

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

OA No.1012/94

New Delhi this the 31st day of January, 1996.

Hon'ble Sh. N.V. Krishnan, Acting Chairman  
Hon'ble Smt. Lakshmi Swaminathan, Member (J)

T.L. Anselm,  
R/o NA-216,  
Vishnu Garden,  
New Delhi-110018. ...Applicant

(By Advocate Sh. A.K. Bhardwaj)

Versus

Union of India through:

1. The Director,  
Directorate of Statistics  
and Intelligence,  
Central Excise and Customs,  
New Delhi.

2. The Chairman,  
Central Board of Excise & Customs  
and Special Secretary,  
North Block,  
New Delhi.

...Respondents

(By Advocate Sh. K.C.D. Gangwani)

ORDER (Oral)  
(Hon'ble Sh. N.V. Krishnan, Acting Chairman)

The applicant is aggrieved by the fact that the respondents have not acceded to his request that he may be permitted to withdraw the application for voluntary retirement. The facts are that on 23.10.92 the applicant sent a notice to the respondents stating that he be permitted to retire voluntarily under Rule 48-A of the G.C.S. (Pension) Rules on the expiry of three months notice, i.e. w.e.f. 1.2.93. Before any order could be passed on this notice, the applicant sent another letter dated 30.10.92, withdrawing the notice given earlier. He states therein that the notice was being withdrawn "as my family circumstances on account of my mother's illness

(2)

has been solved due to the retirement of my elder brother and my aunty from Government service as I have to serve the Government for further eleven years."

2. By an order dated 2.11.92 the respondents accepted the notice of voluntary retirement and directed that he would stand retired from 1.2.93 (Annexure B).

3. In so far as his second notice is concerned, the respondents issued the impugned Annexure-C order dated 13.11.92 stating that his request for withdrawal of the notice of voluntary retirement has not been accepted by the competent authority. Therefore, he would stand retired from 1.2.93.

4. The applicant has preferred the Annexure 'D' representation to the Chairman, Central Board of Excise and Customs (CBEC) to which no reply has been received. Hence, this OA has been filed for a direction to the respondents to quash the impugned order Annexure 'B' and Annexure 'C' and to put back the applicant in service with consequential benefits.

5. The respondents have filed a reply as also an additional affidavit challenging these claims.

6. The matter was heard today. The learned counsel for the applicant submits that it is open to an employee to seek withdrawal of the notice of the voluntary retirement so long as the retirement has not become effective. The respondents cannot reject such a request without assigning proper and valid reasons in



(3)

16  
their reply. He states that because of change in family circumstances the request was made which is genuine and it should have been accepted. He relies on an unreported decision of the Principal Bench of the Tribunal in OA-561/88 Smt. Nirmal Anand vs. Secretary, Ministry of Commerce wherein in a similar situation, the Bench accepted the application holding that it was a legitimate ground for seeking withdrawal of the earlier application, seeking voluntary retirement.

7. He also relies upon the observations of the Supreme Court in Balram Gupta vs. Union of India (1987 AIATLT 416) referred to by the Bench in the above judgement, wherein it was held that the approval of the withdrawal application is not ipse dixit of the approving authority. He also further contends on the basis of the judgement of the Supreme Court in AIR 1963 SC 395 - Bachhittar Singh vs. State of Punjab that the respondents ought to have given their reasons in the order itself as otherwise there is a chance of their changing the grounds on which the order has been passed on file.

8. We have heard the learned counsel for the respondents. He submits that the representation at Annexure 'D' to the Chairman, CBEC has also been rejected by the Annexure R-1 letter dated 6.10.93. In so far as the merits are concerned, the learned counsel has drawn our attention to the additional affidavit filed at Annexure R-3, which is a noting on the file dealing with the Annexure 'A' letter of the applicant seeking permission to withdraw the notice of retirement. Drawing

U

(4)

attention to the provisions of the rules and instructions the office note points out that this applicant had earlier tendered a notice for voluntary retirement on 31.10.90 and had withdrawn it later on which was permitted. It is also stated that this applicant generally remains on long/intermittent leave on medical grounds or otherwise due to his ill health. On considering this note the competent authority directed that his withdrawal will not be accepted and that he will have to be retired on the given date.

9. The learned counsel submits, based again on the judgment of the Supreme Court in Balram Gupta's (supra), that what is important to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the Government from withholding the withdrawal. In other words, the Government cannot refuse withdrawal arbitrarily and there must be some reasons for refusing to grant withdrawal.

10. The learned counsel for the applicant submits that the reasons given are totally unsatisfactory. The fact that the applicant had submitted a voluntary retirement application earlier and withdrew it is not relevant nor is the other circumstance regarding his being <sup>on</sup> leave etc. He, therefore, submits that the reasons given are arbitrary.

11. We have carefully considered the rival contentions. It is not for us to sit in judgement over the reasons which prompted the respondents to decline the request of the applicant so long as those reasons have

*il*

(5)

18

some nexus with the decision. The respondents have given two reasons, which, in our view, cannot be considered to be totally extraneous. We cannot label this decision as either arbitrary or as perverse.

12. The submission of the learned counsel for the applicant that the reasons ought to have been communicated to him has also no force. The decision in Bachhittar Singh's case does not apply to the decision taken in the present case. The ratio of the decision is that a statutory order passed by Government must get support only from what has been mentioned in that order and an additional prop cannot be supplied to make that order valid on a subsequent date when the order is challenged. That ratio will not apply to the present case.

13. We are, therefore, of the view that no grounds have been given for our interference. The O.A. is, therefore, dismissed.

*Lakshmi Swaminathan*

(Smt. Lakshmi Swaminathan)  
Member (J)

'Sanju'

*N.V. Krishnan*

31-1-86  
(N.V. Krishnan)  
Acting Chairman