

5

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.320/95

New Delhi this the 2nd Day of June, 1995.

Hon'ble Sh. J.P. Sharma, Member(J)
Hon'ble Sh. B.K. Singh, Member(A)

Dr. M.G. Mittal,
Principal Scientist,
Indian Agricultural Statistics,
Research Institute (ICAR),
Library Avenue, New Delhi.
R/o 11/390, Sunder Vihar,
New Delhi.

Applicant

(through Sh. M.L. Bhargava, advocate)

versus

1. Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.
through its President.

2. Director General,
Indian Council of Agricultural Research,
Krishi Bhawan,
New Delhi.

Respondents

(through Sh. M.K. Gupta, advocate)

ORDER

delivered by Hon'ble Sh. B.K. Singh, Member(A)

This application No.320/95 has been directed against the order dated 4.1.95 accepting the voluntary retirement notice of the applicant w.e.f. 5.1.95 and order dated 3.2.95 rejecting the request dated 24.12.94 for withdrawal of notice for voluntary retirement. These are annexures A-3 and A-7 of the paperbook respectively.

The admitted facts are that the applicant joined as Junior Statistician in Indian Agricultural Statistics Research Institute, Pusa and rose to the post of Principal Scientist in the same Institute. He filed a petition on 3.10.94 addressed to the D.G. I.C.A.R., Govt. of India through Director Indian

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6

Agricultural Statistics Research Institute for voluntary retirement. The voluntary retirement date was indicated as 5.1.95. It is admitted that the request for voluntary retirement was accepted by the Director General, Indian Council of Agricultural Research on 4.1.95. On 24.12.94 the applicant submitted a petition to Dy. Director requesting his petition to be forwarded to competent authority for withdrawal of voluntary retirement notice submitted on 3.10.94. The request of the applicant for withdrawal of the voluntary retirement notice was rejected by D.G., I.C.A.R. after taking into consideration the various aspects including his service record and also report of the Director of the said Institute.

Aggrieved by these orders, this O.A. was filed in the Tribunal on 14.2.95.

The relief prayed for by the applicant is that the order dated 4.1.95 (Annexure A-3) accepting voluntary retirement notice of the applicant and office order dated 3.2.95 rejecting the request of the applicant dated 24.12.94 for withdrawal of the notice of voluntary retirement (Annexure A-7) may be set aside and quashed and the applicant may be deemed to be continuing in service.

A notice was issued to the respondents who filed their reply contesting the application and grant of reliefs prayed for.

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We heard the learned counsel Sh. M.L. Bhargava for the applicant and Sh. M.K. Gupta for the respondents and perused the record of the case and all other relevant documents summoned by us and produced by Sh. Gupta at the time of hearing and some more documents were also summoned from him which were also produced before us on 31.05.95.

The learned counsel for the applicant argued that since the date of voluntary retirement in the letter dated 3.10.94 was w.e.f. 5.1.94 and prior to that date the applicant had sent a letter on 24.12.94 for its withdrawal it is well within time and is certainly before the proposed date of retirement. He argued that it is a well settled law that prospective resignation or prospective notice for voluntary retirement can be withdrawn before the arrival of the indicated future date. The prospective resignation and voluntary retirement notice from a future date cannot be made operative till the said date has reached and that the applicant was fully competent to withdraw that notice before it became effective. In the instant case, he argued that the voluntary retirement notice was prospective in nature i.e. it was to take effect from 5.1.95 and the applicant was entitled to withdraw the same. The applicant has withdrawn the said notice vide his application dated 24.12.94 and, therefore, the acceptance of the voluntary retirement notice is unjustified and arbitrary. He relied on two rulings of the Hon'ble Supreme Court of India in case of Union of India Vs. Gopal Chandra where it has been laid



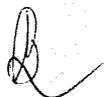
down that in absence of a legal constitutional or contractual law a prospective resignation can be withdrawn. The other ruling on which he placed reliance was Balram Gupta Vs. Union of India 1988 SLJ-79(SC) which lays down that arbitrary refusal is bad in law.

According to him the order dated 3.2.95 (Annexure A-7) is illegal and contrary to the law. Since no orders had been passed by the respondents on the date the withdrawal request was submitted. It was further stated that the order dated 4.1.95 (Annexure A-3) has been passed by the Director General, I.C.A.R. who has no jurisdiction to accept the voluntary retirement notice of the applicant, because the Appointing Authority in respect of the applicant is President, I.C.A.R. It was further submitted by the learned counsel for the applicant that no reasons were recorded while communicating the rejection of the withdrawal notice. The respondents in their counter have rebutted the various contentions raised by the learned counsel for the applicant. It has been stated that the applicant has submitted an application for seeking voluntary retirement w.e.f. 5.1.95 and the same was addressed to the President, I.C.A.R. A true copy of the said notice/letter dated 3.10.95 has been marked as Annexure R-1 to the counter. As per the normal practice in the Council, a request for voluntary retirement in respect of any Scientific Officer/Principal Scientist as in the instant case, posted in the Institute has to be submitted to the Director of the Institute as the Institute maintains

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all the service records/performance data of the Principal Scientist. The Director is expected to examine the request for voluntary retirement with reference to his service record, vigilance angle involved, if any, and has to make his assessment in accordance with the rules on the subject. If he is satisfied that his request is within the rules and is acceptable, he will forward the request for voluntary retirement alongwith a check list for the approval of the competent authority in the Council. It has been pointed out that Dr. Mittal disregarded all the procedural requirements and submitted his request for voluntary retirement to the President, I.C.A.R. on 3.10.94, whereas his Controlling Authority is the Director, I.A.S.R.I. His request for voluntary retirement alongwith all the service particulars was received in the Council on 21.10.94. The Competent Authority accepted his request for voluntary retirement w.e.f. 5.1.95 and accordingly the order at Annexure A-3 was issued.

Sh. M.K. Gupta, learned counsel for the respondents submitted the relevant files where the request for withdrawal of voluntary retirement notice has been kept on record. From a perusal of the record it is clear that the applicant in his own pen had originally written Director but subsequently cut out in his own pen and wrote Dy. Director and Dy. Director has marked that request for withdrawal of the voluntary notice to the Chief Administrative Officer. The Chief Administrative Officer of the Institute has simply forwarded that request to the I.C.A.R. After



the receipt of this request, the matter has been examined in depth by the various officers concerned and after examining all the relevant data available the request for withdrawal of the voluntary notice was rejected on 3.1.95.

The learned counsel for the respondents during the course of arguments relief on Rule 48 (A) of CCS (Pension) Rules, 1972 which provides "that the 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 the competent authority." The same is the position about the Fundamental Rule 56(2). It reads "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." The proviso to this Rule 56(2) adds that the request for withdrawal shall have to be within the intended date of his retirement. Thus it is clear from both the rules i.e. 48(A) of CCS (Pension) Rules, 1972 and also 56(2) of Fundamental Rules alongwith proviso that a person has a right to send a notice of voluntary retirement but the withdrawal of that notice is dependent on the competent authority and not on the sweet will of the person who has sent his notice of voluntary retirement.



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We have carefully perused the records submitted before us on 31.05.95 and have gone through the ACR for the period 1987, ACR 1988, ACR 1989-1990, ACR 1990-1991, ACR 1991-1992 and ACR 1992-1993 submitted by the Indian Council of Agricultural Research, New Delhi. It seems that in all these years the remarks of the officer have been averagish and he has been graded reluctantly as 'good' only. He never obtained very good or outstanding from the reporting/reviewing or accepting authority. The service record itself shows that he had outlived his utility in the eyes of the Director of the Indian Statistics Research Institute. There is another File No.2-2/94-Vig. which deals with wastage of public money fraudulently by Dr. Mittal as Principal Scientist. Although it is a anonymous petition but the facts were enquired into by the Director of the Institute after a letter was received from the D.G. I.C.A.R.'s office. The Director R.K. Pandey of the Indian Agricultural Statistics Research Institute vide his letter No.Dir./IASRI/94 dt. 1.6.94 has found allegations levelled against Dr. Mittal as largely correct. It has been further stated by him that Dr. Mittal, Principal Scientist, AISRI, New Delhi is not engaged in any research project or teaching work for some time in the past. He is also not involved in other academic activities like seminars etc. He has no research publication to his credit. The Director has further recommended that since Dr. Mittal was not contributing adequately to the teaching and research programmes of the Institute, he may be transferred to some other Institute located outside Delhi. This

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letter is addressed to Shri S.S. Rana, Director (Vigilance), ICAR, Krishi Bhawan, New Delhi. A perusal of this file of the Indian Agricultural Research Institute clearly indicates that there were complaints and the allegations made against him were found more or less true. This relevant file and the letters sent by the Director were also taken into consideration before rejecting the request for withdrawal of the voluntary notice.

We have carefully perused the file No.11(11)/94-Part III of 1994 which deals with the request for voluntary retirement of Dr. M.G. Mittal, Principal Scientist, IASRI. In this rule position regarding voluntary retirement etc. both 48(A) of CCS(Pension) Rules, 1972 and FR 56(2) have been extensively examined.

It is true that Dr. Mittal's case falls within the proviso for withdrawal i.e. the request for withdrawal is within the intended date of his retirement but the main rule clearly lays down "that the officer intending to withdraw the notice of voluntary retirement is precluded from withdrawing his election subsequently except with the specific approval of such authority." the approval of the competent authority has been given. The matter was examined by Secretary, ICAR, DG-cum-Special Secretary to Govt. of India and finally a conscious decision was taken not to allow the withdrawal by the Competent Authority. Thus, it would be seen that the competent authority did not agree to the withdrawal and the same



was communicated to Dr. Mittal on 3.2.95. All other representations in this connection were also shown to the Minister. The action has been taken under 48(A) of CCS (Pension) Rules, 1972 and FR 56(2). After going through the relevant files and various records produced before us we find that over all performance of Dr. Mittal was not such that he could be retained in service. It is another matter that respondents instead of resorting to Section 56(J) preferred to accept the request for voluntary retirement under Rule 48(A) of CCS(Pension) Rules, 1972 and FR 56(2). The law has also been laid down by the Hon'ble Supreme Court in Jai Ram Vs. U.O.I. 1954 SC 584. His Lordships of the Hon'ble Supreme Court observed as follows:-

"It may be conceded that it is open to a servant who has expressed a desire to retire and applied to his superior officers to give him the required requisite permission who changed his mind subsequently and asked for cancellation of the permission thus obtained but he can be allowed to do so only when he continues in service and not after the services have been terminated."

The general rule, however, is that a resignation or notice of voluntary retirement can take effect only when it is accepted by the competent authority or the employer. In a case where it merely

amounts to an offer to quit the service, unless an offer is accepted by the employer or some one duly authorised in that behalf, it cannot be taken as termination of service of the resigning employee. Although, the relationship between the Government and its employees is not entirely based on contract, in matters which are not governed by statutory rules on terms of employment, the principle relating to contracts are applicable. It is for this reason that the principles applicable to withdrawal of offer under the law of contract are also applicable to the withdrawal of resignation or voluntary retirement notice provided the same has not been accepted. This view has been held in case of Harish Chander Gupta Vs. State of Madhya Pradesh 1972 MPLJ; Jagdish Chandra Vs. Commissioner of Transport (1982) SLJ 422.(HP) and the same view was also held in case of J.C. Mehta Vs. Postgraduate Institute of Medical Education and Research (1984) 1 SLJ 477.

In the instant case, the relationship between the Government and the Competent Authority i.e. D.G., I.C.A.R. and the applicant is not based on contract. It is based on statutory rules as contained in Rule 48(A) of CCS (Pension) Rules, 1972 and FR 56(2). Although the applicant did apply for withdrawal of his voluntary retirement notice well within time as laid down in proviso to Rule 56(2) but the competent authority chose not to permit the withdrawal on account of various considerations including his record of service, his non contribution to research, teaching or any other academic work for



which he was appointed and thus he found him to be a liability for the Institute and accordingly the request for withdrawal of the notice was rejected in conformity with these statutory rules. The only other point which has been raised by the learned counsel but not satisfactorily answered by the respondents is as to the competent authority who can accept the voluntary retirement notice. I.C.A.R. is an autonomous body registered under the Societies Act and the President, I.C.A.R. is the Chairman of the governing body and it is not clear whether D.G., I.C.A.R.-cum-Special Secretary to Government has been delegated the authority to accept such voluntary retirement notices submitted by Principal Scientists. This question has been raised in the O.A. but there is no rule shown to the effect that the President and not D.G., I.C.A.R. is the competent authority to accept or reject the notices for voluntary retirement or its withdrawal. Since both the applicant and the respondents have kept mum in this regard, we would not like to probe further and we presume that D.G., I.C.A.R.-cum-Special Secretary, Krishi Bhawan, New Delhi is the competent authority to accept the notice for voluntary retirement and he is the competent authority to reject the request for withdrawal once an employee sends him his notice for voluntary retirement. This being so and the rule position being clear as enunciated in FR 56(2) read with 48(A) of the CCS (Pension) Rules, 1972, no interference is called for from this Tribunal. The application, thus, fails and is dismissed, leaving the parties to bear their own costs.

All the three files submitted by the respondents are returned to the Learned counsel Sh. M.K. Gupta.


(B.K. Singh)
Member (A)

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(J.P. Sharma)
Member (J)