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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-738/88

Date: 24.4.1990.

Shri L.D. Panjwani Applicant

Versus

Union of India Respondents
through Secretary,
Ministry of Defence

For the Applicant Applicant in person

For the Respondents Shri M.L. Verma, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *No*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Upper Division Clerk in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 23.5.1986, whereby he was retired from service w.e.f. 1.9.1986, be set aside and quashed and that he be declared to be continuing in service. He has also sought for payment of back wages with interest at the rate of 12 per cent per annum.

2. The applicant joined the Ministry of Defence as Lower Division Clerk in 1963 and was promoted as Upper Division Clerk after a period of over 22 years. On 19th May, 1986, he served a notice on the Commandant, 510 Army Base Workshop, Meerut Cantt., seeking voluntary retirement under Rule 48-A of the C.C.S. (Pension) Rules,

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1972. The said notice was as follows:-

"1. Most respectfully, I beg to state that I was awaiting for the result of Fourth Pay Commission but it seems it will take more time.

2. Now, in the circumstances, I request your goodself that I may kindly be allowed to proceed on Voluntary Retirement w.e.f. 01 Sep 86 and my this application may kindly be treated as notice for three months w.e.f. 01 Jun 86 to 31 Aug 86. I may kindly be SOS wef 01 Sep 86.

3. In the meanwhile, I request your honour, that my pension papers, GP Fund Assets and CGEIGS Account may kindly be submitted to the authorities and obliged so that I am able to draw my pension immediately wef Sep 86.

An early action in the matter is requested."

(Vide Annexure A-14, p.53 of the paper-book)

The above request was considered by the Commandant, who gave him permission to retire w.e.f. 1.9.1986 as had been sought in the notice given by the applicant. The order passed by the Commandant on 23rd May, 1986 reads as follows:-

"WHEREAS the undersigned (Commandant 510 Army Base Workshop Meerut Cantt) has received an application dated 19 May 86 giving three months notice for Voluntary Retirement under the provisions of Rule 48-A of the Central Civil Services (Pension) Rules 1972, from No.7124941H UDC Shri LD Pandwani.

NOW, THEREFORE, in exercise of the powers conferred by Rule 48-A of the Central Civil Services (Pension) Rules 1972, the Commandant 510 Army Base Workshop Meerut Cantt, having received the above referred application for Voluntary Retirement hereby permits Shri LD Pandwani, No.7124941H Temp UDC, that he having already completed twenty years of service qualifying for pension, to retire from service on the 01 of Sep 86 i.e. the date of expiry of the notice period of three months computed from 01 Jun 86 to 31 Aug 86 and he shall be SOS wef 31 Aug 86 (A/N)."

(Vide Annexure A-1, page 35 of the paperbook)

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3. On 24.5.1986, the applicant sought to withdraw his notice of voluntary retirement. In his letter addressed to the Commandant, he stated that he had submitted in his application dated 19.5.1986 for voluntary retirement as per his directions which cannot be termed to be submitted with a free will, that he has no power and jurisdiction to accept his application dated 19.5.1986 as he is not the appointing authority of the applicant and, therefore, the impugned order dated 23.5.1986 which was received by him on 24.5.1986, was illegal and without any powers and jurisdiction. He further added as follows:-

".....However, if your goodself do not agree with me and still decide to retire me, I request your goodself that I may kindly be issued a character Certificate giving my educational qualifications, service particulars with reference to Rule 48-A of CCS (Pension) Rules, 1972 as the same will be required by me for my enrolment as an Advocate, because I shall have no alternative except to start my own practice after my illegal and forcible retirement under Rule 48-A of CCS (Pension) Rules 1972 and which shall be subject to taking shelter of court of law in the matter of my illegal and forcible retirement.

Thanking you,"

(Vide Annexure A-15, p.55 of the paperbook)

4. The respondents have stated in their counter-affidavit that the applicant signed and completed his pension/gratuity papers on 6.6.1986, and that pension was sanctioned to him. Other retirement benefits, including commuted value of pension and gratuity, have been released to him and he has already drawn them. He is drawing his pension regularly.

5. We have carefully gone through the records of the case and have heard the rival contentions for both the parties. There is no doubt that a Government servant who seeks voluntary retirement, can withdraw the same during

the notice period. In the instant case, the applicant purported to withdraw his request for voluntary retirement during the notice period. The only question that arises for consideration is whether the withdrawal was conditional or unconditional. In the instant case, the facts and circumstances clearly indicate that it was an equivocal one. In one breath, the applicant has contended that the Commandant had no power and jurisdiction to permit him to go on voluntary retirement and in another, he has stated that if this is not agreed to by the Commandant, he should be issued a Character Certificate to enable him to get himself enrolled as an Advocate. In fact, on 30th May, 1986, the certificate sought by the applicant was given to him (vide Annexure A-16, p.56 of the paper-book). A character certificate has also been given to him on 30th August, 1986 (vide Annexure A-18, p.58 of the paper-book). He applied for pension and other retirement benefits without any demur or protest. He is even now drawing his pension regularly. He has also been practising ~~xxx~~ as an Advocate all along from the date of his voluntary retirement in May, 1986. His conduct throughout clearly indicates that he had opted for voluntary retirement, notwithstanding his purported withdrawal of the same by his letter dated 24.5.1986.

6. In the light of the above conclusions reached by us, it is unnecessary to consider the various contentions raised by him in his application, including the fact that the Commandant is not the competent authority to accord the necessary permission to him, as required under Rule 48-A of the CCS(Pension) Rules, 1972. We see no merit in the present application and the same is dismissed. The parties will bear their own costs.

D.K. Chakravorty
(D.K. Chakravorty)
Administrative Member

24/4/1990

P.K. Kartha
(P.K. Kartha)
Vice-Chairman(Judl.)