

IN THE HIGH COURT OF DELHI AT NEW DELHI

+WP(C) No.146/2008 and 158/2008

Date of Decision: 30.05.2008

#Lt. Governor & Anr.

....Petitioners in WP(C) Nos.146
& 158/2008

!

Through: Ms.Avnish Ahlawat with
Ms.Latika Chaudhary and
Ms.Nidhi Gupta

Versus

\$Sh.Dharam Vir Singh
Sh.S.R. Goyal

....Respondent in WP(C) No.146/2008
....Respondent in WP(C) No.158/2008

^

Through Mr.P.P. Khurana, Sr. Advocate
Mr.Vikram Saini

CORAM :-

***THE HON'BLE MR.JUSTICE A.K.SIKRI
THE HON'BLE MR. JUSTICE J.R. MIDHA**

- 1.Whether Reporters of Local papers may be allowed to see the Judgment?
- 2.To be referred to the Reporter or not?
- 3.Whether the judgment should be reported in the Digest?

A.K. SIKRI, J.

:

1. In both these writ petitions, common question of law has come up for consideration which touches on the interpretation of Rule 48 of the CCS(Pension) Rules, 1972

(hereinafter referred to as the 'Pension Rules'). This rule allows an individual to seek retirement on completion of 30 years of qualifying service. After the aforesaid qualifying service, a Government servant, who wishes to retire, can do so by giving three months notice in writing. The question, which arises for consideration, is as to whether Rule 48 vests the Government with any discretion to reject the permission to retire in certain circumstances or this rule has automatic effect of retiring the said Government servant after the expiry of three months period. The Tribunal has accepted the second alternative by impugned judgments dated 26.11.2007 and 7.11.2007 respectively. Though two separate judgments were given by two different Benches of the Tribunal in these two cases, since the answer to the question of law, as given by the Tribunal in these two judgments, is identical and having regard to the commonality of the issues involved, we had heard both the petitions together with a purpose to decide the same by a common judgment to avoid repetition of the legal principles. For better understanding of the legal issue involved, we are taking up the facts of WP(C) No.146/2008.

WP(C) No.146/2008

2. The respondent in this case is Sh.Dharamvir Singh, who had joined the service under the Government of National Capital Territory of Delhi on 14.6.1976. He joined the service as a Lower Division Clerk (LDC). In 1979 he was promoted as Grade II (DASS/UDC). Thereafter, in 1990 he was promoted as Grade I (DASS). In this manner, he completed 30 years of service in June 2006. We may, however, point out that in the year 1997 he was charge-sheeted under Rule 14 of the CCS(CCA) Rules on the allegation that he had allowed a private person, namely, Sh.Madan Gulati to discharge official duty/work in his office for which punishment of reduction to lower post of Grade II (DASS) was inflicted on 26.7.2000. In November 2003, another memo was issued to him in view of observations of this Court passed in WP(C) No.6803/2000 concerning sale deed of property No. WZ-3539-A and WZ-3540 in village Shakar Pur, Delhi, which was registered in 1995 in favour of the purchasers/parties by the respondent while functioning as Sub-Registrar, Janak Puri in spite of the fact that the property was on the land acquired by the DDA as far back as in 1966. This memo was thereafter followed by charge-sheet dated 18.10.2006. The respondent denied the

charges and the departmental inquiry into the said charges was underway. At this juncture, on 9.7.2007 the respondent applied for voluntary retirement under Rule 48 of the Pension Rules. This request of the respondent was rejected by the petitioner on the ground that major penalty proceedings had been initiated against him and thus, disciplinary authority was of the view that he cannot be given voluntary retirement till the conclusion of the said disciplinary proceedings, which may lead to imposition of penalty of removal or dismissal from service. This rejection of the petitioner was challenged by the respondent by filing OA No.1773/2007 and the Tribunal has allowed the said OA declaring that after the lapse of three months' notice period under Rule 48 of the Pension Rules the respondent is no more in Government service and directed that retirement benefits be extended to him. It is in this factual background that the question of law, which has come up for consideration, as already delineated in the beginning, namely, as to whether it was open to the Government to turn down the request of voluntary retirement made by the respondent under Rule 48 or such voluntary retirement automatically comes into effect after lapse of three months period.

3. Before we proceed to discuss this issue, it would be apposite to first reproduce the text of this rule which reads as under:-

“48. Retirement on completion of 30 years’ qualifying service

(1) At any time after a Government servant has completed thirty years’ qualifying service-

- (a) he may retire from service, or
- (b) he may be required by the Appointing Authority to retire in the public interest

and in the case of such retirement the Government servant shall be entitled to a retiring pensions:

Provided that-

- (a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and
- (b) The Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months’ pay and allowance in lieu of such notice.

Provided further that where the Government servant giving notice under Clause (a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule.”

4. From the reading of Rule 48 it is clear that when a Government servant completes 30 years of service, option is given to him to retire from service and at the same time the Appointing Authority is also empowered to retire him in public interest. Thus, on the completion of qualifying service both employee and employer are empowered to sever the employee-employer relationship. Proviso to this rule casts an obligation on the Government servant, in case he wishes to retire, to give three months notice before the date on which he wishes to retire. Similar obligation is imposed upon the Appointing Authority in case the Appointing Authority wishes to pass an order of retirement in public interest, i.e., giving of three months' notice. However, in so far as the employer is concerned, choice is also given to pay three months' pay and allowances in lieu of such notice. Second proviso puts a rider on the right of the employee to exercise his right to retire after completion of qualifying service and states that where the Government servant is facing suspension at the time when he submits such a notice for retirement, discretion is given to the Appointing Authority to withhold permission to such Government servant to retire under the said rule. To put it otherwise, in respect of those employees, who are

under suspension, the permission of the Appointing Authority is to be obtained by such Government servants to retire under Rule 48A, which can be rejected as well.

5. The rule otherwise does not stipulate that there has to be a request for retirement, which has to be accepted by the Appointing Authority, which normally is the position in the case of resignation. When an employee submits a resignation, such resignation does not become effective unless it is accepted by the competent authority. Thus rule, on the other hand, deals with “Retirement” and gives choice to the Government servant to retire from service. Therefore, on fulfilling the conditions stipulated in the rule a Government servant is allowed to retire. These conditions are: (a) such a Government servant should have completed 30 years of qualifying service; (b) he should give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire. It is clear that in the notice to be given a Government servant is even entitled to specify the date of his retirement which should be at least three months after the said notice is given so as to complete the requirement of three months’ notice.

6. Once the aforesaid conditions are fulfilled, the consequence contained in the said rule becomes operative, namely, the Government servant is permitted to retire from service. As mentioned above, in so far as reading of the rule is concerned, there is only one circumstance, as stipulated in the said rule, wherein permission can be withheld to such a Government servant to retire, i.e. when he is under suspension. If that is the position which emerges on the reading of the rule, can some other circumstances, which are not stipulated in the rule, be inserted and discretion be given to the Government to withhold the permission to a Government servant to retire in those circumstances. Learned counsel for the petitioners ventures to argue that such a discretion is omnipresent, notwithstanding what is contained in Rule 48 and therefore, for valid reasons like when a Government servant is facing inquiry and a charge-sheet is served upon him, he should not be allowed to retire. Such a course of action, according to her, is in public interest and gives right to the Government to refuse permission dehors the provisions of Rule 48. In order to develop this argument, Ms.Avnish Ahlawat, learned counsel appearing for the petitioners, sought to draw sustenance from some

judgments of the Supreme Court, note whereof shall be taken hereinafter.

7. First judgment cited by the learned counsel for the petitioners was Himachal Pradesh Horticulture Produce Marketing & Processing Corporation Ltd. v. Suman Behari Sharma, (1996) 4 SCC 584 on the basis of which she argued that it has been categorically held that clause in the agreement does not confer on the employee a right to retire on completion of 25 years of service, after giving of three months' notice. It only confers on the employee a right to make a request to permit him to retire, which means that if the request is not accepted and permission is not granted, the employee will not be able to retire as desired by him.

In order to understand the implication of this judgment, one will have to keep in view the exact wording of the clause provided in the agreement in that case. The Court in that case was concerned with Bye-law 3.8 of Himachal Pradesh Produce Marketing (HPMC), relevant portion whereof was to the following effect:-

“(1) Every employee appointed to the service of the Corporation shall normally retire when he attains the age of 58 years

but in special cases their services may be retained up to 60 years.

(2) Notwithstanding anything contained in clause (1) any employee may be required by the competent authority, or permitted at his request, to retire from the service of the Corporation on completion of 25 years' service or at the age of 50 years whichever is earlier."

8. The Court interpreted the expression "may be permitted at his request, to retire from the service" and held that these words indicate that they do not confer on the employee a 'right to retire' on completion of either 25 years of service or on attaining the age of 50 years. It only confers on the employee 'a right to make a request to permit him to retire'. In these circumstances, the Court held that if request is not accepted and permission is not granted, the employee will not be able to retire, as desired by him. The language in Rule 48 is totally different as already noted in detail above. *This very distinction is drawn by the Supreme Court also in its later judgment in the case of State of Haryana v. S.K. Singhal, 1999 (3) All India Service Law Journal 194, in para 15 which reads as under:-*

"15. The employee applied on 26.11.1990 for voluntary retirement effective from 30.11.1990 and also requested for waiver of notice of 3

months. He did not report to duty right from 1.12.1990. Earlier on 12.12.1989, a charge-sheet was issued against him for certain acts of misconduct. On 26.12.1990 he filed a reply to the charge-sheet. On 22.8.1992 another charge-sheet was served for unauthorized absence and one more on 18.9.1992. On 30.9.1992 he approached the Tribunal contending that he stood retired on expiry of 3 months from notice, w.e.f. 26.2.1990. The Tribunal accepted the said plea. Reversing the order of the Tribunal, this Court held while distinguishing *Dinesh Chandra Sangma's* case and other similar High Court judgments, that Clause (2) of the Bye-law merely gave a right to make a request and the request would become effective only if permitted. Under Clause (2) of the Bye-law, it was a 'right to a request' and not 'a right to retire.' If the request was not accepted and permission was not granted, the employee could not claim that there was an automatic retirement on expiry of the period. Even under sub-clause (5) while it was true that there was a non-obstante clause, it was only an exception to Clause (2) to a limited extent, i.e. completion of 20 years satisfactory service (rather than 25 under Clause (2) but the grant of 'permission' to the request seeking retirement was necessary even under the sub-clause (5) and was not dispensed with. If under Clause (2) a person who had put in 25 years had to 'seek to retire' and had to be 'permitted to retire', a person with only 20 years service under Clause (5) could not have been placed on a better footing, it was held. The Court emphasized (p. 588-589):

"The words 'seek retirement' in para 5 indicate that the right which is conferred by it is not the right to retire but a right to ask for retirement. The word 'seek' implies a request by the employee and corresponding acceptance or permission by HPMC. Therefore, there cannot be automatic

retirement or snapping of service relationship on expiry of three months period."

On that basis, it was held that though the rejection of the request was not communicated within the notice period, there was no automatic retirement. There are no such provisions in the case before us."

9. Next case to which the reference was made, is the judgment of the Apex Court in Dr. Baljit Singh v. State of Haryana, (1997) 1 SCC 754. It was argued that the Supreme Court, while taking into consideration the observations made by the Court in Union of India v. Sayed Muzarftfar Mir, 1995 Supp. (1) SCC 76, which judgment is being relied upon by the respondents herein, held that when serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or necessary disciplinary action should be taken under the law. Therefore, mere expiry of three months' period of notice does not put an end to the jural relationship of employer and employee between the Government and delinquent official. Government has a right to refuse permission to retire voluntarily.

10. As is clear from the above submission of the learned

counsel for the petitioner herself, the issue involved in that case was as to whether mere expiry of the period of notice would automatically put an end to the jural relationship of employer and employee. In that case when the notice for voluntary retirement was given under Rule 4.32(B) of the Punjab Civil Services Rules, a criminal trial under Sections 465, 468, 471, 209, 406 IPC was pending against the employee. The request for voluntary retirement was rejected only after the expiry of notice. In these circumstances, the appellant had argued that on the expiry of three months' notice for voluntary retirement there was cessation of employer-employee relationship. Rejecting this plea the Court held that when serious offences are pending trial, it is open to the appropriate Government to decide whether or not the delinquent should be permitted to retire voluntarily or necessary disciplinary action should be taken under the law. The reading of the judgment would indicate that the exact language of Rule 5.32(B) of the Punjab Civil Services Rules under which the notice for voluntary retirement was given is not incorporated in the judgment. In the absence of the exact language of the said provision it is difficult to countenance the plea of the learned counsel for the

petitioners.

11. Therefore, this judgment would not help the petitioners, more so when there is a direct judgment of the Supreme Court, as would be noticed hereafter touching on this aspect. Learned counsel for the petitioners also referred to the judgment of the Supreme Court in the case of Union of India v. A.N. Saxena, 1992(3) SCC 124 wherein the Court has observed: "It is surprising that in a disciplinary enquiry pertaining to serious charges, respondent was allowed to retire voluntarily under FR 56(k). It is not known whether it was duly considered whether his application for voluntary retirement ought to have been rejected in view of pending enquiry proceedings against him and seriousness of the charges levied against him." Obviously, the Court was concerned, in the said judgment, with altogether different aspect. In that case voluntary retirement was accepted under FR 56(k) and the concerned employee was allowed to retire even when charge-sheet was served upon him showing that the charges were of serious nature. It is in these circumstances that this conduct of the employer accepting the request for voluntary retirement was deprecated.

12. What is to be kept in mind is that the Supreme Court did not consider the interpretation of FR-56(k). That was a case where the Tribunal had granted stay of the disciplinary proceedings by way of interim measure against which the Union of India had appealed to the Supreme Court. The Supreme Court, in these circumstances, held that where the imputations made against the delinquent officer were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour, the Tribunal should have been very careful before granting stay in a disciplinary proceedings at an interlocutory stage. In the passing, following remarks were made:-

“11. We are somewhat surprised that in a disciplinary enquiry pertaining to serious charges which we have referred to earlier, the respondent was allowed to retire voluntarily under Fundamental Rules 56(k) by an order dated March 28, 1989. We do not know whether it was duly considered whether his application for voluntary retirement ought to have been rejected in view of pending enquiry against him and in view of the seriousness of the charges leveled against him. However, nothing more can be done in that connection.”

13. It is clear from the above that the Court was not directly concerned with the issue which is before us in the instant

cases. The Court also expressed its ignorance as to whether application for voluntary retirement was duly considered by the disciplinary authority. These observations are simply an obiter. From these observations made in the context referred to above, one cannot come to a conclusion that any legal principle was laid down by the Supreme Court that when there are serious charges against an employee, his application for voluntary retirement under FR 56(k) cannot or should not be allowed. Obviously, the provisions of FR 56(k) are not even noted or reproduced and no discussion is there in the judgment. It is trite that the ratio of the judgment is the legal principle decided therein and not what logically follows therefrom. In this connection, it would be of advantage to refer to the judgment of the Supreme Court in the case of Haryana Financial Corporation and Anr. v. Jagdamba Oil Mills and Anr., AIR 2002 SC 83 and following observations therefrom would help us in understanding as to how the ratio of a judgment is to be culled out:-

“19. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are not to be read as Euclid’s theorems nor as provisions of the statute. These

observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judge to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes, their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (1951 AC 737 at P. 761), Lord Mac Dermot observed:

“The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by the most distinguished judges.”

20. In *Home Office v. Dorset Yacht Co.* (1970 (2) All ER 294) Lord Reid said, “Lord Atkin’s speech..... is not to be treated as if it was a statute definition. It will require qualification in new circumstances.” Megarry, J. in (1971) 1 WLR 1062 observed: “One must not, of course, construe even a reserved judgment of even Russell L.J. as if it were an Act of Parliament.” And, in *Herrington v. British Railways Board*, (1972) 2 WLR Lord Morris said:

“There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be

remembered that judicial utterances made in the setting of the facts of a particular case.”

21. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

22. The following words of Lord Denning in the matter of applying precedents have become locus clasicks:

“Each case depends on its own facts and a close similarity between one and another is not enough because even a single significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.”

14. As against the aforesaid judgments referred to by the learned counsel for the petitioner, we have two judgments of the Supreme Court directly dealing with the issue at hand. The first judgment to which the Tribunal has also referred is B.J. Shelat v. State of Gujarat & Ors., (1978) 2 SCC 202, which is followed by the Supreme Court in State of Haryana v. S.K. Singhal (surpa).

15. In S.K. Singhal (supra), the Supreme Court reiterated that upon expiry of the notice period, the voluntary retirement takes effect automatically as no order of refusal shall be passed within the notice period. It was also held that if the right to voluntary retirement is conferred in absolute terms and there is no provision to withhold permission in certain contingencies, the voluntary retirement would come into effect on the expiry of the period specified in the notice. The Court drew distinction between 'notice to retire' and 'seeking permission to retire' as is clear from the following discussion in the said judgment:-

“16. In the case before us sub-clause (1) of Rule 5.32B contemplates a '*notice to retire*' and not a request seeking permission to retire. The further "request" contemplated by the sub-section is only for seeking exemption from the 3 months period. The proviso to sub-clause (2) makes a positive provision 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), the retirement *shall* become *effective* from the date of expiry of the said period. The case before us stands on a stronger footing than *Dinesh Chandra Sangma's* case so far as the employee is concerned. As already stated Rule 2.2 of Punjab Civil Service Rules Vol. II only deals with a situation of withholding or withdrawing pension to a person who has already retired.”

16. The principles which were laid down in this case are the following: (i) 'to retire' and 'to seek retirement' are different concepts; (ii) where the rules do not prohibit, voluntary retirement become effective on expiry of notice period; and (iii) refusal to accept retirement should be communicated in time.

17. After this detailed discussion of the available case law, we revert back to the language of Rule 48 of the Pension Rules. The only embargo or prohibition which Rule 48 puts is that the appointing authority can withhold permission to such Government servant to retire only in one contingency, namely, when such a Government servant is under suspension. There is no further prohibition stated in the said Rule which would curtail the right of the Government servant to retire from service under Rule 48. If we accept the contention of the petitioners, not only it would be doing violence to the provisions of Rule 48, it would amount to adding the following lines in the said proviso, i.e., 'or where he is facing departmental inquiry'. If the Government wants to withhold the permission, even in such eventualities, the only course of action open to the Government is to amend the provisions of Rule 48. The position as it stands today

does not confer such a power upon the appointing authority. The intention of the rule makers becomes manifest when we read Rule 48 in contra-distinction to Rule 48A, which reads as under:-

“48-A. Retirement on completion of 20 years’ qualifying service.

- (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—

(i) 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:”

18. Under Rule 48A, right is given to the Government servant to retire on completion of 20 years' qualifying service (as against 30 years' qualifying service prescribed under Rule 48). However, sub-rule (2) of Rule 48A specifically states that such a notice of voluntary retirement shall require acceptance by the appointing authority. Thus, whereas three months' notice of voluntary retirement given under Rule 48A is not automatic and is subject to acceptance, this stipulation of requiring acceptance by the appointing authority is conspicuously absent in Rule 48. It is for this reason that though we may note that even under Rule 48A if the refusal is not communicated within three months' period, the retirement automatically becomes effective on the expiry of the said period even under this Rule. It is for this reason that the Supreme Court in the judgments noted above has held that in a provision like Rule 48, voluntary retirement would automatically come into effect on the expiry of the notice period.

19. No doubt, in a case of Government employee, who has rendered more than 30 years of service and is served with charge-sheet and the inquiry is also pending, he may take recourse to Rule 48 by giving notice to retire. If he is not

under suspension at that time, as per this Rule, the Appointing Authority cannot withhold the permission to retire and in that eventuality, the inquiry can be held, if at all, only under Rule 9 of the Pension Rules. As aforesaid, this is the rigour of rule with which the Government (which is also the rule making authority) is bound. At the same time, it cannot be said that the Appointing Authority is totally powerless. If the charges against a particular Government servant are of serious nature, then in contemplation or pending departmental inquiry, such Government employee can be put under suspension. In that eventuality, that Government employee would not be in a position to take advantage of the provisions of Rule 48 as it would be open to the Appointing Authority to withhold the permission to retire. It seems that intention behind Rule 48, as it exists today, is not to withhold permission even when departmental inquiry is pending in respect of a Government servant, who has completed 30 years of qualifying service and gives notice to retire, unless he is facing suspension. If a person is not put under suspension, the Rule pre-supposes that charges are not serious enough to withhold the permission. Be as it may, if the Government is of the opinion that Rule is giving undue

advantage to such Government employees, remedy lies in amending the rule. In view of this legal position, we do not find any merit in WP(C) No.146/2008, which is accordingly dismissed.

WP(C) No.158/2008

20. In this case the facts and events in brief in tabulated form are summarized as under:-

DATE	EVENTS
26.12.2005	CBI filed the FIR.
9.3.2006	Applicant filed application for voluntary retirement
10.5.2006	The applicant was suspended
2.6.2006	Lt. Governor rejected the request for voluntary retirement
7.6.2006	Joint Secretary, Services issued the order in the name of Lt. Governor, Delhi
8.6.2006	The order was received by Maulana Azad Medical College (MAMC)
15.6.2006	MAMC issued the order to the applicant by Speed Post.
17.6.2006	Applicant submits pension papers
31.10.2006	Applicant stood superannuated

21. It is clear from the above that when the respondent herein submitted application for voluntary retirement on 9.3.2006 within two months thereof, i.e., before the expiry of three

months' notice, he was placed under suspension. Therefore, the contingency as provided in the proviso on which the Appointing Authority could withhold the permission to retire was in existence. To this extent there is no quarrel. The argument, however, proceeds on altogether different line. It has also come on record that request for voluntary retirement was rejected on 2.6.2006, which event also happened within three months of the issuance of notice for voluntary retirement given by the said employee. However, the OA filed by the respondent is still allowed on the ground that this was not communicated to the respondent within three months. As is clear from the above, after passing of the order on 2.6.2006, the Joint Secretary (Services) issued the order in the name of the Lt. Governor on 7.6.2006, which was received by the MAMC on 8.6.2007. All this has happened within three months. However, MAMC issued order to the respondent by speed post on 15.6.2006. The Tribunal, thus, took this date of 15.6.2006 into consideration by which communication was sent to the respondent and that was beyond three months' period. Applying the principles laid down in B.J. Shalet (supra) and S.K. Singhal, (supra), the Court held that on the expiry of three months of notice of

retirement given by the respondent, when he had not received any communication withholding his request, the voluntary retirement automatically takes effect. Thus, only question which needs determination is as to which date would be the determinative, namely, when the decision is taken to reject the request for voluntary retirement, i.e., (a) 2.6.2006 when the Lt. Governor rejected the request for voluntary retirement or (b) 7.6.2006 when the Joint Secretary (Services) issued the order in the name of Lt. Governor, Delhi or (c) 15.6.2006 when MAMC issued the order of the respondent by speed post. It is not in dispute that as per the judgment of the Supreme Court in B.J. Shalet (supra), the principle laid down is that refusal to accept retirement should be communicated to the concerned employee in time. The Tribunal deduced the following principle from the said judgments in the case of B.J. Shalet, (supra) and S.K. Singhal (supra):-

“We are of the view that proviso contemplates a positive action by the appointing authority. The words “It shall be open to the appointing authority to withhold permission” would indicate that the appointing authority has got an option to withhold permission and could be exercised by communicating its intention to withhold permission to the government servant. The appointing authority may have considered

the question and might not have taken a decision either way or after considering the facts of the case might have come to the conclusion that it is better to allow the government servant to retire than take any action against him. For the proviso to become operative, it is necessary that the government should not only take a decision but communicate it to the government servant. It is not necessary that the communication should reach the government servant. As held by this Court in the case of **State of Punjab v. Khemi Ram**, (1970) 2 SCR 657, it will be sufficient if such an order is sent out and goes out of control of the appointing authority before the relevant date." It was further held by the Hon'ble Supreme Court that "On a consideration of Rule 161(2)(ii) and the proviso, we are satisfied that it is incumbent on the Government to communicate to the government servant its decision to withhold permission to retire on one of the grounds specified in the proviso."

22. No quarrel could be made on this principle. It is the application of the principles on the facts of this case, which is a matter of controversy before us. Applying this principle we immediately rule out the date of 2.6.2006 on which the Lt. Governor rejected the request for voluntary retirement, as on that date only order was passed but communication was not sent. The real controversy is as to whether 7.6.2006 should be the date when the order was issued by the Joint Secretary (Services) or 15.6.2006 when MAMC issued the order to the

respondent. The Tribunal has arrived at a conclusion that the relevant date would be 15.6.2006, as it is only on this date that MAMC issued the order to the respondent herein and therefore, in so far as the respondent is concerned, the communication was sent only on 15.6.2006, which is after the expiry of three months' period. We are of the view that this approach of the Tribunal is not proper, legal or justified. As we have read the principle laid down in the judgments of the Supreme Court, no doubt, it is incumbent upon the Government to communicate to the Government servant its decision to withhold the voluntary retirement. It is the date of sending the communication which is important and it is not necessary that the communication should reach the Government servant within three months. The Competent Authority/Appointing Authority, who had to take decision on the request of the respondent herein was the Lt. Governor. He rejected the request on 2.6.2006. After the said rejection on file, 'process of communication' thereof started on 7.6.2006, i.e., the date on which the Joint Secretary (Services) issued the order in the name of the Lt. Governor. This order dated 7.6.2006 is extracted in its entirety:-

**“GOVERNMENT OF NATIONAL CAPITAL
TERRITORY OF DELHI
SERVICES DEPARTMENT: SERVICES-I BRANCH
DELHI SECRETARIAT: 7TH FLOOR: B-WING
I P ESTATE: NEW DELHI-110002**

F. No.30/38/2003/S.I./

Dated: 07.06.2006

ORDER No. 240

WHEREAS Sh. S.R. Goyal, Adhoc DANICS/Admn. Officer (MAMC) has applied for Voluntary Retirement w.e.f. 08.06.2008 (AN) Under Rule 48 of the CCS (Pension) Rules 1972 was forwarded by MAMC, Govt. of NCT of Delhi on 24.4.2006.

2. AND WHEREAS the said Sh. S.R. Goyal was placed under suspension vide order no.F.30/38/2003/SI/Part/file/180 dated 10.5.2006.

3. NOW, THEREFORE, the Hon'ble LG being the Competent Authority in respect of Sh. S.R. Goyal, reject the notice of Voluntary Retirement from the Government service given by the said Sh. S.R. Goyal under the said Rules.

**BY ORDER AND IN THE NAME OF
LT. GOVERNOR, DELHI**

s/d

**(S.P. SINGH)
JT. SECRETARY (SERVICES)”**

23. The respondent at that time was posted in MAMC. It is common knowledge that such orders are conveyed through the office where the incumbent is posted at the relevant time.

Therefore, the Dy. Director (Admn.) through whom the said order was forwarded to the respondent on 15.6.2006 cannot be treated as a date when the order is 'communicated' for the first time. The moment order leaves the office of the Jt. Secretary (Services), i.e. 7.6.2006, the process of communication thereof to the respondent started. In the present case itself, though the Lt. Governor rejected the application of the respondent well within time and the order on that basis was also issued much prior to the lapse of three months, merely because as per the normal procedure this communication was sent through MAMC, the date on which MAMC forwarded the communication should not be a material date to thwart the entire process. We, therefore, allow this petition, set aside the judgment of the Tribunal and dismiss the OA filed by the respondent herein

(A.K. SIKRI)
JUDGE

May 30, 2008
HP.

(J.R. MIDHA)
JUDGE