

(8)

CENTRAL ADMINISTRATIVE TRIBUNAL

Principal Bench

O.A. 2569/94 New Delhi, dated the 8th June, 1995

HON'BLE MR. S.R. ADIGE, MEMBER (A)

HON'BLE MRS. IAKSHMI SWAMINATHAN, MEMBER (J)

Shri Kulwant Singh,
R/o M-67, Hari Nagar, Clock Tower,
New Delhi-110064.

(By Advocate: Shri D.C. Vohra) ... APPLICANT

VERSUS

1. The Commissioner of Police,
Police Hqrs., I.P. Estate,
New Delhi-110002.
2. Sr. Addl. Commissioner of Police (AP&T)
Police Hqrs., I.P. Estate,
New Delhi-110002.
3. Shri Sewa Dass
Dy. Commissioner of Police/Principal
Police Training School, Jharoda Kalan,
New Delhi.
4. The Administratator/It. Governor,
Raj Niwas, Delhi-110054.
5. Union of India through the
Secretary, Ministry of Home Affairs,
Govt. of India, New Delhi.

(By advocate: Ms. Jyotsna Kaushik) ... RESPONDENTS

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, MEMBER (A)

The applicant Shri Kulwant Singh, Inspector of Police, Delhi Admn. enlisted in Delhi Police on 17.2.59 and who under normal circumstances would have retired on reaching the age of superannuation of 58 years on 30.6.98, submitted a petition dt. 29.9.94 addressed to the Principal, Police Training School (Annexure to Rejoinder) containing a 3 months notice for voluntary retirement under Rule 40 of CCS (Pension) Rules, 1992 which was to commence from 29.9.94 and take effect from 31.12.94. The grounds contained in that petition were the

9

the deteriorating medical condition of his wife and the need to settle his children. The Principal by his note of the same date recorded below the body of the petition, recommended its acceptance, recording that the applicant had not been attending office for the previous 3 months and had been sending either leave applications or medical certificates. The applicant's prayer for voluntary retirement w.e.f. 31.12.94 was accepted by the respondents vide their order dt. 17.11.94 (Annexure B). Meanwhile the applicant withdrew his petition regarding voluntary retirement under Rule 48 and 48A CCS (Pension) Rules and FR 56 vide his letter dt. 29.11.94 (Annexure C). However, the respondents have not acceded to the applicant's withdrawal of his voluntary retirement notice, vide their letter dated 20.12.94 and have decided that the applicant retired w.e.f. 31.12.94. It is this which is the applicant's grievance, and he has prayed for quashing of the respondents' order dated 17.11.94 to 20.12.94.

2. The first ground taken by the applicant is that he was compelled to sign the notice of voluntary retirement by Respondent No.3 who was constantly reprimanding and rebuking him and also harassing him. In this connection the applicant has drawn attention to a notice for voluntary retirement filed earlier on 17.3.94 before Respondent No.3, ^{on the} which Respondent No.3 had noted

that basically what the applicant sought was a transfer from PTS owing to family problems, and therefore voluntary retirement was not recommended. Secondly, it has been urged that the request for withdrawal of voluntary retirement has been made on 30.11.94 well within the intended date of retirement (31.12.94) and is, therefore, fully covered unmder Rule 48 CCS (Pension) Rules and its proviso. Thirdly, it has been urged that no reasons have been given for not accepting the request for withdrawal. Fourthly, it has been urged that social and family obligation now require him to remain in service.

3. The Respondents in their reply have contested the O.A. and vehemently deny any pressure, being put on the applicant to file a notice for voluntary retirement. They state that his request for withdrawal of the retirement notice was considered carefully and keeping in view his prayer for voluntary retirement made earlier, as well as all the other attendant ~~facts~~ and circumstances, they decided not to accept his request for withdrawal of the notice, as the applicant appeared to be making a mockery of the legal provisions by sending notices for voluntary retirement under Rule 48 (A) CCS (Pen.) Rules time and again.

4. We have heard Dr. D.C. Vohra for

the applicant and Ms. Jyotsna Kaushik for the respondents. We have also perused the materials on record and given the matter ~~of~~ careful consideration. The applicant's allegation that he was pressurised by Respondent No.3 to sign the 3 months notice dt. 29.9.94 for voluntary retirement is fit to be rejected straightaway in the absence of any materials to support the same and any evidence to establish that respondent No.3 was inimically disposed towards the applicant. If anything Resp. No.3's noting on the applicant's earlier notice dt. 17.3.94 for voluntary retirement, indicates that he was aware of, and sympathetic towards the applicant's family problems, and had noted that voluntary retirement was not the answer to it. Indeed we cannot but depurate in strong terms the attempt on the applicant's part to buttress his case by making wild allegations against Resp. No.3, and during the course of hearing, Dr. Vohra fairly stated that he was withdrawing those allegations. The Respondents also cannot be blamed ^{if} ~~for~~ they concluded that the applicant by filing notices for voluntary retirement time and again, appeared to be making a mockery of the legal provisions, and on his second notice dated 29.9.94 for voluntary retirement, decided to pin him to his word.

11

5. Having said that however, we must note that the Rules as they stand do permit the applicant to withdraw his notice with the specific approval of the competent authority. The guidelines laid down by the Govt. of India under which such withdrawal may be allowed, lay down that there should be no objection to permission being given to a Govt. servant to withdraw the notice given by him, but ordinarily such permission should not be given unless that Govt. servant 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.

6. In his addl. affidavit dt. 26.5.95 the applicant has stated that certain material changes took place during Oct-Nov. 94 which compelled him to withdraw his notice for voluntary retirement. These alleged changes include the falling through of the applicant's daughter's marriage, the marriage of his son, the falling through of the sale of certain property from which he had expected a handsome return, which had prompted the applicant to apply for voluntary retirement, and his subsequent deteriorating financial condition, which necessitated his continuing in service. The respondents in their reply to this addl. affidavit have correctly pointed out that the applicant has now changed his stand and admits having submitted the notice for voluntary retirement of his own accord. Further they state that the averments made in this addl. affidavit are also false in as much as in Annexure R-2 to the rejoinder dt. 30.12.94, the applicant stated that

B

his son is still unmarried, while in his additional affidavit he has stated that one of the material changes between Oct. - Nov. 94 is the marriage of his son. This, the respondents state is only one instance of such falsity.

7. As we have already deprecitated the applicant's conduct in making wild and baseless allegations against Resp. No.3, which has effectively been given the lie in the applicant's own additional affidavit dt. 26.5.95 we do not propose to say anything more about it. The question remains how the rules and the guidelines are to be interpreted. In Balram Gupta Vs. UOI I-1988(1) AISIJ page 79 decided on 1.9.87 while allowing the appeal and setting aside the Delhi High Court's judgment dt. 13.7.81 the Hon'ble Supreme Court was pleased to observe as follows:

" In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there had been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation

14

or letter of retirement to make other employee available for his job that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was effected".

8. They have also observed, *inter alia*, that "the appointing authority who has the statutory authority must act reasonably and rationally".

9. It is not the respondents' case that they had made any arrangements, acting on the applicant's letter of retirement, to make another employee available for the job. Even if as contended by the applicant, the sale of certain ancestral property from which he expected a handsome return fell through, depriving him of that return and necessitating his continuance in service, that in our view would be a change material enough to permit withdrawal of his notice for voluntary retirement. No useful purpose in our opinion would be served by conducting an inquiry into the extent of this material change in the applicant's circumstances, and for our purposes the fact that the applicant's financial circumstances required him to continue in service, must in the background of the Hon'ble Supreme Court's judgment in Balram Gupta's case (Supra) ^{be} ¹ held to be good and valid reason.

BS

10. In the result this O.A. succeeds and is allowed. The impugned orders dt. 17.11.94 and 20.11.94 are quashed. The respondents are directed to accept the applicant's letter dated 30.11.94, withdrawing his notice for voluntary retirement and take the applicant back on duty, treating the applicant's period of absence from duty in accordance with Rules. No costs.

Lakshmi Swaminathan

(LAKSHMI SWAMINATHAN)
Member (A)

S.R. Adige

(S.R. ADIGE)
Member (A)

GK