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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No.OA 651/89

Date of decision 8-5-89

Shri A.N. Saxena

.....Applicant

Vs.

Union of India & Others

.....Respondents

For the Applicant

.....Shri Jagjit Singh,
Counsel

For the Respondents

.....Shri P.H. Ramchandani,
Sr. Counsel

CORAM:

THE HON'BLE MR. B.C. MATHUR, VICE CHAIRMAN(A)

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *Yes*

JUDGMENT

(The Judgment of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J)).

The applicant, who is working as Income-tax Officer (Investigation) in the office of Director of Income-tax (Investigation) (Respondent No.3) filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

- (a) To quash the impugned order dated 27.3.1989 whereby he was informed that his letter dated 15.3.89 withdrawing his notice under FR 56(k) dated 26.12.88 has been considered and the request contained therein

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has not been acceded to;

(b) to declare that he has lawfully withdrawn the notice of voluntary retirement and that his notice dated 26.12.88 is non-est;

(c) to direct the respondents to continue him on the post on which he is already working; and

(d) to prohibit the respondents from discontinuing him in any manner.

2. The case of the applicant in short is that he ^{was} Stenographer in 1955 ^{On} joined the Income-tax department and was promoted as Upper Division Clerk (UDC) in 1958, as Head Clerk in 1968, as Inspector in 1970 and as Income-tax Officer Grade 'B' in 1980. In 1987, the respondents served on him an order dated 6.2.87 purporting to retire him prematurely under FR 56(j). He challenged this order in this Tribunal in O.A. No.259/87. By judgment dated 10.12.1987, the Tribunal quashed the said order and directed that he shall be treated as being in service without break and that he shall be entitled to salary, allowance and other benefits admissible under the rules.

3. Thereafter, the applicant was reinstated and he rejoined the department on 16.12.87 as Income-tax Officer (Investigation). On 25.4.88, a Memorandum was served on him asking for his explanation in respect of certain assessment orders passed by him. The applicant has stated that the said assessment orders were also the basis on which the respondents had earlier passed the order for his premature retirement under FR 56(j).

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4. The applicant submitted an application to the respondents on 26.12.88 seeking voluntary retirement under FR 56(k). The said letter reads as follows:-

" Due to some personal reasons I am unable to continue in service any more. I am also not keeping fit due to Diabity and Blood Pressure and am under the treatment of R.M.L. Hospital, New Delhi.

Hence it is requested that I may kindly be allowed to proceed on voluntary retirement under F.R. 56(k) with full retirement and pensionary benefits and may kindly be relieved at your earliest convenience. I may mention here that I have already completed more than thirty three years of qualifying service in the Department.

This may kindly be treated as three month's notice as per rules".

(vide Annexure P-5, page 34 of the Paper Book)

5. The applicant has stated that after passage of ^{some} time, his mental tension was reduced to a great extent and his pressure ^Q family members also exerted on him to withdraw the aforesaid notice of voluntary retirement. His colleagues and other staff members also advised him on the same lines. In view of this, he wrote to the respondents on 15.3.89 purporting to withdraw his notice dated 26.12.88. The said letter reads as follows:-

" Your kind attention is invited to my letter dated 26th December, 1988, regarding voluntary retirement under F.R. 56(k). The same may kindly be treated as withdrawn with immediate effect".

(vide Annexure-P-6, page 35 of the Paper Book)

6. On 15.3.1989 - the same day on which he had purported to withdraw his notice for voluntary retirement - the respondents served on the applicant a chargesheet proposing disciplinary action for major penalty under Rule 14 of the CCS (CCA) Rules, 1965.

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7. On 27.3.89, the respondents wrote to the applicant stating that the appropriate authority has not acceded to his request for withdrawing his notice on 26.12.88 under F.R. 56(k). The said letter reads as follows:-

" I am directed to inform you that your letter dated 15.3.89 withdrawing your notice under Fundamental Rule 56(k) dated 26.12.88 has been carefully considered by the Appropriate Authority and the request contained therein has not been acceded to."

(vide Annexure-P-7, page 36 of the Paper Book)

8. The application was admitted on 31.3.89 when an interim order was passed to the effect that the applicant shall not be relieved from the present post which he is holding. The said interim order was continued till the case was finally heard on 28.4.89.

9. The applicant has stated in his application that he attended the office on 27th March, 1989 and the impugned order dated 27.3.89 was served on him in the evening at about 5.00 P.M. He also attended office on 28.3.89. He applied for three days C.L. upto 31st March, 1989.

10. The point at issue in this case is whether it was open to the applicant to withdraw his notice of voluntary retirement under F.R. 56(k) and whether it was open to the respondents to reject the applicant's request for withdrawal of the said notice.

11. We have gone through the records of the case and have heard the learned counsel of both parties. The stand of the applicant is that it was well within his rights to withdraw his notice of voluntary retirement during the validity period of the notice and that the impugned order

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dated 27.3.89 whereby the respondents rejected his request for acceptance of such withdrawal was illegal. The applicant has contended that the rejection by the respondents of his request for withdrawal of his notice was made after the expiry of the notice period of three months.

12. The case of the respondents is that the applicant stood retired by virtue of the provisions of F.R. 56(k) with effect from 27.3.89 and that the impugned order dated 27.3.89 was perfectly valid. The applicant stood automatically retired and he was relieved of his duties with effect from 27.3.89.

13. The learned counsel of the applicant relied upon the decision of the Supreme Court in Balram Gupta Vs. Union of India and Another, 1987 SC 2354 and of this Tribunal in Dharam Chand Sharma Vs. Union of India and Others, ATR 1989(1) CAT 300. In Balram Gupta's case, the Supreme Court referred to its earlier decisions in Union of India Vs. Gopal Chandra Misra, AIR 1978 SC 694 and in Raj Kumar Vs. U.O.I., AIR 1969 SC 180. In Balram Gupta's case, the question arose whether a notice seeking voluntary retirement from service under Rule 48 A of the CCS (Pension) Rules, 1972 could be withdrawn by a Government servant before it became effective and whether the Government could ^{with- On} hold approval to such withdrawal of retirement without giving any reasons.

14. Rule 48A of the CCS (Pension) Rules, 1972 is not on a par with F.R. 56(k). F.R. 56(k), in so far as it is

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relevant to the present case, reads as follows:-

"(k)(1) Any Government servant may by giving notice of not less than three months in writing to the appropriate authority retire from service after he has attained the age of fifty years if he is in Group 'A' or Group 'B' service or post (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years:

Provided that:

(c) it shall be open to the appropriate authority to withhold permission to a Government servant under suspension who seeks to retire under this clause."

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"(2) 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:

Provided that the request for withdrawal shall be within the intended date of his retirement."

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"Note 3 - In computing the notice period of three months referred to in clauses(j) to (m), date of service of the notice and the date of its expiry shall be excluded."

15. Rule 48A of the CCS (Pension) Rules, 1972, in so far as it is relevant reads as follows:-

"(1) At any time after a Government servant 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."

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"(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

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"(4) A Government servant, who has elected to retire under this rule and has given the necessary

10

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."

16. The main difference between the two provisions is that in the case of a notice under F.R. 56(k), the Government servant retires by efflux of the notice period of three months and this is not dependent on acceptance by the appointing authority. However, the Appropriate Authority may withhold the permission to a Government servant under suspension who seeks to retire under F.R. 56(k). On the other hand, in the case of a retirement under Rule 48 A of the CCS (Pension) Rules, 1972, the notice shall require acceptance by the Appointing Authority. However, where the Appointing Authority does not refuse to grant the permission for such retirement before the expiry of the notice period of three months, the retirement shall become effective from the date of expiry of the said notice.

17. There is, however, a common feature in both F.R. 56(k) and Rule 48A, namely, that a Government servant who has elected to retire and has given his notice shall be precluded from withdrawing the same except with the specific approval of the Appointing Authority. This is subject to the proviso that the request for the withdrawal shall be made within the intended date of retirement (vide F.R. 56(k)(2) and Rule 48A(4)).

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18. In Balram Gupta's case, the Government servant sought to withdraw his letter of resignation before the expiry of the notice period of three months. However, the respondents issued an order to the effect that the Government servant is allowed to retire voluntarily with effect from the expiry of the notice period. This was challenged before the Supreme Court. The Supreme Court held that there was no valid reason for withdrawing the permission by the respondents. The Supreme Court observed that "the approval envisaged in Rule 48A(4) of the CCS (Pension) Rules, 1972," is not ipse dixit of the Approving Authority. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason." (vide para 11 of the judgment)

19. The Supreme Court in Balram Gupta's case also has made certain general observations as to the need to adopt a liberal approach in dealing with such cases in the present day world. The following extracts from the judgment are relevant:-

" In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court

12

cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees."

(vide para 13 of the judgment)

20. In the instant case, the request for withdrawal of the notice of voluntary retirement dated 26.12.88 was made within the validity period of the notice. Ordinarily, the Government servant is entitled to do so (vide Gopal Chandra Misra's case and Balram Gupta's case Supra). However, there are some peculiar features in the instant case. The applicants request for withdrawing his notice of voluntary retirement was made on 15.3.1989. On that date, the respondents served on him the charge-sheet dated 13.3.1989 proposing to hold enquiry against him for major penalty under Rule 14 of the CCS (CCA) Rules, 1965. The allegation in ^{the} said charge-sheet is that he completed assessments in four cases with a view to confer undue benefit on the assesseees concerned and thereby he failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant and thereby contravened the provisions of Rule 3 of the CCS (CCA) Rules, 1964. These allegations pertain to the doubtful integrity of the applicant and if ^{of the penalty of} proved, may even entail ~~the~~ imposition/dismissal from service.

21. We do not propose to make any observation regarding the aforesaid allegations, one way or the other, which are ^{on such enquiry, the applicant} yet to be gone into in the proposed enquiry. During ^{is} ~~is~~

entitled to reasonable opportunity to defend his case. What is relevant to note is that in case we allow the prayer of the applicant and hold that the rejection of his request for voluntary retirement is not legally sustainable, he will have to be reinstated in service and he will continue to work till he attains the age of superannuation in February, 1990. In our opinion, it will not be appropriate to direct the respondents to reinstate the applicant when serious allegations concerning his integrity are the subject matter of a regular departmental enquiry.

22. The learned counsel of the applicant stated that the impugned order dated 27.3.89 was passed by the respondents after the expiry of the notice period and, therefore, it is not legally valid. In our opinion, this contention is without any substance. While, it was open to the applicant to withdraw his notice of voluntary retirement during the validity period of the notice, such withdrawal requires the specific approval of the Appointing Authority. No time limit is prescribed under F.R. 56(k) for the Appointing Authority to convey its rejection to the applicant.

23. The learned counsel of the respondents heavily relied upon the provisions contained in Note 3 occurring under F.R. 56(k), according to which in computing the notice period of three months, ^{the date of service} and the date of expiry, shall be excluded. The intendment of the rule is that a Government servant should give clear three months notice.

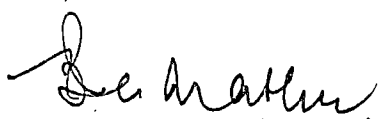
24. In our opinion, the impugned order dated 27.3.89 was passed in accordance with the provisions contained in F.R.56(k) read with Note 3 thereunder.

25. Incidentally, it may be stated that in a case where a Government servant has prematurely retired under F.R.56(k), he will be entitled to addition to qualifying service for a period not exceeding 5 years, subject to the condition that the total qualifying service rendered by him does not in any case exceed 33 years and it does not take him beyond the date of superannuation (vide Rule 43B of the CCS (Pension) Rules, 1972).

26. In view of the ^{above} provision, the applicant will not suffer any disadvantage in terms of his retirement benefits. The period upto his normal date of superannuation will have to be counted as qualifying service for the purpose of pension and other retirement benefits.

27. In the facts and circumstances of the case, we see no merit in the present application and the same is dismissed. We also ^{hereby} vacate the interim orders ^{as the Tribunal} passed by us on 31.3.1989 and continued upto 28.4.1989. The parties will bear their own costs.


(P.K. KARTHA)
VICE CHAIRMAN(J)


(B.C. MATHUR)
VICE CHAIRMAN(A)