

Central Administrative Tribunal
Principal Bench, New Delhi.

O.A.No.1761/94

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New Delhi this the 4th Day of May, 1995.

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

Sh. Liaq Ram,
S/o Sh. Pyare Lal,
R/o Vill. & P.O. Khera Kallen,
Flat No.15, Delhi. Applicant

(through Sh. Ashish Kalia, advocate)

versus

1. Union of India,
The Director General of Works,
C.P.W.D.,
Nirman Bhawan,
New Delhi-11.

2. The Superintending Engineer,
PWD Circle No.IV,
Govt. of NCT Delhi,
I.P. Estate,MSO Bldg.,
New Delhi-2.

Respondents

(through Sh. E.X. Joseph, Sr.Counsel with
Sh. N. Amresh, advocate)

ORDER(ORAL)

delivered by Hon'ble Sh. J.P. Sharma, Member(J)

The applicant while working as U.D.C. with the respondents moved an application on 19.05.1993 requesting the respondents for giving him voluntary retirement w.e.f. 31.8.1993(AN) because of certain domestic problems. Before the date i.e. 31.08.93, the applicant withdrew the request on 25.08.93 for voluntary retirement due to change in domestic circumstance and requested for rejection of the earlier request dt. 19.05.93 for voluntary retirement. However, by the order dt. 25.08.93 the applicant was informed that his request for voluntary retirement has been accepted by the respondents. As a consequence the applicant was relieved from the post of UDC by the respondents on 31.8.93. He also made certain

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representations against the same. The representation dt. 2.11.93 was also rejected by the letter dt. 3.12.93. A copy of which has been filed as Annexure R-5 to the counter. The applicant filed this application on 19.08.94 and has prayed for the grant of the reliefs that the orders dt. 25.08.93 and 30.08.93 be declared null and void and the applicant be allowed to join duty from 01.09.1993.

The respondents have filed their reply and opposed the application stating that earlier also the applicant gave a notice of voluntary retirement in May, 1992 and later on requested for its withdrawal in June, 1992. The applicant was absenting from duty when he was under orders of transfer and by that time he has moved an application requesting for voluntary retirement w.e.f. 31.08.93. The applicant did not join in compliance with the transfer order issued by the office. The withdrawal letter was considered by Supdt. Engineer and withdrawal is not ordinarily permissible vide Govt. of India decision in para 2 of Appendix of CCS (Pension) Rules, 1972. A copy of same has been annexed as Annexure R-1 to the counter. The main basis for accepting the prayer for voluntary retirement and rejected the withdrawal on the ground that the applicant has been in the habit of moving such application and then withdrawing the same. The applicant has not given any details of the domestic reasons which compelled him to seek voluntary retirement.

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The applicant has also withdrawn the G.P.F., gratuity and P.P.O. has also been issued in his name by the order dated 22.02.94.

The applicant has also filed rejoinder reiterating the facts already stated in the O.A.

We have given a careful consideration to the arguments advanced by the learned counsel of both the parties. Under Rule 48-A of CCS (Pension) Rules, 1972, it is provided that a Govt. servant who 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. The notice has to be accepted by the Appointing Authority. Sub clause (4) of the said rule lays down that 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.

We find that there is a similar provision under FR 56 (k) that the request for withdrawal shall be within the intended date of retirement.

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We have to consider the matter in the light of the fact that the applicant has also been paid certain retiral benefits. However, the respondents rejected the petition for withdrawal of the applicant for voluntary retirement before the intended date of retirement. The applicant has applied for withdrawal on 25.08.93. The acceptance of voluntary retirement is also of 25.08.93. The intended date of retirement has been 31.08.93. In such a circumstance, the respondents should have given some reason as to why the request for withdrawal is being turned down. When a statutory right has been given to an employee and he specifically mentioned that due to certain domestic reasons, he does not want to remain in service and having completed 25 years and more in service prayed for being granted voluntary retirement from service. During the course of the hearing, the learned counsel for the applicant disclosed that the applicant was under extreme mental agony inasmuch as one of his sons has suffered pre-mature death in some family fued. This would have normally created a depression which might have been the result of moving such an application for voluntary retirement w.e.f. 31.08.93.

However, another picture that emerges that this application has been filed by the applicant in August, 1994. Before he filed this application it appears that he has also accepted certain retiral benefits from the respondents in February, 94. A P.P.O. has also been issued in favour of the applicant and it is also admitted that the gratuity amount has also been received by the applicant. In such a

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situation only one course is open that all the retiral benefits accepted by the applicant have to be reimbursed to the Government with interest as the applicant has earned the monetary benefit on this amount. This position cannot be dealt with in a judicial review. But on the face of it, the order rejecting the application for voluntary retirement is not a speaking order and since the respondents did not initiate any departmental proceeding against the applicant for non-compliance of the order of transfer, now it cannot be said that the applicant in order to avoid the transfer order, opted for voluntary retirement w.e.f. 31.08.93. Though it is for the competent authority to accept or reject the prayer for voluntary retirement of an employee but an application for withdrawal of voluntary retirement when the intended date is far ahead, should be disposed of by a speaking order. In the counter the respondents have stated that the applicant in the month of June, 1992 moved a similar application for voluntary retirement and on that basis the authorities consider the matter that the applicant is in the habit of moving such applications. That cannot be said to be a reasonable ground for rejecting the withdrawal application though no such ground is mentioned in the order under challenge.

In view of the above facts and circumstances of the case, without passing any clear direction to the respondents, we direct that the respondents will again consider the application for withdrawal of voluntary retirement of the applicant and

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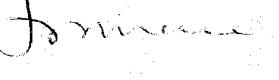
decide the same by a speaking order. The applicant may also make a representation saying that he will deposit all the payments with interest which he has drawn on voluntary retirement within the stipulated period to the respondents. The applicant also to assess whether he will be beneficiary in the ultimate result or not. He has already completed 30 years service with the respondents.

With the above observations, we dispose of this application without interfering in the order of rejection of withdrawal application for voluntary retirement. But it shall be open to the applicant to assail that final order, if so advised, and necessity arises.

Costs on parties.


(B.K. Singh)

Member (A)


(J.P. Sharma)

Member (J)

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