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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 3 of 1986  
T.A. No.

DATE OF DECISION 31.3.1986

Shri P.Chakraborty

Petitioner

Petitioner in person

Advocate for the Petitioner(s)

Versus

Union of India & Ors.

Respondent

Shri N.S. Mehta for R-1

Advocate for the Respondent(s)

Shri R.K. Khanna for D.D.A.

**CORAM :**

● The Hon'ble Mr.S.P.Mukerji, Member

The Hon'ble Mr.H.P.Bagchi, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No

**JUDGMENT :**

The applicant has come up before us under Section 19 of the Administrative Tribunals Act praying that the impugned order dated 1st January 1985 issued by the Ministry of Home Affairs rejecting his application for postponement

of the date of voluntary retirement under Rule 48-A of Central Civil Services (Pension) Rules (hereinafter referred to as Rules) from the forenoon of 2nd January 1985 should be quashed <sup>h</sup> along with the notification of his retirement, that he should be deemed to have been in service even after 6.4.85. He has also prayed that the order of the Delhi Development Authority dated 6.4.85 relieving him from 6.4.85 may also be set aside and that alternatively declare that the effective date of retirement of the applicant was 6.4.85 with the further direction that payment of pension and other retirement benefits should be made to him with 18% rate of interest from the date of his retirement which according to him should be 6.4.85. The applicant has also requested that Rule 48-A(4) of the Rules should be declared violative of Article 14 of the Constitution of India.

2. The material facts of the case admitted by both parties can be summarised as follows. The applicant is a member of the Delhi - Himachal Pradesh Civil Service (now DANI) which is a service controlled and administered by the Govt. of India in the Ministry of Home Affairs. The applicant who was to complete 20 years of service on 14.7.84, applied on 11.12.82, for voluntary retirement with effect from 30.6.84.

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In continuation of his letter of 11.12.82, he later submitted another application dated 18.6.84 seeking permission for voluntary retirement with effect from 2.1.85. The Ministry of Home Affairs by a notification dated 4.12.84 accepted his application of 18.6.84 and permitted him to retire on 2.1.85. On 15.12.84 the applicant submitted another application as follows:

"I am in receipt of your office letter No. U-14031-7/84-UTS dated 5th December, 1984 and the notification referred to in the subject mentioned above.

For unavoidable reasons and because of the election, I could not avail of certain facilities/concessions that were admissible to me as a public servant. I have now decided to retire voluntarily from government service w.e.f. the afternoon of 15th February, 1985 instead of 2nd January 1985.

Necessary permission may kindly be granted accordingly."

3. The Ministry of Home Affairs by the impugned order of 1.1.85 rejected the application of 15th December 1984 on the ground that the request for postponement of the date of voluntary retirement under rule 48-A of the Rules is not covered under the Rules.

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4. The applicant who during this period had been on deputation with effect from 25.7.84 with the Delhi Development Authority continued to function in the Delhi Development Authority till 6.4.85 when his services were terminated by the Delhi Development Authority also.

5. We have heard at great length the arguments of the applicant in person who himself is a legal practitioner, and also of the learned counsel for the respondent.

6. The basic question to be decided is whether the applicant was entitled to withdraw from the date of voluntary retirement effect from 2.1.85 (which had been proposed by him and already been accepted by the competent authority on 4.12.84) and to get the date of voluntary retirement postponed from 2.1.85 to 15.2.85. The applicant has been vehemently arguing that his case of voluntary retirement is on all fours with the decided cases of resignation. He heavily depended upon the ruling of the Hon'ble Supreme Court given in the celebrated case of Union of India and others Vs. Gopal Chandra Misra and others reported in AIR 1978 S.C. 694 and also on another ruling of the same Court in Jairam Vs. Union

of India: reported in AIR 1954 SC 584. The general tenor of the applicant's arguments has been that resignations can be withdrawn at any time before the resignor relinquishes office and therefore the applicant also was entitled to withdraw or postpone his voluntary retirement before he demitted office on 2.1.85.

6. Before going into the basic difference between voluntary retirement as in the case of applicant and resignation, it will be useful to assess the extent and support which the applicant can derive from the aforesaid rulings of the Hon'ble Supreme Court. Taking the 1954 Ruling in Jairam Vs. Union of India first, the Hon'ble Supreme Court observed as follows:

"It may be conceded that it is open to a servant who has expressed a desire to retire from service, and applied to his superior officer to give him the required requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained; but he can be allowed to do so, so long as he continues in service and not after it has terminated."

This ruling however got slightly modified by a subsequent ruling of the Hon'ble Supreme Court

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in Rai Kumar Vs. Union of India (AIR 1969 SC 180 = 1968(3) SCR 857) in which the Supreme Court observed:-

"Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus paenitentiae* but not thereafter."

The result of the above two Rulings read together is that after the resignation is accepted under the rules etc. the right of the resignor to resile unilaterally from the resignation does not exist. The still more recent ruling of the Supreme Court drawn upon by the applicant in the aforesaid Union of India and others Vs. Gopal Chandra Misra and others (AIR 1978(1) SC 694 as quoted below, does not also seem to support the applicant:

"It will be bear repetition that the general principle is that in the absence of a legal contractual or constitutional bar, a "prospective" resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is

equally applicable to government servants and constitutional functionaries. In the case of a government servant or a functionary who cannot under the conditions of his service/or office, by his own unilateral act of tendering resignation give up his service/or office normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority".

The above ruling was given in the case of a Hon'ble Judge of the High Court who is a constitutional functionary and has a unilateral right or privilege to resign his office under Proviso (a) to Article 217(1) of the Constitution. In his case the question of acceptance of the resignation does not arise and therefore in accordance with the Hon'ble Supreme Court if the Judge by such writing chooses to resign from a future date the act of resigning office is not complete because he does not terminate his tenure before such date and the Judge can at any time before the arrival of the prospective date on which it was intended to be effective, withdraw it, because the Constitution does not bar such withdrawal.

7. The case of the petitioner is patently distinct from the case of a High Court Judge who has the unilateral right to <sup>in tender resignation to</sup> resign without waiting for its acceptance and there is no legal or constitutional

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bar to its withdrawal. In case of the applicant however, he has himself conceded by quoting Rule 48-A of the CCS(Pension) Rules of 1972 that the notice of voluntary retirement shall require acceptance by the appointing authority. Rule 48-A has been quoted by the petitioner as follows:

"Retirement on completion of 20 years' qualifying service -

- 1) At any time after a government servant completed 20 years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.
- 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."

Rule 48-A(4) also as quoted by him contains a bar to the withdrawal except with <sup>the</sup> ~~the~~ specific approval by such authority as it reads as follows:

"48-A(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:

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

Thus even the analogy of resignation, where acceptance <sup>and</sup> ~~the~~ of resignation is necessary, the resignor has no right to withdraw his resignation after it has been accepted by the competent authority, does not help the applicant.

8. Now let us come to the difference between voluntary retirement and resignation. In so far as the

acceptance part is concerned, ordinarily resignation, with notable exceptions in cases like that of Judges is a bilateral process. The employee has to apply for acceptance of resignation and the competent authority may or may not accept it. So long as the resignation is not accepted in such a case, it is not effective. In case of voluntary retirement as under Rule 48-A quoted above three mandatory requirements have to be fulfilled for its validity:

- a) There has to be an application for voluntary retirement.
- b) A notice of at least three months in writing should accompany the application for voluntary retirement.
- c) The request has to be accepted by the Appointing Authority. In case there has been no refusal within three months acceptance would be taken for granted.

9. It, therefore, follows that once the process of voluntary retirement is completed bilaterally with the fulfilment of the aforesaid three conditions it cannot be changed unilaterally by either party. In the instant case the applicant in a letter seething with frustration and criticism applied on 11.12.82 (w.e.f.) for voluntary retirement with effect from 30.6.84 but before it was accepted, he applied again on 18.6.84 for voluntary retirement w.e.f. 2.1.85 giving a notice of more than three months. This notice was accepted by the competent authority (Ministry of Home Affairs) on 4.12.84 and his voluntary retirement effective from 2.1.85 was notified. Therefore on or after 4.12.84 his application for voluntary retirement having been duly accompanied with appropriate notice and duly accepted, stands finally disposed of between him

and his employer. After this date, the applicant lost his right even otherwise to withdraw from or postpone his voluntary retirement unilaterally i.e. without the consent of the competent authority. On 15.12.84 the petitioner sent a cryptic letter which has been quoted in para 2 above saying that "I have now decided to retire voluntarily from government service w.e.f. the afternoon of 15th February 1985 instead of 2nd January 1985". He sought necessary permission accordingly. This letter is cryptic in the sense that it completely overlooks the fact that his application for voluntary retirement dated 18.6.84 had been already been disposed of by its acceptance on 4.12.84 and therefore the question of postponement of the date on the basis of that application did not arise. The petitioner should have firstly sought cancellation of acceptance and secondly done what he did on 18.6.84, i.e., send a self-contained application for voluntary retirement with three months notice. This obviously he could not do and he knew it, because unlike on 18.6.84, on 15.12.84 the Government had already accepted his notice of voluntary retirement w.e.f. 2.1.85 and he was not giving another notice of three months. Being a lawyer, he also knew fully well at that time that under Rule 48-A(4) withdrawal of his previous notice was barred except with the specific approval of the Government. Perhaps he tried to sidetrack the restriction on withdrawal by resorting to the alternative of seeking a simple postponement of the date of voluntary retirement by only a month and a half.

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10. The cryptic letter unfortunately but not wholly undeservedly was rejected as it 'was not covered under the rules'.

11. It is clear that apart from the cryptic construction, the letter of 15.12.84 suffered from two fatal defects as follows:

- a) The request for postponement of the date of voluntary retirement was made on 15.12.84 after his preceding application dated 18.6.84 for voluntary retirement w.e.f. 2.1.85 had been accepted and retirement notified on 4.12.84.
- B) The request did not mention anything about the mandatory requirement of three months notice.

12. The proposed retirement applied for on 15.12.84 fell short of three months notice by one month. A request for waiving of three months notice or condonation of the shortfall was also not there. There was no request for cancellation of the acceptance notification also. Therefore the application was rightly construed to be falling outside the scope of Rule 48-A and rejected.

13. Even if the petitioner had been given the benefit of doubt that what he sought was postponement notwithstanding withdrawal of his previous application, he did not have a strong case within that perception also. His previous application had already been disposed of by the order of 4th December 1984 and any postponement had to be to a date which would have given a margin of three months notice. Further, postponement

of date of retirement cannot be viewed as innocuous and allowed, because if this is done anybody would effectively get his voluntary retirement withdrawn by simply getting his date of voluntary retirement postponed at one's will. In such a situation regulating the withdrawal would be completely negatived by unregulated postponements. That is perhaps why Rule 48-A does not cover cases of postponement.

14. The applicant has tried to challenge the constitutionality of Rule 48-A(4) which precludes withdrawal of notice of voluntary retirement except with the specific approval of competent authority, by saying that in this provision unfettered discretion has been given to the competent authority. We do not propose to go into the constitutionality of this provision because we have found already that having got from the competent authority the acceptance under Rule 48-A(1)(2) of the notice of voluntary retirement with effect from 2.1.85, through the consummation of bilateral process itself the applicant was precluded from getting the date of retirement postponed except with the consent of the same authority which has accepted his notice. Thus once acceptance is complete, the obligation of the applicant to seek permission of the accepting authority to get the date of voluntary retirement withdrawn or changed would subsist even if Rule 48-A(4) did not exist. In other words, rule 48-A(4) would come into play if the withdrawal of voluntary

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retirement is sought before the competent authority accepts the request of voluntary retirement. Once such acceptance has taken place, rule 48(A)(4) becomes, as it were, not relevant, as permission of withdrawal will in any case be necessary to neutralise the preceding acceptance. The very process of acceptance generates independently of Rule 48-A(4) <sup>to</sup> the obligation of securing permission for withdrawal/postponement of voluntary retirement. Further, since neither in his letter of 15.12.84 nor in the impugned order Rule 48-A(4) has been referred to and since rejection of his request dated 15.12.84 does not necessarily flow from 48-A(4), any research into the constitutionality of this provision in this case is uncalled for.

15. It may be pertinent to mention that the applicant himself had in his demi-official letter signed by him on 23.4.85 and addressed to the Commissioner, D.D.A. a copy of which has been enclosed by him with his rejoinder, accepted that he retired voluntarily from government service with effect from 2.1.85.

16. We are also convinced that there is no malafide involved in the impugned order. The applicant's original application for voluntary retirement dated 11.12.82 is besmirched with a sense of unbearable despondency and frustration and criticism of administration. Even a cursory reading of the letter would give the impression that voluntary retirement would be a great deliverance and favour to him. In his letter of 15.12.84 seeking postponement of retirement, there is no indication that he has rediscovered happiness and fulfilment in government service. His only plea

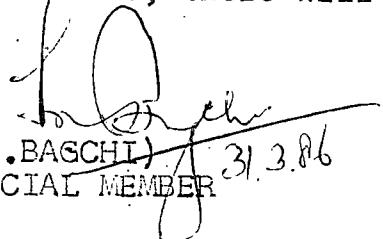
in that application was the enjoyment of leave Travel Concession for the sake of which postponement of date of retirement was sought by him. Perhaps this pittance also would have <sup>been</sup> given to him had the requirements of proper procedure, format and rules been fulfilled.

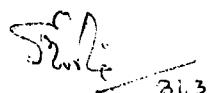
17. We, therefore, find nothing wrong with the impugned order of 1st January 1985 nor any merit in his present application about getting his date of voluntary retirement postponed. Since the applicant stands retired from the DANI Civil Service with effect from 2.1.85, his deputation with the Delhi Development Authority (DDA) as a member of that Service also ends <sup>on</sup> ~~from~~ that day. His status after 2.1.85 is that of an employee of the DDA, pure and simple. This Tribunal has no jurisdiction to adjudicate between him as an employee of the DDA and the DDA, in relation to his service after 2.1.85. This is because no notification has so far been issued under sub-section (2) of Section 14 of the Administrative Tribunals Act to bring his service matter after 2.1.85 falling under sub-section (3) off that section, within the jurisdiction of the Tribunal. The petitioner is at liberty to move other competent fora in this regard in accordance with law.

18. We, however, cannot fail to notice that there has been considerable delay in the sanction of pension and other retirement benefits to the applicant, to which he is entitled under the Rules.

S. J.

Considering that he had given notice of voluntary retirement on 11.12.82 and again on 18.6.84 which was accepted on 4.12.84 permitting him to retire from 2.1.85, there is no reason why he should not have been sanctioned pension and other retirement benefits within 4 months of his retirement. The Respondent 1 in his reply has not indicated anything to conclude that the applicant has contributed to the delay. We, therefore, direct Respondent-1 to ensure ~~sanction~~<sup>sanction is</sup> of his pension and related matters within the next two months and also to pay to him interest at official rate (applicable to General Provident Fund) on his dues reckoned from the date the applicant submitted all necessary documents for retirement benefits or the 1st of May 1985 whichever is later. Subject to this and what has been stated in the preceding para in regard to his service after 2.1.85 the application is rejected. In the circumstances, of the case, there will be no order as to costs.

  
(H.P.BAGCHI) 31.3.86  
JUDICIAL MEMBER

  
31.3.86  
(S.P.MUKERJI)  
MEMBER