

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2011/90

199

T.A. No.
XXXXXXXXXX

DATE OF DECISION 17.5.91

Shri S.N. Kumaria	Petitioner
Shri M.M. Sudan	Advocate for the Petitioner(s)
Versus	
U.O.I. & Ors.	Respondent
Shri A.K. Behra	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. B.N. DHOUNDIYAL, 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 OF THE BENCH DELIVERED BY
SHRI B.N. DHOUNDIYAL, HON.MEMBER(A))

Section 19 of the

In this application, filed under Administrative Tribunal Act, 1985, the applicant, a Naval Stores Officer of Group 'A' gazetted cadre, prays for quashing order No.SE/2046/PC dated 26.3.90 accepting his notice for voluntary retirement w.e.f.31.3.90.

While working as Naval Stores Officer in the Directorate of Standardisation, New Delhi the applicant fell ^{on} ill and was on leave for 70 days, being treated for mental depression in the C.G.H.S. dispensary. In september, 1988 orders were issued for his transfer to Material

Organisation, Bombay w.e.f. 1.8.1989. He represented to the Chief of Naval Staff against this transfer in January and May, 1989 on the ground of ill health, advanced age and his wife's service with the Customs at Delhi. He fell sick again in September, 1989, proceeded on leave and rejoined his duties on 25.1.1990. Orders posting him in the Directorate of Logistic Support, Delhi were issued on the same day and he joined his new post on 12.1.199.

Meanwhile, on 12th December, 1989, he had made a request for voluntary retirement under Rule 48A of CCS (Pension) Rules, 1972 in which he gave his transfer as one of the reasons. The retirement was to be effect^{ed} ~~ed~~ from 31.3.1990. Later, on the advice of his superiors, on the same day he gave an unconditional notice of voluntary retirement. On 5.3.1990, he received a communication that the notice of voluntary retirement was defective as it was addressed to the Chief of Naval Staff and not to the President of India. On 19.3.1990, he withdrew the notice of voluntary retirement. This was within the notice period. However, vide the impugned order dated 26.3.1990, his notice of voluntary retirement was accepted w.e.f. 30.3.1990. The applicant was asked to give some clarifications regarding his withdrawal of notice for voluntary retirement which were given by him on the same day. He explained how his health had improved and undertook to accept transfer to any place in India and not to apply for voluntary retirement till his superannuation. His request was rejected on 18.6.1990. The Directorate of Estate^y cancelled his allotment of Government quarters in R.K. Puram but he continues occupation under the stay order granted by this Tribunal.

The applicant has contended that the respondents could not have accepted a notice of voluntary retirement which they themselves treated as defective. The notice was in any case withdrawn before its acceptance. He has relied on the Judgements given in similar cases of Dharam Chandra Sharma Vs. U.O.I. and others 1989(10). Jairam Vs. U.O.I. ATR 1954 SC 584, Raj Kumar, Vs. U.O.I. AIR 1969 SC 180, and Balram Gupta, Vs. U.O.I. AIR 1987 SC 2354/ A.G.Vinupakkshappa Vs. Director of Telecommunications & Ors. ATR 1986 C.A.T. 296.

According to the respondents, the applicant was posted to Material Organisation, Bombay in December 1988 and his repeated request for cancellation of transfer could not be acceded to due to the administrative reasons. He proceeded on sick leave and gave a notice on 12.12.1989 seeking voluntary retirement w.e.f. 31.3.1990. Though he was requested to correctly address his notice to the President of India before the notice period expired, the approval of the competent authority was obtained and conveyed on 26.3.1990. His application for withdrawal of notice on 19.3.90 was not acceded to in public interest. This was intimated to him on 1st of December, 1989. As he stood retired, he was not entitled for Government accommodation and hence the Directorate of Estate cancelled his allotment.

We have gone through the facts of the case and heard the rival contentions. By asking the applicant to correctly address the notice

for voluntary retirement, to the President and not to the Chief of Naval staff the respondents have accepted the fact that the notice was defective. In a catena of Judgement, Hon'ble Supreme Court has held that the notice for resignation/voluntary retirement can be withdrawn at any time before it becomes accepted. (Jayaraman Vs. U.O.I. AIR 1954 (SC) 584.

Rajkumar Vs. U.O.I. AIR 1969(SC)180, and
Balram Gupta Vs. U.O.I. AIR 1987 SC 2354).

In another case, the Bangalore Bench of this Tribunal has held that offer of voluntary retirement under Rule 48-A of CCS (Pension) Rules can be withdrawn before it is accepted by the competent authority. (A.G. Virapakshappa Vs. Director of Telecommunication ATR 1986 CAT 296).

Following the ratio of these judgements, we give directions as mentioned below:

- (a) The order issued by the Directorate of Logistic Support No.SE/2046/PC dated 26.3.1990 conveying the acceptance of the notice of voluntary retirement by the applicant and seeking to relieve him from the office on 31.3.1990 is hereby quashed.
- (b) The respondents shall take back the applicant at same level from which he was retired and extend to him all consequential benefits of arrears of salary, promotion etc.
- (c) The applicant will be deemed to be continuing in the service. He shall not be evicted from the Government quarters No.570, Sector 8, R.K. Puram, New Delhi.

There will be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL)
17/5/91
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
17/5/91
VICE CHAIRMAN