

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(6)

O.A. NO. 1026/98

DATE OF DECISION : 16-7-1998

HON'BLE SHRI JUSTICE K. M. AGARWAL, CHAIRMAN

HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

M. S. Sokhanda

... Applicant

-Versus-

Union of India & Ors.

... Respondents

Advocates : Shri R. K. Anand, Sr. Counsel with Shri Lovkesh Sawhney, for Applicant.

Shri K. R. Sachdeva, for Respondents.

✓ 1. Whether to be referred to Reporter? *yes*

✓ 2. Whether to be circulated to other Benches? *yes* *yes* *km*

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(K. M. Agarwal)
Chairman

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.1026/98

NEW DELHI, THIS THE 16th DAY OF JULY, 1998.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Shri M.S.Sokhanda,
S/o late Sh.Sarup Singh,
R/o C-II/81, Moti Bagh,
New Delhi-110 021.

...Applicant

(Shri R.K.Anand, Sr.Counsel with
Shri Lovkesh Sawhney, Advocate)

vs.

1. Union of India,
through its Secretary,
Ministry of Defence,
South Block,
New Delhi.
2. The Secretary (Defence)
Ministry of Defence,
Govt.of India,
South Block,
New Delhi.
3. Shri Subir Datta,
Additional Secretary,
Ministry of Defence,
Govt.of India,
South Block,
New Delhi.
4. Secretary to Govt.of India,
Ministry of Personnel,
Public Grievances and Pensions,
Shastri Bhavan,
New Delhi.

...Respondents

(Shri K.R.Sachdeva,Counsel)

ORDER

JUSTICE K.M.AGARWAL:

This application under section 19 of the Administrative Tribunals Act, 1985 has been filed for quashing the order dated 8.5.1998, Annexure B, conveying the Presidential sanction for acceptance of the applicant's notice for voluntary retirement with effect from the forenoon of 16.5.1998 and the refusal of the Competent Authority to accede to applicant's subsequent request for withdrawal of his notice for voluntary retirement as manifested by Memo dated 16.5.1998, Annexure R-II, of the Government of India, Ministry of Defence.

2. The applicant was working as Joint Secretary in the Ministry of Defence since 1.5.1991. He filed O.A. No.15/98 for directing the respondents therein to empanel his name for promotion to the post of Additional Secretary. The O.A. was decided in his favour by order dated 10.2.1998, repronounced on 6.3.1998. This decision of the Tribunal was challenged by the Government before the Delhi High Court in CWP No.1664/98. By order dated 2.4.1998, the Delhi High Court was pleased to stay the operation of the said order of the Tribunal in O.A. No.15/98. Thereafter it appears that the applicant served the respondents with his notice of voluntary retirement dated 24.4.1998, Annexure A, saying that:

"I have completed more than 33 years of qualifying government service and I am left with one year of service to superannuate. I now intend to participate in the national mainstream. I intend to join BJP and strengthen the hands of our Hon'ble Prime Minister at this juncture in my own humble way. I am required to join the party immediately and in any case by the end of May, 1998 so that I get enrolled in the party and qualify for getting a nomination for fighting Delhi State Assembly elections from Outer Delhi which are due in Oct/Nov, 1998. As there is hardly any time left and due to urgency in the matter, I seek retirement immediately and give this notice of retirement from service w.e.f. the afternoon of 15.5.1998 under rule 48 (1-A) of the CCS(Pension) Rules, 1972 (photo copy of relevant extracts enclosed). I request that my retirement be accepted at this short notice for the special and urgent reasons given above. The dues, if any, against me may also be adjusted out of my retirement benefits."

This notice of voluntary retirement was accepted with effect from 16.5.1998 and communicated to the applicant by service of order dated 8.5.1998, Annexure B, on him. It was alleged in paragraph 4.8 of the O.A. that on 12.5.1998, the Government of India took a major policy decision to enhance the retirement age of the Government servants from 58 to 60 years, which was also notified in Gazette of India Extra Ordinary dated 13.5.1998, Annexure C, which prompted him to seek withdrawal of his notice for voluntary retirement by filing his application dated 12.5.1998, Annexure D. The request was turned down, as communicated to the applicant by order dated 16.5.1998, Annexure R-II. He has, therefore, filed the present O.A. for the said reliefs.

3. The respondents are resisting the application by justifying the decision contained in the order dated 16.5.1998, Annexure R-II.

4. The learned counsel for the applicant first tried to attack the impugned order dated 16.5.1998 by submitting that the Competent Authority either to accept or reject the applicant's request to withdraw his notice for voluntary retirement was the Ministry of Defence, where he worked, but not the Ministry of Personnel, Public Grievances and Pensions. The argument deserves to be rejected for reasons more than one. Firstly, the Competent Authority for the purpose, according to us, was the President of India. Secondly, the Cadre Controlling Authority of the applicant was the Ministry of Personnel, Public Grievances and Pensions. Lastly, the impugned order of the Competent Authority was communicated to the applicant by the Ministry of Defence and not by the Ministry of Personnel, Public Grievances and Pensions, which means that the application was also processed by the Ministry of Defence. Arguments to show that earlier the Ministry of Defence had made favourable

recommendations for permission to withdraw the notice of voluntary retirement carry no weight on the face of ultimate decision taken by the Competent Authority.

5. Relying on a decision of the Supreme Court in Balram Gupta v. Union of India, 1987 (Supp) SCC 228, it was further argued by the learned counsel for the applicant that at any time before the effective date of voluntary retirement, the applicant could withdraw his notice for voluntary retirement and as in the present case, the application seeking withdrawal of notice for voluntary retirement was made before the effective date for voluntary retirement, i.e., before 16.5.1998 on the ground of "a material change in the circumstances" as detailed in the application, the respondents, or the Competent Authority could not reject the request for withdrawing his notice for voluntary retirement.

6. Rule 48-A of the Central Civil Services (Pension) Rules, 1972, (in short "CCS Pension Rules"), dealt with by the Supreme Court in Balram Gupta's case (supra), provides for retirement of Government servants on completion of 20 years' qualifying service; whereas Rule 48 of those rules makes a provision for retirement of a Government servant on completion of 30 years' qualifying service. More or less, the provisions are the same. Sub-rules (1) and (2) of Rule 48-A of the CCS Pension Rules read as follows:

"(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."

"(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

"Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice,

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the retirement shall become effective from the date of expiry of the said period."

Further, sub-rule (4) of Rule 48-A was also considered by the Supreme Court, which reads as follows:

"(4) A Government servant who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."

Sub-rules (1) and (2) of Rule 48 of the CCS Pension Rules read as follows:

"(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 pension:

"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;"

"(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

"Provided that the request for withdrawal shall be within the intended date of his retirement." (Emphasis supplied).

It is true that in paragraph 9 of the judgment in Balram Gupta's case (supra), it has been held by the Supreme Court that a Government employee is "at

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liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation." But at the same time, the rule has not been declared ultra vires and it has been observed in paragraph 8 of the judgment that "the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the government servant cannot withdraw except with the approval of such authority." Again in paragraph 10, it was said : "On the principle of general law the offer to relinquishment could have been withdrawn by the appellant before the date it became effective if sub-rule (4) of Rule 48-A was not there."

7. In Balram Gupta's case (supra), though the Supreme Court found that it was not concerned with the actual controversy involved in the case of Air India v. Nergesh Meerza, AIR 1981 SC 1829, it was recalled that in that case "the court reiterated that there should not be arbitrariness and hostile discrimination in government's approach to its employees." Similarly while observing that it was not necessary to examine the validity of sub-rule (4) of Rule 48-A, it was said that:

"..It may be a salutary requirement that a government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason."

(Middle of paragraph 11)

And that: "If properly exercised the power of the government may be a salutary rule."

8. The learned counsel for the respondents

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relied on the Government guidelines given in O.M. dated 24.12.1952, reproduced at S.No.2 in Swamy's Pension Compilation, page 294 under the sub-head "Government of India's Decisions", filed as Annexure R-VI, in support of his contention that the discretion was rightly exercised by the Competent Authority in rejecting the applicant's request for withdrawal of his notice for voluntary retirement. These guidelines read as follows:

"(2) Withdrawal of notice of retirement not ordinarily permissible.- A question has been raised whether a Government servant who has given to the appropriate authority, notice of retirement has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such rights. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case, to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn, if so desired for adequate reasons, provided the Government servant concerned is agreeable."

These guidelines were not held to be unreasonable by the Supreme Court in Balram Gupta's case (supra).

9. The gist is that:

(i) Normal rule that a person can withdraw his resignation before it is effective would not apply with full force to a case of the

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present nature because here the Government servant cannot withdraw without the approval of the appointing authority.

(ii) Neither Rule 48 (2) is invalid, nor the guidelines dated 24.12.1952 are unreasonable. If the power is properly exercised, the rule may be a salutary rule.

(iii) As provided in the guidelines, ordinarily permission to withdraw the notice of retirement cannot be given, but if it is shown that "there has been a material change in the circumstances in consideration of which the notice was originally given", permission to withdraw may be given. (Emphasis given).

(iv) However, there should not be arbitrariness and hostile discrimination in Government's approach to its employees in this regard.

10. Let us now examine the present case in the light of the said principles. The applicant gave his notice for retirement on 24.4.1998, mentioning following reasons for the same:

(i) One year of service was left for retirement.

(ii) Wanted to participate in politics by joining BJP, a major political party.

(iii) Wanted to join the political party immediately and "in any case by the end of May, 1998" so as to be eligible "for getting a nomination for fighting Delhi State Assembly elections from Outer Delhi which are due in Oct/Nov, 1998." (Emphasis given).

(iv) As there was hardly any time left, immediate retirement was sought "at this short notice for the special and urgent reasons given above." (Emphasis given).

The effective date for retirement was the afternoon of 15.5.1998. Just 3 days before this effective date, i.e., on 12.5.1998, the applicant applied for withdrawal of his notice for retirement stating that:

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(i) "There has been a material change in the circumstances since then, (i.e., the date of notice for retirement), as the government has decided to increase the age of superannuation to 60 years with immediate effect."

(ii) Now 3 years service would be left for retirement.

(iii) The "increase in retirement age would result in substantial increase" in post retirement benefits of the applicant.

(iv) He would also get "ample opportunity to pursue" his case for promotion.

(v) It was said: "With this material change in service situation coupled with the fact that my case for promotion is coming up for hearing in the Delhi High Court on 15.5.98, I withdraw the notice of my voluntary retirement with immediate effect."

(vi) It was also mentioned that the "withdrawal is permissible under the relevant rules and as per the government of India decision contained vide OM No.24(57) dated 24th Dec. 1952".

Though the notice for retirement fell short of 3 months, it was accepted by the respondents by order dated 8.5.1998 and as desired by the applicant in his notice for retirement, he was permitted to retire with effect from the afternoon of 15.5.1998. The application for withdrawal of notice for retirement, made just 3 days before the effective date for retirement, was rejected by the respondents on the ground disclosed in paragraph 14 of the detailed counter filed on 6.7.1998, which is as follows:

"....while considering the request of the applicant for withdrawal of his notice for voluntary retirement, (competent authority) felt that the applicant's clear intention to join a political party could compromise his

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neutrality, impartiality and objectivity, if he is allowed to withdraw his notice for voluntary retirement and continue as a Government servant."

In paragraph 15 of the counter, it has been further asserted that:

"....on consideration of all the related aspects of the matter, the competent authority came to the conclusion that the applicant had not shown that there has been a material change in the circumstances in consideration of which the notice was originally given by him."

(Emphasis supplied)

11. The guidelines, Annexure R-VI, also referred to by the applicant in his application for withdrawal of notice for retirement, Annexure-D, and found to be not unreasonable by the Supreme court in Balram Gupta's case (supra), specifically provide that the permission to withdraw the notice should not be granted unless the employee is "in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given." On consideration of the materials placed before us, we are also satisfied that the applicant has not been in a position to show that there was a material change in the circumstances in consideration of which the notice was originally given. Our conclusion is based on the following facts and circumstances:

(i) In the notice for retirement, reason given was the intention of the applicant to join politics and a political party with a view to contest Delhi Assembly elections to be held in Oct./Nov. 98. In the application for withdrawal of notice for retirement, it has not been stated that he has changed his mind to enter politics, or to contest the elections.

(ii) It may be argued that such change in intention to join politics, or to contest

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election may be inferred by the fact that he applied for withdrawal of notice for retirement. However, the keenness to contest the election shown in the notice for retirement cannot be overlooked and it cannot also be overlooked that if allowed to continue in service for a further period of 3 years pursuant to increase in the superannuation age, he will get no immediate opportunity to contest Delhi Assembly election on retirement.

(iii) There is a ceiling on the maximum amount of pension that a retiring employee may get. It has not been shown, what difference is likely to be worked out in the amount of pension between the two dates of retirement, i.e., the effective date of retirement pursuant to notice for retirement and the normal date of retirement pursuant to increase in the superannuation age from 58 to 60 years. According to us, looking to the long period of 33 years service on the date of notice for retirement, there may be no difference in the amount of pension between the two dates for retirement. This reason in the application for withdrawal may not, therefore, constitute a material change in the circumstances in consideration of which the notice was originally given.

(iv) Another ground given for withdrawal of the notice is to provide him ample opportunity to pursue his case for promotion, "coupled with the fact that (his) case for promotion is coming up for hearing in the Delhi High Court on 15.5.98".

On the date of his notice for retirement, i.e., on 24.4.98, his O.A. No.15/98 for empanelment of his name for promotion had already been decided in his favour by the Tribunal and that order of the Tribunal was stayed by the Delhi High Court on 2.4.98 in CWP No.1664/98. After the date of acceptance of his notice, CWP No.1664/98 was dismissed by the Delhi High court on 15.5.98 on the ground that it had become infructuous. (See Annexure R-III). This

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fact has been suppressed by the applicant in his O.A. Now with the dismissal of CWP No.1664/98 on 15.5.98, the Tribunal's order in his favour is revived with the result that if he is allowed to withdraw his notice for retirement, he may insist for his promotion pursuant to the order of the Tribunal in his favour and the Government may be left in bewilderment, or with no remedy against the Tribunal's order in his favour.

For the aforesaid reasons, we are of the view that there was no arbitrariness on the part of the Competent Authority when it decided to reject the applicant's request for withdrawal of his notice for retirement.

12. Balram Gupta's case (supra) is distinguishable from the present case in several respects. In Balram's case, the application for withdrawal of notice for retirement was made 2 months before the effective date of retirement. In the present case, it was just before 3 days from the effective date of retirement. In the former case, no reason for tendering the notice for retirement was given. In the present case, reasons were given. In Balram's case, the Competent Authority rejected the application for withdrawal of notice on the ground that no reasons were given for such withdrawal. The Supreme court found in paragraph 11 of its judgment that reason was "sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter." In the present case, reasons given by the applicant for withdrawal of his notice for retirement were duly considered and, thereafter, a finding was recorded, as mentioned in paragraph 15 of the counter, that:

.....on consideration of all the related aspects of the matter, the competent

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authority came to the conclusion that the applicant had not shown that there has been a material change in the circumstances in consideration of which the notice was originally given by him." (9)

The applicant cannot, therefore, bank on the authority of Balram Gupta (supra) and derive any benefit on that basis. It is also significant to mention that because of his seeking voluntary retirement with effect from the afternoon of 15.5.1998, CWP No.1664/98 filed by the Government against the Tribunal's order in O.A. No.15/98 in his favour was dismissed on 15.5.1998 as having become infructuous.

13. No other point was urged before us.

14. For the foregoing reasons, this O.A. fails and it is hereby dismissed, but without any order as to costs.



(K.M. AGARWAL)
CHAIRMAN


(R.K. AHOOTJA)
MEMBER (A)