

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(10)

OA NO. 253/2002

This the 24th day of September, 2002

HON'BLE SH. KULDIP SINGH, MEMBER (J)

Mrs. Gurmeet Kaur,
w/o Shri Jarnail Singh
working as T.O. under
Sr. Architect VI,
CPWD, Nirman Bhawan, New Delhi
R/o 64, Ankur Apartments,
7, I.P.Extension,
Near Mother Dairy, Delhi-110092.

(By Advocate: Sh. S.K.Sawhney)

Versus

1. Union of India through Secretary,
Ministry of Urban Development and
Poverty Alleviation,
Nirman Bhawan,
New Delhi.
2. Director General (Works),
CPWD, Nirman Bhawan,
New Delhi.
3. ADG (Architect),
CPWD, Nirman Bhawan,
New Delhi.

(By Advocate: Ms. Rinchen Ongmu)

O R D E R (ORAL)

By Sh. Kuldip Singh, Member (J)

Applicant in this OA has challenged the order of the respondents vide which they had not accepted the request of the applicant for withdrawing her conditional request for voluntary retirement (Annexure A-1).

2. The facts as alleged by the applicant in brief are that the applicant was working as a Technical Officer under the respondent. She was transferred vide order dated 20.9.2001. She made a request that since she was about to retire she should not have been transferred. In the aforeslated circumstances, she was compelled to submit an application for voluntary retirement. But soon after submitting the request

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for voluntary retirement, applicant submitted another representation dated 12.10.2001 for withdrawing the said request which was to take effect from the end of December 2001.

3. It is further stated that by an order dated 5.12.2001 the respondent cancelled the order of transfer of the applicant and allowed her to be retained in the same unit where she was working. However, it was ordered that she will retire voluntarily on 31.12.2001. Applicant submits that she was within her right to withdraw the request for voluntary retirement and her request for withdrawal has been wrongly rejected. This rejection on the part of the respondents is arbitrary and malafide and the same is liable to be quashed.

4. Respondents are contesting the OA. Respondents in their reply plead that respondents have sought voluntary retirement to avoid transfer. The respondent accorded approval to applicant's request for voluntary retirement and later the applicant's transfer order was cancelled to avoid inconvenience and delay in processing the applicant's retirement papers in view of the fact that the applicant was going to retire soon. So it is submitted that the applicant cannot be allowed to withdraw her earlier request for voluntary retirement so her request for withdrawal of voluntary retirement has been rightly rejected.

5. I have heard the learned counsel for the parties and gone through the record. Both the counsel has relied upon the judgment of Balram Gupta vs. Union of India. Counsel for respondents pleaded that since there was no rhyme and reason for withdrawal of request of voluntary retirement nor in their

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letter any changed circumstances were mentioned on the basis of which the applicant shall seek withdrawal of notice, so applicant's request has rightly been rejected.

6. Counsel for applicant has also referred to a judgment reported in 1990 (1) ATJ 319 of Jabalpur Bench of the Tribunal in case of Dalip Khan vs. Union of India & Ors. and held that there should be cogent reason for withdrawal of notice of voluntary retirement.

7. In response to this, the learned counsel appearing for the applicant submitted that the applicant could have withdrawn the notice of voluntary retirement even if the same had been accepted by the department provided the date from which it was served but before the retirement is reached, and in support of this contention he has referred to a judgment given by Hon'ble Supreme Court in J.N.Srivastava vs. Union of India reported in (1998) 9 SCC 559. The Hon'ble Supreme Court had observed as under:-

"Service Law - Retirement - Voluntary retirement - Notice - Withdrawal of, before intended date of retirement - permissibility - Three months' notice for voluntary retirement given on 3.10.1989 which was to come into effect from 31.1.1990 - Notice accepted by the Government on 2.11.1989 and thereafter the appellant withdrawing notice vide his letter dated 11.12.1989 - Withdrawal, held, permissible because it was made before 31.1.1990 - Further held, even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement - The appellant therefore deemed to have continued in service till his superannuation age.

Service Law - Back Wages - "No work, no pay" - When not applicable - Appellant deemed to have continued in service till his superannuation age because his request for withdrawal of notice for voluntary

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retirement was wrongly rejected - Appellant held, entitled to arrears of salary and other emoluments including increments because he was ready and willing to work - Plea of "no work, no pay" rejected - Pensionary benefits also directed to be revised accordingly subject however to adjustment of amounts already paid."

6. After considering these two judgments I am also of the view that the applicant whose voluntary retirement was to become effective w.e.f. December 2001 had a right to withdraw the notice of voluntary retirement within the said period. Relying upon the law as laid down by the Hon'ble Supreme Court in J.N.Srivastava's case (supra), I hold that the OA deserves to be allowed. Accordingly, I allow the OA with the direction to the respondents that the applicant shall be deemed to be in service till the date of superannuation and the applicant is also entitled to the wages for the period for which she was kept out of job.


(KULDIP SINGH)
Member (J)

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