

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1440/2019

Sri Dilip Das, S/O Late Kartik Chandra Das, Resident of Barjala,
P.O.-Barjala, P.S.-West Agartala, Barjala, District-West Tripura.
-----Petitioner(s)

Versus

The State of Tripura & others

-----Respondent(s)

For Petitioner(s)	: Mrs. Sujata Deb (Gupta), Advocate.
For Respondent(s)	: Mr. Debalay Bhattacharjee, G.A..

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment: **20th December, 2019.**

JUDGMENT & ORDER(ORAL)

I have heard learned counsel for the petitioner and learned Government Advocate appearing on advance copy for final disposal of the petition.

2. Petitioner is serving as a Constable (Watcher) in the Police Department of the State of Tripura. He joined the service on 23.11.1981. After about 37 years of service he gave a notice of voluntary retirement on 30.10.2018 requesting the Government to release him from duty on voluntary retirement w.e.f. 01.02.2019. The respondents did not communicate any reply to this notice. However, from an internal communication dated 30.11.2018 from Superintendent of Police (Vigilance) to Assistant Inspector General of Police (Establishment) it emerges that there was no vigilance case or disciplinary proceedings pending against the petitioner. This communication also records that the petitioner was granted

sufficient opportunity to reconsider his decision. However, due to his family reasons he is reluctant to change his decision.

3. Despite this since there was no formal acceptance of the notice of voluntary retirement given by the petitioner he again wrote to the department on 11.03.2019 reiterating his request for voluntary retirement. Receiving no response he filed WP(C) No.873 of 2019 which was disposed of by the learned Single Judge directing the department to consider his request within 3(three) weeks. This was also not done. The petitioner has, therefore, had to approach again.

4. I am at loss to understand the stand of the respondents. A Government employee after 37 years of service opted for voluntary retirement for which purpose he gave a statutory notice of 3(three) months. Under Rule 48A of CCS(Pension) Rules, he virtually had a right to seek voluntary retirement which request could have been of course rejected, if he was facing departmental inquiry or criminal case or departmental inquiry was contemplated. Admittedly, none of these factors arise in the present case. Sub-rule (2) of Rule 48A provides that a notice of voluntary retirement given under sub-rule (1) would require acceptance of the appointing authority. However, proviso to sub-rule (2) provides that where the appointing authority does not refuse to grant permission for retirement before expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period. In the present case thus upon completion

of a notice period indicated in the notice dated 30.10.2018 proviso to sub-rule (2) to Rule 48A of CCS (Pension) Rules would kick in. By deeming provision the notice for voluntary retirement would stand accepted. However, in the present case, I am informed that he continued to render service up to March, 2019 for which he received full remuneration.

5. Learned counsel for the Government on the basis of written instructions stated that the Assistant Inspector General of Police (Establishment) had issued an order dated 28.05.2019 transferring the petitioner from the office of Superintendent of Police, Vigilance to the office of Superintendent of Police, West Tripura and he was released from duty on 30.05.2019. Such communication was sent to the petitioner through special messenger which he refused to accept. The communication further records that the petitioner may report in the transferred place upon which the remaining formalities can be completed.

6. I fail to understand the reason for the curious steps taken by the department. When the petitioner after 37 years of service and in any case at the verge of superannuation had asked for voluntary release from service which right had not only ripened but had crystallized, the authorities ought not to have ordered his transfer. In view of the earlier declaration that his notice for voluntary retirement stands accepted by deeming fiction the subsequent order of transfer dated 28.05.2019 is rendered nugatory.

7. The petition is, therefore, disposed of with following directions:

The petitioner shall be deemed to have retired from the time when he stopped rendering active service and receiving salary. His pension and other post retiral benefits shall be released on such basis expeditiously.

8. Petition is disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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