

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: September 08, 2021

+ W.P.(C) 4285/2021

GAURAV BHUTANI

..... Petitioner

Through: Mr. Sambit Nanda, Adv.

versus

THE PRINCIPAL DISTRICT AND SESSIONS JUDGE
HEADQUARTERS

..... Respondent

Through: Mrs. Avnish Ahlawat, SC (DSJ) with
Mrs. Tania Ahlawat, Mr. Nitesh
Kumar Singh & Ms. Palak Rohmetra,
Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. The instant Writ Petition has been filed with the following prayers:-

“It is, therefore, most respectfully prayed that this Hon'ble may be pleased to issue a Writ in the nature of QUO WARRANTO against the Respondent for quashing the letters dated 6 January 2021 and 4 December 2020 by which the respondent has illegally rejected the Petitioner's application for voluntary retirement under Rule 48A of the CCS (Pension) Rules, 1972 and to further issue a writ in the nature of Mandamus thereby commanding the respondent to grant voluntary retirement to the petitioner and release

all pensionary benefits of the petitioner in the light of the facts and grounds stated hereinabove. Any other order which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Petitioner and against the Respondents."

2. The petitioner joined the post of Lower Division Clerk at the District and Sessions Judge (Headquarters), Tis Hazari Courts, Delhi on February 29, 2000. He was subsequently promoted to the post of Reader/Judicial Assistant. From the years 2000 to 2009, the petitioner was posted at Tis Hazari District Court. From 2009 till February 13, 2018, the petitioner was posted at Rohini District Courts. On February 02, 2019, he was transferred from Rohini Courts to Record Room (Civil), Dwarka Courts and was thereafter on April 15, 2019 posted as a Reader in the Court of Ms. Manisha Tripathy, Metropolitan Magistrate, Mahila Court-04, SW District, Dwarka Courts.

3. It is the case of the petitioner that in 2018, he was diagnosed with Lumbar Spondylosis, a type of lower back pain caused by excessive degeneration of the lower spine. On July 29, 2019, the petitioner sent a representation seeking transfer to Rohini Courts, since his medical condition would not allow him to continue with the long hours of travel from his residence at Rohini to the Dwarka Courts. Between July 2019 and March 2020, the petitioner was forced to take several leaves on account of his medical condition and his inability to travel.

4. It is stated by Mr. Sambit Nanda, learned counsel appearing on behalf of the petitioner, that owing to the

respondent's refusal to allow the request of the petitioner to transfer him back to Rohini Courts due to his medical condition, the petitioner was constrained to send a representation / notice to the respondent on August 05, 2020 under Rule 48-A of the Central Civil Services (Pension) Rules, 1972 ('Pension Rules', hereinafter) requesting the respondent to allow him to take voluntary retirement from service. It is stated that the petitioner had completed twenty years of continuous service as required under Rule 48-A in March 2020, as his date of joining was February 29, 2000.

5. On September 28, 2020, the respondent forwarded the petitioner's Notice for voluntary retirement ('Notice', hereinafter') to its Accounts Branch, General/Vigilance Branch, Leave Section, Library Branch and Computer Branch, seeking a report regarding dues or inquiry, if any, pending against the petitioner. A letter was also sent to the petitioner, with a direction to surrender his official Identity Card as well as his Medical Card. The petitioner, on November 11, 2020, submitted a Relieving Report to the Respondent stating that he was retiring from service as on November 11, 2020, and further requested the respondent to release all his retirement benefits and pensionary dues on an urgent basis in accordance with the Rules. In addition to the said letter, the petitioner also surrendered his original medical facility card and original official ID card along with two covering letters.

6. It is contended by Mr. Nanda that since the respondent did not refuse permission for voluntary retirement within three

months of the Notice dated August 05, 2020, the petitioner's retirement became effective on the date of expiry of the Notice period, i.e., on November 05, 2020 as per the proviso to Sub-Rule (2) of Rule 48-A of the Pension Rules. Upon receiving no intimation regarding his pending dues, the petitioner sent another letter to the respondent on November 21, 2020, requesting them to release all pensionary dues and retirement benefits.

7. In response to the petitioner's letter dated November 21, 2020, the Drawing and Disbursing Officer of the Respondent, on December 02, 2020, forwarded the Petitioner's letter to the DDO/A.O., Accounts Branch of Dwarka Courts with a request to do the needful regarding release of the petitioner's pensionary dues. A copy of the said letter was also sent to the petitioner. It is stated that, in the said letter, he was addressed as 'Ex-Judicial Assistant', implying that he was no longer employed with the respondent. The respondent sent a letter to the petitioner on December 04, 2020 wherein a reference was made to an alleged letter dated November 12, 2020 under which the petitioner's Notice was "*kept in abeyance till the final outcome of the pending complaint, leave sanctioned and clearance of dues of the Library*". The letter further stated that the petitioner had not complied with a purported Transfer Order dated November 19, 2020 by which the petitioner had been transferred to the Court of Civil Judge-3, South West District, Dwarka Courts. It is the stand of the petitioner that these letters were only sent to him along with the letter dated December 04, 2020, after the expiry of the

three-month period prescribed under Rule 48-A (2) of the Pension Rules.

8. The petitioner, on December 09, 2020 sent a response to the respondent's letter dated December 04, 2020 referring to his Notice dated August 05, 2020 and his relieving letter dated November 11, 2020 and pointed out that his Notice for voluntary retirement had not been rejected by the respondent for over three months and therefore, it is deemed to have been accepted. He further pointed out the fact, that he had received a letter dated December 02, 2020 wherein the release of his pensionary dues had been recommended.

9. It is further submitted by Mr. Nanda that on January 06, 2021, the petitioner received a letter from the respondent wherein the petitioner's request for voluntary retirement was rejected on the ground that he had completed only 19 years, 11 months and 4 days of service, and therefore did not possess the required 20 years of service. This allegation is vehemently denied by Mr. Nanda, as the petitioner had joined the service on February 29, 2000. Therefore, on the date of the Notice, he had already completed 20 years and 5 months of service. It is further stated that on the date of his relieving, i.e., on November 11, 2020, the petitioner had completed 20 years 8 months and 11 days of service.

10. That apart, it is averred by Mr. Nanda that on January 08, 2021, the petitioner filed an RTI application with the Public Information Officer of the Respondent, seeking information regarding his representations and the voluntary retirement Notice.

However, the respondent rejected the said application on February 08, 2021 on the ground that the petitioner was continuing as an employee of the respondent and was therefore obligated to approach the respondent's office directly, before seeking information under the RTI Act, 2005. An appeal was duly filed by the petitioner against the rejection of the RTI Application. However, the appeal was returned by the Appellate Authority on the ground that the appeal did not have a self-attested copy of the RTI Application and the reply of the Public Information Officer. This, according to Mr. Nanda, was an arbitrary stand taken by the respondent to deny the petitioner of the information he sought.

11. It is stated that despite not responding to any of the petitioner's requests, and notwithstanding the fact that he had retired, the respondent, on March 19, 2021 sent a notice to the petitioner seeking an explanation as to why he has been absent from office since November 12, 2020 and further directed the petitioner to join his duty immediately.

12. It is contended by Mr. Nanda that the petitioner is entitled to receive the following, among other accruals, on account of his retirement: -

- (i) General Provident Fund
- (ii) Gratuity
- (iii) Pension Commutation
- (iv) Pension
- (v) Miscellaneous amounts insurance etc.

13. A Counter Affidavit has been filed by the respondent wherein it is stated that the petitioner was not eligible to apply for voluntary retirement under Rule 48-A of the Pension Rules, as on the date of his application dated August 05, 2020, he had not completed twenty years of qualifying service. It is also stated that the same was intimated to the petitioner in the rejection letter, with clear instruction that he should join duty with immediate effect, which he has failed to do.

14. It is submitted by Ms. Avnish Ahlawat, learned Standing Counsel appearing on behalf of the respondent, that the notice given under Rule 48-A requires acceptance by the Appointing Authority. That apart, as per Government of India's instructions, before a government servant gives notice of voluntary retirement under Rule 48-A, he should satisfy himself by means of a reference to the appropriate administrative authority that he has completed twenty years of qualifying service.

15. It is stated by Ms. Ahlawat that the petitioner has been irregular in attending his office from the very next day of his joining as Reader in Dwarka Courts. It is further stated that, on continuous unauthorised absence of the petitioner from duty, Ms. Manisha Tripathy, MM, Mahila Court-04, South-West, Dwarka, vide letter dated December 03, 2019, submitted a complaint addressed to the District and Sessions Judge, South-West, Dwarka Courts, New Delhi, requesting that some other official be assigned in place of the petitioner for the smooth functioning of the Court. In the complaint, it is stated that petitioner has been extremely irregular in attending his duties ever since his posting

as Reader in the Court. The learned MM in the complaint has stated that, it appeared as if the petitioner was deliberately failing to attend his duty in order to obtain a transfer from the Court or in case he is genuinely under medical treatment, then he has been obtaining false fitness certificate without being actually fit to join his duties.

16. That apart, it is submitted that vide letter dated February 11, 2020, the matter of the unauthorised absence of the petitioner for the period between November 25, 2019 to March 07, 2020 was forwarded to the Vigilance Branch, HQ. The petitioner was issued a show cause notice for the said absence, to which reply was sent by the petitioner's wife.

17. It is submitted by Ms. Ahlawat that the petitioner did not attend his duties from March 17, 2020 to June 30, 2020, without providing any intimation for leave/absence. Accordingly, the said period was considered unauthorised absence and leave without Pay/Extra Ordinary Leave by Competent Authority, as per directions of the Principal District and Sessions Judge, South-West, Dwarka Courts.

18. It is stated that the period of unauthorised/extra ordinary leave taken is to be excluded while computing the qualifying service of an employee. Reliance in this regard has been placed on judgments of the Supreme Court in ***Delhi Transport Corporation v. Balwan Singh and Ors.*, (2019) 18 SCC 126**, ***Karan Singh v. Delhi Transport Corporation and Anr.*, (2019) 19 SCC 726**, ***Delhi Transport Corporation v. Lillu Ram* (2017) 11 SCC 407** and the judgment of a Division Bench of this Court

in *Delhi Transport Corporation v. Karan Singh* bearing W.P.(C) 9029/2011 decided on May 29, 2013.

19. It is stated by Ms. Ahlawat that the notice of voluntary retirement of the petitioner was received by the office of the respondent amidst the Covid-19 pandemic lockdown, and the letter was duly forwarded by the Officer-in-Charge on August 11, 2020. According to the Notice, the period of three months was due to expire on November 10, 2020, during the unprecedented situation of lockdown and subsequent partial resumption of work. It is stated that as per an OM issued by the Department of Personnel and Training ('DoPT', for short), bearing F.No. 11012/19/2016-Estt.A-III dated March 30, 2020, it has been decided by the Government of India, *inter-alia* not to count the period of lockdown for the purpose of calculating the period of acceptance of notice of VRS under Rule 48A of the Pension Rules.

20. That apart, it is submitted that vide letter dated September 19, 2020, JA, Library Branch informed that a 'No Due Certificate' could not be issued to the petitioner, on the ground that Books and Charge Report is pending against the him. A report was submitted by the Branch-in-Charge, Vigilance and Senior Administrative Officer, Vigilance, that as per records, a complaint is pending against the petitioner regarding absence from duty for the period of November 25, 2019 to March 07, 2020. The Administration Branch, Principal District and Sessions Judge, South-West, Dwarka District Court, also informed that the matter regarding unauthorised absence of the petitioner is under

consideration and therefore, 'No Due Certificate' could not be issued.

21. Accordingly, the petitioner was informed vide letter dated November 12, 2020 that the request for voluntary retirement tendered by him has been kept in abeyance till the final outcome of the pending complaint, leave sanctioned and clearance of dues of the library.

22. Since the petitioner was in service, as his VRS application was kept in abeyance, he was transferred to the Court of Ms. Vaishali Singh, Civil Judge, South West, Dwarka Courts, vide Transfer Order dated November 19, 2020. It is stated that the petitioner, having full knowledge that his application for voluntary retirement has not been accepted by the Competent Authority, requested for release of his pensionary benefits and withdrawal of the Transfer Order.

23. It is further stated by Ms. Ahlawat that considering the fact that the petitioner did not complete qualifying service of twenty years under Rule 48-A of the Pension Rules on the date of submission of the Notice dated August 05, 2020 or even on the alleged completion of three months, i.e., November 10, 2020, his request for voluntary retirement has been rejected by the Competent Authority vide letter dated January 06, 2021. It is submitted that, after deducting the period of unauthorised absence/ extra ordinary leave without pay, the petitioner had qualifying service of only 19 years, 8 months and 10 days from February 29, 2000 i.e., the date of joining, to August 05, 2020 i.e., the date of the VRS Notice. Net qualifying service as on the

date of receipt of VRS Notice by the Authority i.e., August 11, 2020 is 19 years, 8 months and 16 days and finally even as on the completion of the notice period of three months, i.e., November 10, 2020 it is 19 years, 11 months and 15 days. Reliance is placed on the judgment of this Court in ***Delhi Transport Corporation and Anr. v. Jai Kumar Jain*** bearing ***W.P.(C) 5424/2017*** decided on December 24, 2019 to contend that the petitioner has not completed the qualifying service prescribed.

24. A rejoinder has been filed on behalf of the petitioner, wherein it is stated that as per Rule 49 (3) of the Pension Rules, a fraction of a year equal to three months and above shall be treated as a completed one half year and reckoned as qualifying service. Therefore, even if the respondent's case is taken at the highest, the petitioner has completed 19 years, 11 months and 16 days on the date of expiry of his Notice, the petitioner would be deemed to have completed twenty years of service. To buttress this argument, Mr. Nanda has relied upon the Judgment of this Court in ***Pawan Vohra v. The Chairman, DVB Pension Trust, W.P. (C) 1680/2012***, decided on May 17, 2013.

25. It is also submitted that even though Rule 48-A of the Pension Rules requires acceptance of Notice by the Appointing Authority, the proviso to Sub-Rule 2 states that where the Appointing Authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

26. It is the contention of Mr. Nanda that the instructions issued by the Government of India requiring an individual to satisfy himself of completing twenty years of service, is only a guiding provision and not mandatory.

27. That apart, Mr. Nanda vehemently denies the contention of the respondent that the petitioner had not completed twenty years of qualifying service on the date of application. Further, it is stated that the respondent rejected the petitioners' request by its letter dated January 06, 2021, five months after the issuance of the Notice under Rule 48-A of the Pension Rules and two months after the petitioner had already retired in terms of the proviso to Sub-Rule 2 of Rule 48-A of the Pension Rules.

28. It is stated that the petitioner had duly intimated the Presiding Officer in advance of the leaves taken by him. However, since most of the leaves taken by the petitioner were due to his medical condition, he could only submit the applications after rejoining his duties. It is further stated that he had always, duly submitted leave applications, along with medical certificates, for each of the leaves taken by him. It is contended that the petitioner had no control over whether the leave applications submitted by him were actually sent to the concerned officer or not. Apart from the letter dated February 11, 2020, which was duly responded to by the petitioner, there has been no notice issued to the petitioner for unauthorised absence.

29. Mr. Nanda categorically denied that the petitioner was irregular in attending his duties. He reiterated that the Presiding Officer was notified of every leave taken by the petitioner. It is

contended that the respondent arbitrarily and illegally counted the entire period of lockdown, i.e., from March 17, 2020 to June 30, 2020, as extra ordinary leave taken by the petitioner.

30. It is stated that the Orders dated March 23, 2020 and May 22, 2020 of the Office of the District and Sessions Judge, SW, Dwarka Courts, made it clear that during lockdown, Judicial Officers would only depute the staff who are residing in Delhi and are using their own conveyance. The petitioner did not have his own conveyance, and it is for this reason that the petitioner was never requested to physically be present during Court proceedings between March 25, 2020 and June 30, 2020. That apart, the DoPT issued guidelines on July 28, 2020, as clarified on March 01, 2020, setting out that any person who is unable to join his duties due to non-availability of transport, would be deemed to have joined office during the lockdown period. It is contended by Mr. Nanda that therefore, the period between March 25, 2020 and June 30, 2020 cannot be counted as extraordinary leave. Once this period, which constitutes 98 days is added to the tenure of the petitioner, he would have completed over twenty years of service even before the date of his application under Rule 48-A of the Pension Rules.

31. It is vehemently contended by Mr. Nanda that the respondents cannot be allowed to place reliance on the DoPT OM dated March 30, 2020. The said OM makes it clear that for calculating the period of notice under Rule 48-A of the Pension Rules, it was decided “*not to count the period of the Lockdown for the purpose of adherence to the prescribed timelines*”. The

said OM further makes it clear that *“These instructions are applicable only in such cases where there is an intervening Lockdown period and it will not be applicable otherwise”*. It is submitted that the lockdown in the State of Delhi was lifted in June 2020. As per the Order dated June 01, 2020 of the Delhi Disaster Management Authority (DDMA), from June 01, 2020, all government and private offices were permitted to function. By the time the petitioner submitted his Notice on August 05, 2020, the lockdown in the entire country had been lifted and was restricted only to containment zones.

32. The contention of the respondent that that the petitioner was still in service as his VRS application was kept in abeyance is vehemently denied by Mr.Nanda. It is stated that the Transfer Order dated November 19, 2020 issued by the respondent was unlawful, since the petitioner had already retired on November 11, 2020. Further, it is averred that the alleged letter dated November 12, 2020 was not received by the petitioner at the relevant time, and was only forwarded to him on December 04, 2020.

33. It is stated by Mr. Nanda that the calculation made by the respondent to compute the number of extra ordinary leaves taken by the petitioner is intentionally concocted so as to consider several of the sanctioned leaves taken by the petitioner as an extra-ordinary leave, despite the petitioner providing the required medical certificates along with all his leave applications. Further, the computation has apparently been done on November 25, 2020, i.e., after the petitioner had retired and served his letter

seeking release of his pension. It is the case of the petitioner that therefore, the action of the respondent is clearly ill-motivated, and the leave sanctions have been accorded in a manner to ensure that the petitioner does not complete his qualifying service. It is also stated that various medical certificates presented by the petitioner against leaves have been arbitrarily rejected by the respondent.

34. Mr. Nanda, in his submissions, has reiterated his contention that, by virtue of the proviso to Rule 48-A (2) of the Pension Rules, the petitioner stood automatically retired on non-refusal of his notice by the respondent within three months. Reliance in this regard has been placed on the judgments of the Supreme Court in *Tek Chand v. Dile Ram* (2001) 3 SCC 290, *State of Haryana v. S.K. Singhal* (1999) 4 SCC 293 and *Dinesh Chandra Sangma v. State of Assam* (1977) 4 SCC 441.

35. That apart, it is submitted that the petitioner has the required qualifying service under Rule 48-A. The respondent, vide letter dated January 06, 2021, has rejected the petitioner's application for voluntary retirement on the ground that the petitioner has completed only 19 years, 11 months and 04 days of qualifying service. It is submitted by Mr. Nanda that as per Rule 49(3) of the Pension Rules, in case an applicant has completed over three months of service out of a year, his service has to be rounded off to half a year for calculating qualifying service under Rule 48-A of the Pension Rules. Reference in this regard has been made to a judgment of a Division Bench of this Court in *Govt. of Delhi v. North Delhi Power Ltd.* (2015) 152 DRJ 101.

It is submitted that assuming that the petitioner's service is less than twenty years, since it is admitted by the respondent that he has completed 19 years and 9 months of service, his service period would have to be rounded off to twenty years, and therefore, the petitioner meets the requirement for voluntary retirement under Rule 48-A of the Pension Rules.

36. Having heard the learned counsel for the parties and perused the record, the only issue which arises for consideration is, whether the respondent is justified in rejecting the request of the petitioner, under Rule 48-A of the Pension Rules, seeking retirement.

37. At the outset, I may reproduce the contents of the impugned communication dated January 06, 2021 by which the request of the petitioner was rejected for voluntary retirement, as under:

"I have been directed to refer to your letter dated 05.08.2020 seeking Voluntary Retirement from service and to inform you that as per the report received from the Accounts Branch concerned, your net qualifying service is 19 years 11 months and C-4 days. Since, your net qualifying service is in-adequate for acquiring Voluntary Retirement from service, your application for the same has been rejected/declined. Further, I am also directed to inform you that since, your application for Voluntary Retirement has been rejected/declined, owing to aforesaid reason, you are directed to join your duty with immediate effect."

38. The above reveals the request of the petitioner was rejected as he had completed only 19 years 11 months and 04 days of qualifying service and not 20 years as is required under the rule.

39. I may also at this stage reproduce the relevant portion of Rule 48-A of Pension Rules 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.”

40. A perusal of the said rule, it is clear that a Government servant at any time, after he has completed 20 years of qualifying service, may give a notice of three months to retire from service. The rule contemplates 20 years of qualifying service. The qualifying service has been defined in Rule 3(q) of the Pension Rules to mean “*service rendered while on duty or otherwise which shall be taken into account for the purpose of pensions and gratuities admissible under the rules.*”

41. As per the case of the respondent, the petitioner was on extra ordinary leave without pay, which has been excluded to determine the qualifying service. On this Mr. Nanda submitted that the respondent, while declaring the period between November 25, 2019 and March 7, 2020 as extraordinary leave, excluded the same for computing qualifying service and has also illegally excluded the entire period of lockdown from March 24, 2020 to June 30, 2020 as qualifying service. In support of this submission, Mr. Nanda had relied upon certain OMs issued by this Court and also by the DoPT to contend that when the working of the Courts was affected there was no occasion for the petitioner to come to the Court and perform his duties. In this

regard, I may reproduce below the leave record of the petitioner till June 30, 2020 as under:

<i>Leave / Absence Record of the Official</i>		
<i>Sh. Gaurav Bhutani, JA. W</i>		
<i>S/ N</i>	<i>Month / Year</i>	<i>Leave / Dates</i>
<i>1</i>	<i>Apr-19</i>	<i>16.04.2019 to 30.04.2019</i>
<i>2</i>	<i>May-19</i>	<i>03.05.2019 to 04.05.2019</i>
		<i>08.05.2019</i>
		<i>13.05.2019 to 15.05.2019</i>
		<i>25.05.2019</i>
		<i>31.05.2019</i>
<i>3</i>	<i>Jun-19 (excluding the summer vacation period of MM Courts)</i>	<i>01.06.2019</i>
		<i>06.06.2019</i>
		<i>21.06.2019 to 22.06.2019</i>
		<i>27.06.2019 to 29.06.2019</i>
<i>4</i>	<i>July-19</i>	<i>04.07.2019</i>
		<i>06.07.2019 to 08.07.2019</i>
		<i>15.07.2019 to 18.07.2019</i>
		<i>22.07.2019 to 27.07.2019</i>
		<i>31.07.2019 to 09.08.2019</i>
<i>5</i>	<i>Aug-19</i>	<i>14.08.2019 to 23.08.2019</i>
		<i>28.08.2019 to 31.08.2019</i>
<i>6</i>	<i>Sep-19</i>	<i>03.09.2019 to 05.09.2019</i>
		<i>09.09.2019</i>
		<i>16.09.2019</i>
		<i>26.09.2019</i>
<i>7</i>	<i>Oct-19</i>	<i>11.10.2019</i>

8	Nov-19	15.10.2019
		24.10.2019 to 25.10.2019
		31.10.2019 to 02.11.2019
		06.11.2019 to 08.11.2019
		13.11.2019 to 19.11.2019
9	2020	25.11.2019 to 07.03.2020
		17.03.2020 to 30.06.2020

42. It transpires that the petitioner had absented himself between November 25, 2019 to March 7, 2020 without submitting a leave application. The MM had submitted a complaint on December 03, 2019 addressed to the learned District and Sessions Judge, Dwarka Courts requesting that some other official be assigned in place of the petitioner for smooth functioning of the Court as he is extremely irregular in attending his duties ever since his posting only to obtain a transfer from the Court. It is noted, the petitioner was issued show cause notice for his absence, to which reply was sent by the wife of the petitioner, wherein she says that he suffering from back pain and partial paralysis. But I find, the petitioner has in his subsequent letter referred to backpain / spinal pain as his medical problem, because of which he is seeking voluntary retirement. Surely, a backpain cannot be a justification to remain on continuous leave without intimation / leave application. I find the leave application for the period November 25, 2019 to March 7, 2020 was submitted only on March 11, 2020, upon his joining the duties at

Dwarka Courts which period was treated as extraordinary leave without pay, not to be counted as qualifying service. Mr.Nanda has not seriously contended this decision.

43. In any case, he again started absenting himself without intimation or leave application from March 17, 2020. He continued to be absent till June 30, 2020. Now a plea has been taken that because of COVID-19, the working of the Courts was suspended, as such there was no occasion for the petitioner to attend the duties; nor was he informed to attend the duties; in any case he was unable to join the duties as he did not own a conveyance. In other words, the period between March 17, 2020 to June 30, 2020, be treated as qualifying service, which will make the petitioner eligible for VRS and also pensionary benefits.

44. The plea is clearly an after thought, neither is there any leave application nor he had written to his Controlling Officer, intimating that he is unable to join his duties because of the lockdown or lack of conveyance. The DoPT's OM dated July 28, 2020 stipulates that Government servants who are on leave prior to the issue of lockdown orders w.e.f. March 25, 2020, and whose leave ended during the lockdown period would be deemed to have joined duty only if intimation, indicating difficulty in joining duty due to non-availability of public transport, has been provided by the Government servant to his office. In case of medical grounds this is subject to the production of medical / fitness certificate. Both of these stipulations have not been satisfied by the petitioner, inasmuch as he has not informed the

office that he is unable to join the duties because of non-availability of public transport. Even on medical grounds, there is no leave letter in advance or till date for the period from March 17, 2020 to June 30, 2020. He gives a leave application for the period March 17, 2020 to March 21, 2020, on October 01, 2020, that is after he had submitted his notice for voluntary retirement, which was treated as extraordinary leave without pay.

45. Concedingly, the decision of the learned Principal District and Sessions Judge to treat the period between March 17, 2020 till June 30, 2020 as extraordinary leave without pay, to be excluded has not been challenged in these proceedings. Unless the petitioner challenges the said decision, it must be presumed that the decision is valid and if the decision is valid, then the authority has rightly excluded the period between March 17, 2020 till June 30, 2020 from being treated as qualifying service. Hence, this plea of Mr. Nanda needs to be rejected.

46. I must state, the learned counsel for the petitioner had submitted that assuming that the petitioner had only 19 years 11 months 4 days as qualifying service, in view of Rule 49(3), the petitioner should be treated to have completed the period of 20 years of qualifying service.

47. There is no dispute that that the petitioner had given the notice of three months to retire voluntarily on August 05, 2020, which was received by the respondent on August 11, 2020. The three months period had expired on November 05, 2020 or November 10, 2020.

48. According to the respondent, the total qualifying service below 20 years is in the following manner:

“(1) Net Qualifying Service w.e.f. 29.02.2000 (Date of joining) to 05.08.2020 (i.e. the date of VRS notice) signed by petitioner

	Year	Months	Days
29/02/2000 to 31/12/2000	-	10	01
01/01/2001 to 31/12/2019	19	x	-
01/01/2020 to 05/08/2020	x	07	05

Total Qualifying Service	19	17	06
Less Non Qualifying Service	-	08	26
=====			
Net Qualifying Service	19	8	10
=====			

(2) Net Qualifying Service w.e.f. 29.02.2000 (Date of joining) to 11.08.2020 (i.e. date of forwarding of VRS Notice dated 05.08.2020 of the petitioner)

	Year	Months	Days
29/02/2000 to 31/12/2000	-	10	01
01/01/2001 to 31/12/2019	19	x	-
01/01/2020 to 11/08/2020	x	07	11

Total Qualifying Service	19	17	12
Less Non Qualifying Service	-	08	26
=====			
Net Qualifying Service	19	08	16
=====			

(3) Net Qualifying Service w.e.f. 29.02.2000 (Date of joining) to 10.11.2020 (i.e. the date of completion of 3 months notice period of the Petitioner w.e.f. 11.08.2020).

	Year	Months	Days
29/02/2000 to 31/12/2000	-	10	01
01/01/2001 to 31/12/2019	19	x	-
01/01/2020 to 10/11/2020	x	10	10

Total Qualifying Service	19	20	11
Less Non Qualifying Service	-	08	26
=====			
Net Qualifying Service	19	11	15
=====			

49. From the above, it is noted that as on August 05, 2020, that is, on the date of notice seeking voluntary retirement, the net

qualifying service was 19 years 8 months and 10 days. The date on which the notice was received by the respondent, i.e., August 11, 2020 it was 19 years 8 months and 16 days and as on November 10, 2020 i.e. the date of completion of three months' notice period w.e.f. August 11, 2020, it was 19 years 11 months and 15 days.

50. The provision of Rule 48-A of the Pension Rules is very clear that it is only after a government servant has completed 20 years of qualifying service, he by giving notice of not less than three months retire from service. The Rule presupposes the Government servant having the qualifying service before giving a notice.

51. Mr. Nanda, learned counsel for the petitioner had relied upon Rule 49(3) of the Pension Rules in support of his submission to state that the petitioner has completed 20 years of qualifying service. The said rule is reproduced as under:

“(3) In calculating the length of qualifying service, fraction of a year equal to ³[three months] and above shall be treated as a completed one half-year and reckoned as qualifying service.”

52. It is a settled law that Rule 48-A of the Pension Rules has to be read in conjunction with Rule 49(3) of the Pension Rules in terms of the judgment of this Court in the case of **Pawan Vohra** (*supra*) wherein in para 4 it is held as under:

“4. It is not an issue that the petitioner had completed service of 19 years, 10 months and 20 days. As per Rule 48-A, the entitlement to voluntary retirement comes into effect after 20 years of service and the petitioner has not served for 20 years. The issue is that can the provisions of Rule 48-B and 49(3)

help the petitioner. In my opinion, the provision of Rule 49(3) is absolutely clear for being read in favour of the petitioner. This provision specifically states that for calculating the length of qualifying service, fraction of a year equal to three months and above shall be treated as a completed half-year and reckoned accordingly for qualifying service. Since the petitioner has completed more than 19 years and 3 months of service, by virtue of Rule 49(3) the position will be that the petitioner will be taken to have completed 20 years of service. Once petitioner is held to have completed 20 years of service the petitioner will have the qualifying service of 20 years to bring into application entitlement of voluntary retirement in terms of Rule 48-A. I therefore hold that the petitioner had completed qualifying service of 20 years and was entitled to voluntary retirement in terms of Rule 48-A. I may at this stage add that it is not disputed before me that on completion of qualifying service of 20 years, pension liability will accrue in terms of SVRS 2003. Accordingly, for the aforesaid reasons and conclusions I hold that the petitioner will be entitled to benefits of pension under SVRS 2003 and it is not open to the respondent No.2 to contend that the petitioner has not completed 20 years of service as required under Rule 48-A."

(Emphasis supplied)

53. Even the Division Bench in a batch of appeals, the lead appeal being **Govt. of Delhi & Ors. v. North Delhi Power Ltd. & Ors., LPA 677/2011**, decided on August 31, 2015, has in para 30 held as under:

"30. As regards the interpretation placed by the learned Single Judge on sub-Rule 3 of Rule 49, the view is sound and legal. The argument of the DISCOMS that the head note of the Rule requires the Rule to be interpreted in relation to the amount of pension is noted and rejected for the reason the head note of a Rule does not determine the sweep of the

span of the Rule, and if the language of the Rule is clear it has to be given effect to. The language of the Rule proclaims that in calculating the length of qualifying service the fraction of a year equal to 3 months and above shall be treated as a completed one half year, requires it to be held that the Rule contemplates rounding up of a fraction to the next nearest half and thus relates to the calculation of the length of qualifying service. Such persons who attained 20 years qualifying service as a result of the rounding up of the fraction to the next nearest half would thus be entitled to have their qualifying service reckoned by getting the benefit of the rounding up of the fraction to the next nearest half.”

(Emphasis supplied)

54. The purport of Rule 49(3) is, for calculating the length of qualifying service, that is fraction of a year equal to three months and above shall be treated as completed as one-half year and reckoned as qualifying service. This Rule has been interpreted by a Division Bench of this Court of which I was a member in the following manner:

“xxx

xxx

xxx

Hence, the period of 98 days shall necessarily be excluded for the purpose of qualifying service of 10 years, the respondent's total qualifying service would come to 9 years, 1 month and 25 days (total service rendered is 9 years, 5 months and 3 days). Rule 49 (3) of CCS Pension Rules, 1972 would not benefit the respondent for the reasons (1) the same is not applicable as the service is not above 3 months, (2) even if applicable the service would be 9 years, 6 months and 0 days. Further if the service of the

respondent is reckoned from May 27, 1983 and the period of 98 days is excluded then also the total period of service put in by the respondent is 9 years, 7 months and 8 days. In that eventuality also the benefit of Rule 49 (3) would not be applicable to the respondent as the same is attracted when the period is equal to 3 months and above which shall be treated as completed one half year. In this case beyond a period of 6 months i.e. second half the respondent has not put in 3 months of minimum service to seek the benefit of Rule 49 (3).”

55. The above interpretation of Rule 49(3) is that when the period is fraction of a year equal to three months and above, the same shall be treated as complete one half-year to be reckoned as qualifying service. In the case in hand, the date on which the petitioner had submitted his notice seeking voluntary retirement or even on the date of receipt of notice by the respondent, he had qualifying service of 19 years 8 months 10 days or 19 years 8 months 16 days which means beyond a period of six months i.e., in the second half-year, the petitioner did not have three months of minimum service to be treated as a completed one half-year. In other words, he must have had 19 years 9 months as qualifying service to get the benefit of Rule 49(3) of Pension Rules.

56. No doubt, in the case of **Pawan Vohra (supra)** the petitioner therein had completed 19 years 3 months and by virtue of Rule 49(3) of the Pension Rules, the service of the petitioner therein was treated to be as 20 years of service but the same was without interpreting the Rule in the manner done by the Division

Benches in *Govt. of NCT of Delhi (supra)* and also *DTC v. Karan Singh*, inasmuch as the Rule contemplates rounding up of a fraction to the next nearest half, that is if the period is beyond six months, a Government servant must necessarily have three months service beyond six months to be treated as complete one half-year, which in this case the petitioner did not have. It follows, that when the petitioner was not eligible to submit a notice to retire under Rule 48-A, the plea of Mr. Nanda that the rejection was beyond the period of three months and the petitioner is deemed to have retired is unsustainable. The judgments in the case of *Tek Chand (supra)* and *Dinesh Chandra Sangma (Supra)* so relied upon by Mr. Nanda on the proposition that the petitioner stood automatically retired on non-refusal of his notice by the respondent within three months have no applicability in the facts of this case. Ms. Ahlawat is justified to refer to the Judgment in the case of *Karan Singh (Supra)* in support of her contention that the period of unauthorised / extraordinary leave taken is to be excluded for computing the qualifying service of an employee.

57. I do not see any merit in the petition, the same is dismissed. No costs.

V. KAMESWAR RAO, J

SEPTEMBER 08, 2021/akyjg