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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NO.2605/2000

Thursday, this the 6th day of September, 2001

Hon'ble Shri Shanker Raju, Member (Jud1)

Shri Gurdip Singh
ex. Deputy Director
AFFPD
Ministry of Defence
New Delhi
r/o BB 14-F Janak Puri
New Delhi-58.

(By Advocate: Shri B.S. Mainee)

..Applicant

Versus

Union of India through

1. The Secretary
Ministry of Defence
South Block,
New Delhi
2. The Chief Administrative Officer
Ministry of Defence, C-II Hutmants,
DHQ, PO, New Delhi-11.
3. The Director
AFFPD, H-Block, DHQ, PO
Ministry of Defence,
New Delhi-11.

(By Advocate: Shri S.M. Arif)

..Respondents

O R D E R (ORAL)

Heard the learned counsel for both the parties.

2. The applicant in the present case is ~~was~~ aggrieved by an order dated 24.5.1998 whereby his request for withdrawal of notice for voluntary retirement has been rejected as well as an order dated 4.5.1998 whereby on account of acceptance of his request for voluntary retirement, he has been relieved of his duties.
3. Briefly stated, the applicant, who had been working with the respondents w.e.f. 3.9.1959, requested the respondents for voluntary retirement under Rule 48 of

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C.C.S. (Pension) Rules, 1972 by his letter dated 28.1.1998, wherein it is stated that due to serious financial hardships and in the circumstances that his daughter is to be married, he opted for voluntary retirement, so that the financial benefits should be accorded to him. In his notice of voluntary retirement, an undertaking was given by him that he would not withdraw this notice, except with the specific approval of the appointing authority and in case of circumstances beyond his control compelling him to withdraw the notice, the same would be done within the intended date of retirement. The applicant has requested the respondents to retire him from service w.e.f. 1.5.1998, i.e., after the expiry of three months from 28.1.1998 as envisaged under Rule 48 ibid. The respondents by an order dated 17.4.1998 accepted the request of the applicant for voluntary retirement w.e.f. 1.5.1998 and the same is to be made effective with effect from the given date. The applicant on 17.4.1998 requested the respondents for withdrawal of his notice for voluntary retirement on the grounds that as the domestic financial obligations forced him to request for voluntary retirement and as the same have not been accorded to him provisionally, he wants to continue in service. The aforesaid request has been forwarded to the Secretary, Ministry of Defence, who in view of the cogent and convincing grounds, recommended the case for acceptance of his request for withdrawal of voluntary retirement.

4. The learned counsel for the applicant by resorting to Rule 48 ibid, stated that it is open to a

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Govt. servant who has tendered a notice for voluntary retirement to withdraw the same within the intended date on which the notice becomes effective and for this, he places reliance on clause 4 of the Rule 48 ibid. The learned counsel for the applicant places reliance on the decision of the Apex Court in the case of Union of India & Anr. Vs. Wing Commander T. Parthasarathy, reported as 2001 (2) SLJ 195, wherein the petitioner, who was commissioned in the Indian Air Force, has sought pre-mature retirement from service to be made effective w.e.f. 31.8.1986 and before this, the same was accepted, the petitioner had made a request for withdrawal of the same. The Apex Court by placing reliance on the decision of Balram Gupta Vs. Union of India & Anr., 1987 (3) SCR 1173 and also on the decision of the Constitutional Bench of the Apex Court has observed as under:-

"7. This Court had again an occasion to consider the question as to the principle of law to be applied to a case of resignation made to become effective on the expiry of a particular period or from a future date as desired by the employee in Punjab National Bank Vs. P. K. Mittal, AIR 1989 SC 1083 = 1989 (2) SLJ 1. It was held therein that resignation being voluntary act of employee, he may choose to resign with immediate effect or with a notice of less than 3 months if the employer agrees to the same or he may also resign at a future date on the expiry or beyond the period of 3 months as envisaged under the governing regulation in that case, even though there is no such consent from the employer, and that, it was always open to the employee to withdraw the same before the date on which resignation could have become effective.

8. So far as the case in hand is concerned, nothing in the form of any statutory rules or any provision of any Act has been brought to our notice which could be said to impede or deny this

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right of the appellants. On the other hand, not only the acceptance of the request by the Headquarters, the appropriate authority was said to have been made only on 20.2.1986, a day after the respondent withdrew his request for pre-mature retirement but even such acceptance in this case was to be effective from a future date namely 31.8.1986. Consequently, it could not be legitimately contended by the appellants that there was any cessation of the relationship of master and servant between the Department and the respondent at any rate before 31.8.1986. While that be the position inevitably the respondent had a right and was entitled to withdraw or revoke his request earlier made before it ever really and effectively became effective."

5. The learned counsel for the applicant states that the effective date for acceptance of notice for voluntary retirement is after expiry of three months, i.e., 1.5.1998 and as he had made his request for ^{withdrawal} ~~withdrawal~~ voluntary retirement much before the effective date, the same should have been considered by the respondents and more particularly keeping in view the circumstances that the same has been recommended through proper channel to the competent authority. It is also stated that no justified reasons have been accorded for denial of acceptance of his request for withdrawal of voluntary retirement. The applicant has also placed reliance on a decision of the Apex Court in Balram Gupta's case (supra), wherein the petitioner has made a request for voluntary retirement which was to be effective after the expiry of notice period, i.e., three months and during this period, he requested for withdrawal of the same but the respondents therein accepted the voluntary retirement and had refused to accord the permission under Rule 48A sub Rule 2 ibid. In this conspectus, it has been observed that the request

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for withdrawal is to be made before the intended date of retirement and the normal rule is that once it is being made in accordance with the rules, then it cannot be refused by the competent authority. It is further observed by this Tribunal in a decision of Dilip Khan Vs. Union of India & Ors., 1989 (3) AISLJ 264 by placing reliance on Balram Gupta's case (supra), a Govt. servant can withdraw the notice for voluntary retirement before it becomes operated and the same can be withdrawn only for adequate reasons.

6. Strongly rebutting the contentions of the applicant, the learned counsel for the respondents stated that from the past record of the applicant, he is a incorrigible person and having tendered resignation in the past was also withdrawn by him and he is continuing the same without any justified reasons and just to harass the department. It is also stated that the reasons for withdrawal, as mentioned by the applicant in his application, are absolutely vague, unjustified and are not tenable and that the applicant has resorted to the same reasons which he took in the year 1992 but his request for withdrawal of notice for voluntary retirement has been acceded to. The learned counsel for the respondents has further contended that in the ratio cited by the applicant in Wing Commander T. Parthasarathy's case (supra), the Apex Court has observed that in the absence of any policy or decision of the Department and in absence of any statutory provision, rule or regulation, the case of the petitioner therein is not to be rejected. Drawing my attention to Rule 48A sub Rule 2

ibid, it is stated that there exists the provision by which the appointing authority having regard to the circumstances and reasons recorded, can refuse permission to withdraw the notice for voluntary retirement and as the reasons mentioned by the applicant in the present case were not justified, the permission to withdraw the notice was refused. It is also stated that in the aforesaid case, the request for withdrawal was made a day before the request for voluntary retirement was accepted wherein in the instant case, the request was acceded to on 7.4.1998 whereas the notice for withdrawal was moved on 17.4.1998 as such the circumstances in the present case are distinguishable and the ratio of the Apex Court would have no application to the case of the applicant. The respondents have further objected to the limitation as, according to them, the order impugned is dated 4.5.1998 whereas the present OA has been filed on 12.12.2000 which is beyond the prescribed period of limitation as provided under Section 21 of the Administrative Tribunals Act, 1985.

7. I have carefully considered the rival contentions of the parties and have perused the materials placed on record. The applicant has moved an MA-3044/2000 for condonation of delay, inter alia, stating that he has submitted a representation to the Chief Admn. Officer for withdrawing the order dated 4.5.1998 and having received no reply, he submitted an appeal to the Secretary, Ministry of Defence on 18.12.1998. As no reply was forthcoming from the Secretary, Ministry of Defence also, he made a representation to the President

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of India on 14.6.1999 and as the matter pertains to pensionary benefits and continuance in service, the same is a recurring cause of action to which the learned counsel for the applicant has put stiff resistance. In view of the reasons accorded by the applicant and in the interest of justice and also on account of merits involved in the present OA, the MA-3044/2000 for condonation of delay is allowed and the delay is condoned.

8. As on merits, the plea of the applicant taking resort to the ratio in case of Wing Commander T. Parthasarathy's case (supra), the case of the applicant is liable to be allowed. The applicant, who has made a request for voluntary retirement on account of the financial hardships and prayed for according the provisional retiral benefits as his daughter was to be married having not paid the same, has made an application for withdrawing the notice for voluntary retirement on 17.4.1998. The respondents by an earlier letter dated 7.4.1998 accepted the voluntary retirement of the applicant and that has to be made effective w.e.f. 1.5.1998. As held by the Apex Court in Balram Gupta's case (supra) and also in Wing Commander T. Parthasarathy's case (supra), the crucial factor is the effective date of the voluntary retirement. In the present case, admittedly, the applicant has made a request for voluntary retirement under Rule 48A sub Rule 2 ibid which envisages a notice of not less than three months in writing to the appointing authority. The applicant in his notice has specifically prayed that the

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same may be made effective w.e.f. 1.5.1998. The applicant, despite his voluntary retirement has been accepted, continued to perform his duties and the relationship of master and servant existed till 1.5.1998. The notice for voluntary retirement even after acceptance would have been effective with effect from the intended date, i.e., 1.5.1998. The applicant before this effective date has made a request for withdrawing the same which has not been acted upon by the respondents as such he has complied with the provisions of Rule 48 ibid and in view of the ratio laid down by the Apex Court in Wing Commander T. Parthasarathy's case (supra), the request was valid and the voluntary retirement has not been made effective till the date he has moved an application for withdrawal of the notice for voluntary retirement. As regards the interpretation of Rule 48A ibid is concerned, it is stipulated that the necessary notice is to be given for withdrawing the request for voluntary retirement and the Govt. servant is to be precluded from withdrawing, except with the specific approval of the appointing authority.

9. I have also seen the reasons accorded by the applicant for withdrawal of notice for voluntary retirement and these reasons are that as he failed to be paid the provisional retiral benefits which were required urgently at the time when he served the notice for voluntary retirement on account of marriage of his daughter, in my view, the aforesaid reasons are justified and were also acknowledged and affirmed by the respondents by their letter dated 17.4.1998 while forwarding the request for withdrawal of application of

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the applicant, wherein it is mentioned that the reasons accorded are cogent and convincing. Later on, the refusal of the competent authority to accord the necessary approval to the application for withdrawal of voluntary retirement has been passed which is absolutely bald without any reasons. It appears that in the same Department, two views have been taken by the respondents on the one hand, it is stated that the reasons are convincing and on the other, the same have been rejected without disagreeing with the Secretary, Ministry of Defence and the recommendation thereof. In such a situation, the action of the respondents refusing to accord permission to withdraw the notice for voluntary retirement is absolutely unjustified and illegal and in this view of mine, I am fortified by the ratio of the Apex Court in Balram Gupta's case (supra) and also an order of this Court, wherein it is stated that on reasonable grounds, the permission could not be refused.

10. In the peculiar facts and circumstances of this case, the present OA is allowed and the impugned orders dated 24.5.1998 (Annexure A-1) and 4.5.1998 (Annexure A-2) are hereby quashed and set aside. The respondents are directed to reinstate the applicant in service and he will also be entitled for all consequential benefits. However, the applicant is also directed to be more careful in future. The aforesaid directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member (J)

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