner's case will fall under Exception to Special Voluntary Retirement Scheme (SVRS) contained in Annexure-I, Clause-1(b) "against whom disciplinary proceedings is/are pending or contemplated. Clause-5(5) SVRS package reads as under :

"The Company shall have absolute discretion either to accept or reject the request of a Development Officer seeking Special Voluntary Retirement Package depending upon the requirement of the company. The reasons for rejection of request of a Development Officer seeking Special Voluntary Retirement Package shall be recorded in writing by the Company. Acceptance or rejection of the request of a Development Officer seeking Special Voluntary Retirement Package shall be communicated to him in writing."

11. A plain reading of above stipulations makes it clear that though decision rejecting petitioner's application for Special Voluntary Retirement Scheme is not brought on record by the answering respondents, but there is sufficient material on record

to demonstrate that an enquiry was contemplated, therefore, petitioner was not entitled to claim Special Voluntary Retirement Scheme.

12. In **Tek Chand Vs. Dile Ram, (2001) 3 SCC 290**, a three Judges Bench of Hon'ble Supreme Court catalogued the three categories rules relating to voluntary retirement, namely: -

- “(a) Where voluntary retirement automatically comes into force on expiry of notice period;
- (b) Where voluntary retirement comes into force unless an order is passed during notice period withholding permission to retire;
- (c) Voluntary retirement does not come into force unless permission to this effect is granted by the competent authority.

Case of **Tek Chand (supra)** was under ‘b’ category but case of the petitioner will fall in the (c) category, when read in the light of clause 1(b) of Annexure-I & Clause 5(5).

13. The law laid down in the case of **Harendra Jaseja (Dr.) (supra)** and **S.S. Nafde (supra)** is not applicable to the facts of the present case because in those cases Clause-(b) of three categories mentioned in the case of **Tek Chand (supra)** is applicable whereas the case of the petitioner falls under Clause-(c).

14. Thus, petitioner cannot claim any deemed voluntary retirement. Once it is held that there was no deemed retirement and there is material on record to show that there existed events in the domain of contemplated disciplinary proceedings, the impugned cannot be faulted with.

15. Accordingly, this writ petition fails and is hereby dismissed.

(VIVEK AGARWAL)
JUDGE

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