

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

88

O.A. No. 561/1988
T.A. No.

199

DATE OF DECISION 7-8-1991SMT. NIRMAL ANAND

Petitioner

SHRI B.L. CHAWLA

Advocate for the Petitioner(s)

Versus

THE SECY., MINISTRY OF COMMERCE,
NEW DELHI & OTHERS

Respondent

SHRI P.P. KHURANA

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice-Chairman (J)

The Hon'ble Mr. I.P. Gupta, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT

(DELIVERED BY SHRI I.P. GUPTA, HON'BLE MEMBER (A))

The applicant was appointed as an L.D.C. in October, 1960 in the Office of the respondents Nos 2 and 3 and thereafter she was promoted as a U.D.C. She remained on her job upto 4th April, 1988 and drew her salary on that date. The applicant made an application on 31.12.1987 seeking voluntary retirement after three months thereof. She later gave an application on 18.3.1988 withdrawing her notice for voluntary retirement on account

of changed family circumstances and compulsions.

2. Nothing was communicated to the applicant till 4th April, 1988 and she reported for duty on 4th April after holidays on 31.3.1988 to 3.4.1988 and marked her attendance and drew salary on that date. Since nothing was communicated to her, she presumed that her request for voluntary retirement has been treated as withdrawn.

3. The learned counsel for the applicant argued that the impugned order dated 31.3.1988 ^{is} ~~are~~ bad in law because

- (1) The applicant was entitled to reasonable and adequate opportunity of being heard before rejection of her application dated 18.3.1988.
- (2) The application for withdrawal was made within the intended date of her retirement and she should have been given opportunity before rejection of the same.

The relief sought is that the order of 31.3.1988 be quashed and the applicant allowed to continue to perform her duties on the post of U.D.C. with all consequential benefits and without break of service.

4. In the counter filed on behalf of the respondents, it has been admitted that the applicant submitted her application on 31.12.1987 seeking voluntary retirement with effect from the afternoon of 31st March, 1988 due to her family circumstances and ill health. Accordingly, the necessary

forms were supplied to the applicant and after completion they were forwarded to the Accounts Officer, New Delhi on 9.3.1988 for issue of pensionary benefits. It has further been mentioned in the counter that her request for voluntary retirement was accepted by competent authority on 21.1.1988 and this was duly received by her on 21.1.1988 (however, the applicant has denied receipt of this letter). The applicant submitted an application dated 18.3.1988 stating that due to changed circumstances she is not in a position to take premature^{ed} retirement and requested for withdrawal of her application dated 31.12.1987 for premature^{ed} retirement.

5. In this connection, the learned counsel for the respondents has drawn attention to Rule 48(A) 4 of Pension Rules which stipulates 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/her notice except with the specific approval of the said authority. It has been admitted in the counter that from 31st March to 3rd April, 1988 were holidays and her request was to retire from 31st March, 1988, voluntary retirement/relieving order was delivered to her on 4.4.1988.

6. The learned counsel for the applicant draw attention to the judgement of the Hon'ble Supreme Court in Bal Ram Gupta Vs. Union of India & Anr. (Civil Appeal No.2057/87) (1987 AIATLT 416) wherein it was held that approval of the withdrawal application is not ipse-dixit of the approving authority. The approving authority who is the statutory authority, must act reasonably and rationally. It was further held that the guidelines of the Government of India were complied with because the appellant had indicated that there was a change in the circumstances, namely the persistent and personal request from the staff members and relations which changed the attitude of the appellant who was continuing in Government service and induced the appellant to withdraw the note.

7. Let the matter be examined in the present case. Sub-Rule (4) of Rule 48(A) prevents withdrawal of resignation letter except with the approval of the authority. The sub-rule 4 provides as follows :-

"(4) 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."


And

8. In the Supreme Court judgement quoted above, it was observed that 'It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reason.....If properly exercised, the power of the Government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who is the statutory authority, must act reasonably and rationally.

9. In the present case of the applicant, there was no valid reason of withholding the permission by the respondents. The appellant has stated that there was a change in the family circumstances and compulsions which ^{had} ~~have~~ earlier ^{she} urged her to submit the notice for premature retirement.

10. In the case of Vishwanath Prasad Singh vs. U.O.I. (1987 (4) SLR 627), the Patna Bench of the Central Administrative Tribunal observed that ⁱⁿ ~~the~~ ^{communication} ~~application~~ ^{for} rejecting notice for subsequent withdrawal, the order must be a speaking order and must be supported by reasons and sufficient opportunities must be given.

11. In the aforesaid view of the matter, the appeal is allowed and the Tribunal directs that the applicant may be put back to his job with all the consequential benefits, being treated in the job from 1.4.1988 and for the period of absence from 1.4.1988, no salary is to be paid. There will be no order as to the costs.


(I.P. GUPTA)
MEMBER (A)


(U.C. SRIVASTAVA)
VICE CHAIRMAN (J)