

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 114/91
File No.

199

DATE OF DECISION 29 Sep 93

<u>Shri R.N.Narula</u>	Petitioner
<u>Shri S.S.DUGGAL &</u> <u>Shri PP Khurana</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri M.L.Verma</u>	Advocate for the Respondent(s)

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The Hon'ble Mr. N.V.Krishnan, Vice Chairman (A).

The Hon'ble Mr. B.S.Hegde, Member (J).

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?

**ORAL
JUDGEMENT**

(Delivered by Shri NV Krishnan, Vice Chairman(A)).

The applicant who was an employee under the 2nd respondent, Director General Electrical Mechanical Engineer, Army Headquarters, New Delhi, had sought voluntary retirement with effect from 3-10-90 by sending a letter on 16-5-90 (An.A1) to the President of India through proper channel under rule 48(1)(a) of the CCS Pension Rules, 1972. He had mentioned therein that as his wife was not quite well and he is required to attend her at Delhi and as both of his sons were out of Delhi, he was seeking this voluntary retirement.

2. On 17-8-90, the second respondent's office informed the applicant's office (An.A2) that the applicant's request for voluntary retirement has been accepted and advised that he be relieved on 17-10-1990. A copy of the letter

was endorsed to the applicant also.

3. Subsequently, on 5-9-90, the applicant sent another letter to the President of India (An.A3) stating that he wished to withdraw his application for voluntary retirement and continue in service due to a change in the family circumstances. He stated therein that his younger son had come to Delhi and therefore, he would be able to look after his ailing wife at Delhi.

4. This request was forwarded to the competent authority but on 9-10-90 the second respondent informed the applicant's office (An.A8) with a copy to the applicant, that the applicant's request in the An.A3 letter seeking withdrawal ^{of notice of} ~~from~~ voluntary retirement, has been rejected by the competent authority.

5. Being aggrieved by the An.A8 order, this application has been preferred for a direction to quash that order and to allow the applicant to resume his duty till his actual date of retirement, with all consequential benefits.

6. In their reply, the respondents have contended that the application is barred by estoppel because the applicant was permitted to retire voluntarily w.e.f. 3-10-90 on his own request dated 16-5-90. Therefore, he was estopped from seeking withdrawal of the application for voluntary retirement. That is the main thrust of the reply by the respondents.

7. We have heard the learned counsel for the parties. Shri PP Khurana, counsel for the applicant draws our attention to the decision of the Supreme Court in AIR 1987 SC 2354 Balram Gupta Vs. UOI involving an identical situation. That was a case of voluntary retirement under rule 48A of the CCS Pension Rules 1972. This permitted voluntary retirement after having rendered 20 years of qualifying service. Sub rule 4 of 48A provides that a government servant who had elected to retire on his own and had given the necessary notice shall be precluded from withdrawing it, except with the approval of the competent authority. (It has to be added

straight away that such a restriction is not imposed in Rule 48 ibid, under which the present applicant sought voluntary retirement). In that case, the petitioner gave notice of voluntary retirement on 24-12-80 seeking retirement from 31-3-81. This was accepted by the letter dated 21-1-81 of the competent authority. Subsequently, on 31-1-81, the petitioner sought permission to withdraw the earlier notice i.e. before the date on which the retirement was to become effective (31-3-81) but after the notice of retirement had been accepted on 21-1-81. The Supreme Court held that the applicant was at liberty and entitled as a government servant to withdraw his notice of voluntary retirement before the retirement became effective. As this decision fully covers the facts of the present case, the learned counsel prayed for allowing the O.A.

8. The learned counsel for the respondents, however, has drawn our attention to the decision of Chandigarh Bench of the Tribunal- Tirath Singh Vs. ULI 1990 3 SLJ 222. That was a similar case where the notice of retirement on completion of 30 years of qualifying service was sent by the applicant on 16-6-88 seeking voluntary retirement from 31-8-88. Later on, he requested that the date of retirement be considered from 30-9-88. This was accepted on 6-9-88 and the applicant was permitted to retire from 30-9-88. The applicant, thereafter, sent a letter dated 9-9-88 stating that his earlier application for voluntary retirement be treated as withdrawn. This was rejected on 22-9-88 and the applicant was retired from 30-9-88. The sequence of dates is fully comparable with that in the present O.A. That O.A. was, however, dismissed on the ground that the applicant was estopped from making the application because, after the applicant retired on 30-9-88, he made an application on 31-11-88 for provisional DCRG, without reserving any right to assail the impugned order. Other applications for pension, commutation were also made. It is mainly on this ground viz., that the applicant took steps to claim the pensionary benefits

without reserving his right to challenge the impugned order in separate proceedings, that the Tribunal came to the conclusion that the applicant was estopped from filing G.A. The learned counsel for the respondent, therefore, contends that this application should also be dismissed on the ground of estoppel.

9. We have, therefore, considered the rival contentions. We notice that in the reply of the respondents the plea of estoppel is, no doubt, raised but, on a ground totally different from that considered in Tirath Singh's case. Their only plea in this connection is that the applicant, having sought voluntary retirement on 16-5-90 and the request having been accepted on 17-8-90, he was thereafter estopped from making a request withdrawing the earlier notice by his subsequent letter dated 5-9-90. In other words, withdrawal of notice, may be permitted only if it is not only before the date of intended retirement but also before the date the notice was accepted by Government. The respondents have no case that the applicant had taken steps ^{out} to claim pension ~~with~~ reserving his rights to impugn the order of retirement, which is the ground on which the Chandigarh Bench's decision is based.

10. We are, therefore, of the view that the decision of the Chandigarh Bench does not apply to this case. This G.A. is fully covered by the decision of the Supreme Court in Balram Gupta's case. In the circumstances the applicant is entitled to the relief prayed for.

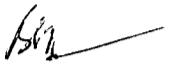
11. We notice that the respondents have enclosed with their reply a copy of the Daily Order dated 20-9-90 which notifies the decrease of strength due to the voluntary retirement of the applicant. In that order, the date of birth of the applicant is stated to be 6 August 1935. The applicant would therefore have normally superannuated on 31-8-93. In the circumstances, the question of his reinstatement does not arise.

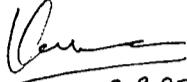
12. We, therefore, quash the A.M.R order dated 9-10-90 rejecting the applicant's request for withdrawal of his voluntary retirement

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(14)

and the A.n.A9 signal dated 17-9-90 communicating that decision to him and declare that the applicant shall be deemed to be in service from 3-10-90/^{the date} the date of superannuation i.e. 31-8-93 and we direct the respondents to give him all consequential benefits within four months from the date of receipt of the order.


(B.S. HEGDE)
Member (J).


29.8.93
(N.V. KRISHNAN)
Vice Chairman (A)