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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 636/1987. DATE OF DECISION: 22-7-1991.

Shri R.B. Jain Applicant.

V/s.

Union of India & Ors. Respondents.

CO-RAM: Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman
Hon'ble Mr. N.V. Krishnan, Member (A).

Shri P.T.S. Murthy, counsel for the applicant.
Shri K.C. Mittal, counsel for the respondents.

(Judgment of the Bench delivered by
Hon'ble Mr. Justice U.C. Srivastava,
Vice Chairman)

JUDGMENT (ORAL)

The applicant, who is stated to have since died on 19.12.1989, is represented by his legal heirs. At the relevant point of time when he was retired from service, he was working as Lower Division Clerk in the office of Assistant Labour Commissioner (Central), Allahabad. He joined the Government service on 6.10.1962 and after a number of transfers, he was finally posted at Allahabad. On completion of about 23 years of service, an application for voluntary retirement addressed to Regional Labour Commissioner (Central), Allahabad, was given by him. According to the applicant, he neither intended to take voluntary retirement, nor did he address his application for voluntary retirement to the Regional Labour Commissioner (Central), Kanpur, who is stated to have disposed of his application. On the other hand, he alleges that it was because of harassment of the respondents and out of sheer disgust and desperation, he had scribbled a letter dated 21.10.1984 on a dirty scrap of paper which was surreptitiously stolen from the drawer of his table and it was on this letter that an order was passed on 5.2.1985 accepting the so-called request of the applicant for voluntary retirement with effect from 31.5.1985. The Regional Labour Commissioner (Central), Kanpur appears to have taken the period of three months from 5.2.1985 and the application

for voluntary retirement accepted with effect from 31-5-1985. It also appears that the aforesaid order dated 5-2-1985 was shown to the applicant on 19-2-1985 and he was requested to fill in the relevant pension papers, but before that, the applicant tried to hand over his letter dated 4-2-1985 addressed to the Regional Labour Commissioner (Central), Kanpur, which was not acknowledged at the time of interview. The applicant in his letter dated 4.2.1985 had stated that his application dated 21.10.1984 be treated as withdrawn and no action be taken on the same. Thereafter on 24.4.1985, mentioning all these facts, he made a detailed representation to the Regional Labour Commissioner (C), Kanpur, stating that the order dated 5.2.1985 was illegal and the same could not be passed after the applicant had withdrawn his earlier application dated 21.10.1984 on 4.2.1985. However, vide order dated 10th May, 1985, the request of the applicant for withdrawal of the previous application for voluntary retirement was rejected. He was communicated that his application for withdrawal of voluntary retirement from service, which had been accepted on 5.2.1985, had been rejected and that permission to withdraw the same could not be granted.

2. It is contended by the learned counsel for the applicant that no action could have been taken on the application of the applicant dated 21.10.1984 since it had not been addressed to the appropriate authority and it could only be when the applicant had addressed his application to the competent authority that cognizance thereof could have been taken. It has been further contended that the order dated 5.2.1985 accepting the so-called notice of voluntary retirement, which was conditional, was to come into effect from 31.5.1985 and that before the said order had come into effect, the respondents were bound to accept the notice of withdrawal given by the applicant.

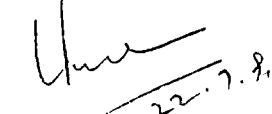
3. None appeared for the respondents.

4. So far as the first contention is concerned, obviously, it is not without substance and force. The application was addressed to a non-existent authority i.e., the Regional Labour Commissioner, Allahabad. For, the applicant was working under the Assistant Labour Commissioner (C), Allahabad, but the application was not addressed to this functionary. There is no authority as Regional Labour Commissioner, Allahabad because the Regional Labour Commissioner is at Kanpur. Under these circumstances, if somehow or other the lower authority (i.e., the Assistant Labour Commissioner, Allahabad) chose to hand over or send the same to the appropriate authority (i.e., Regional Labour Commissioner, Kanpur), the appropriate authority should have first asked the applicant whether the said application had been moved by him and he was really serious about it. But nothing like this was done. The date of retirement of the applicant was fixed as 31st May, 1985 by the impugned order. The applicant had moved an application for withdrawal of his earlier request (even if that be treated as a genuine one) for voluntary retirement before the said order came into effect. Government of India, Ministry of Finance O.M. dated 24.12.1952 (Appendix 10 of Swamy's Pension Compilation) states that normally a request withdrawing an application seeking voluntary retirement should not be accepted unless specific reasons are given as to why the applicant has changed his mind after giving notice of voluntary retirement. In the instant case, reasons were assigned by the applicant, but the same were not considered at all and the application was rejected. Under the circumstances, the respondents were bound to consider his application withdrawing his earlier notice of voluntary retirement and rather they should have acceded to his request. Indeed, this seems to be the effect of Rule 48-A of the Central Civil Services (Pension) Rules, 1972.

5. Thus, on both the counts, the application is bound to succeed and accordingly the order dated 5th

February, 1985 by which the applicant was retired on 31.5.1985 is hereby quashed. The applicant states in his application filed on 29.4.87 that he is 51 years of age. He would, therefore, have normally superannuated in 1995 only. As the applicant has already expired, he cannot be restored back in service. He will, therefore, be deemed to have been in service till he died on 19.12.1989.

6. The respondents are accordingly directed to treat the applicant to be in service till the date of his death. For this purpose, the period from the date the applicant was actually retired from service (i.e., 31.5.85) to the date of his death will to the extent possible be treated as period of Earned Leave as may be due to him and the remaining period that cannot be regularised in this manner, shall be treated as Half Pay Leave even if not due. The family of the deceased Government servant shall be entitled to all consequential benefits and family pension after giving them the benefit of service of the deceased Government servant upto 19.12.1989. There shall be no order as to costs.



(N.V. KRISHNAN)
Member (A)



(U.C. SRIVASTAVA)
Vice Chairman (J)

22.7.1991.