

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: April 04, 2018

+ **W.P.(C) 8278/2017**

SUMAN KHANDUJA Petitioner
Through: Mr. R.A. Sharma and Mr. Prem
Chand, Advocates

versus

THE NEW INDIA ASSURANCE CO LTD AND ORS
.....Respondents
Through: Mr. Saurabh Prakash, Mr. Kunal
Gosain and Mr. Utsav Jain, Advocates

CORAM:
HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

1. Impugned Communication of 16th December, 2016 rejects petitioner's application for voluntary retirement by observing that petitioner had not attained the age of 55 years before applying for voluntary retirement and hence, she was not eligible for voluntary retirement and her application for voluntary retirement was treated as one for resignation and instead of granting voluntary retirement, petitioner is treated to have resigned on 7th November, 2016. On the said date i.e. 7th November, 2016, petitioner was informed by respondent vide Communication (*Annexure P-6*) that she stood relieved from service on 7th November, 2016 and the subject of this Communication is '*Voluntary Retirement*'. Petitioner claims to have sent a Representation, which was

not responded to, and that led to serving of a Legal Notice of 12th July, 2017 upon respondent, in which petitioner had sought refund of ₹4,36,613/- or in the alternative, recalling of impugned letter of 16th December, 2016, with a prayer to permit petitioner to rejoin her duty while undertaking to refund the entire amount received by her as terminal benefits upon her voluntary retirement. In response to said Legal Notice, respondents vide Reply of 28th July, 2017 (*Annexure P-8*) had intimated that in the Communication of 7th November, 2016, there was an error regarding subject i.e. “*Voluntary Retirement*” and the same stood corrected vide Corrigendum Letter of 16th December, 2016. Thus, in the Reply, it is maintained that no case for reinstatement of petitioner in service is made out.

2. In the counter affidavit filed by respondents, the stand taken in the aforesaid Reply (*Annexure P-8*) is maintained, but it is not stated therein that there is no vacancy available to enable petitioner to rejoin.

3. Learned counsel for petitioner submits that petitioner has rendered service of more than 28 years and her service record has been good and if petitioner was not eligible to be voluntarily retired, then petitioner’s application ought to have been simply rejected and there was no occasion for respondents to have treated the said application as one for resignation.

4. On the contrary, learned counsel for respondents submits that the alternative prayer in the Legal Notice can be granted i.e. refund of ₹4,36,613/- as in the facts of instant case, rejoining of petitioner on the same position may not be feasible.

5. Upon hearing and on perusal of impugned Communication of 16th December, 2016 and the material on record, I find that respondents were

not justified in treating petitioner's application for voluntary retirement as one for resignation. If petitioner was not eligible for voluntary retirement, then her application should have been rejected while so observing. For the error on the part of respondents, petitioner cannot be penalized. Since petitioner has already rendered 28 years' service and she has about 10 years of service to her credit, therefore, in law and equity petitioner should be allowed to rejoin on the same position and the intervening period, i.e. from 7th November, 2016 till she is allowed to rejoin her service on the same position, should be regularized but without any monetary benefits. It is ordered accordingly. However, it would be subject to petitioner refunding the amounts received by her upon her being relieved and the amount so returned by petitioner shall carry interest @ 6% *per annum*. 50% of the refundable amount be deposited by petitioner with first respondent within two weeks from today. Regarding remaining 50% of the refundable amount, it be deducted from petitioner's salary with interest @ 6% *per annum* thereon, within a period of 18 months. Subject to petitioner depositing 50% of the refundable amount with first respondent within two weeks, she be reinstated into service within two weeks thereof.

6. With aforesaid directions, this petition is disposed of.

Copy of this order be given *dasti* to learned counsel for the parties.

(SUNIL GAUR)
JUDGE

APRIL 04, 2018

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