

THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

(3)

O.A. No. 426/91
T.A. No.

199

DATE OF DECISION 07.06.1991.

<u>VIJAY KUMAR BAHL</u>	Petitioner
<u>Shri R.C. Toor</u>	Advocate for the Petitioner(s)
Versus	
<u>UNION OF INDIA & OTHERS</u>	Respondent
<u>Shri M.L. Verma</u>	Advocate for the Respondent(s)

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

The Hon'ble Mr. B.N. DHOUNDIYAL, 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? *Yes*
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? *No*

J U D G E M E N T

(Delivered by Hon'ble Shri B.N. Dhoundiyal)

This application has been filed by Shri Vijay Kumar Bahl under Section 19 of the Administrative Tribunals Act, 1985 against the refusal of the Chief Town Planner, New Delhi to permit withdrawal of his notice for voluntary retirement.

2. The applicant was employed as Planning Draftsman in the Office of the Chief Planner, Town and Country Planning Organisation, New Delhi. After serving for 27 years, he submitted

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an application for voluntary retirement on 9.11.1989 asking to be relieved w.e.f. 31.12.1989. On 4.12.1989, an order was issued by the Administrative Officer of the Organisation intimating acceptance of his notice for voluntary retirement under Rule 48(A) 3(b) of CCS (Pension) Rules 1972 and retiring him from service w.e.f. 1.1.1990. On 27.12.1989, the applicant submitted an application to the Chief ^{Tolkh} Planner that the notice for voluntary retirement was submitted by him while he was under mental depression and having reconsidered the matter, he would like to withdraw it. When such withdrawal was refused, he appealed to the Secretary, Ministry of Urban Development, as also the Minister for Urban Development through telegrams and letters. On 30.5.1990, he was informed by the Ministry of Urban Development that his appeal had been considered in detail and that he could not be allowed to withdraw the notice for voluntary retirement.

3. The applicant has alleged that no valid reason for refusing his request for withdrawal has been given and that the respondents have not applied their mind judiciously. The notice for withdrawal was well within three months of the application for voluntary retirement. He has prayed the following reliefs:

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(1) To allow him to resume his duties as Planning draftsman i.e. the same capacity in which he was working.

(2) To allow him to retain in Quarter No.53/1-C, Sector II, DIZ Area, New Delhi.

4. The respondents have contended that the request for withdrawal of a notice under Rule 48(a)4 of the Pension Rules is invalid unless permitted by the Competent Authority.. It is also permissible to allow the shortening of the notice period (52 days in this case) if it does not cause administrative inconvenience. The Competent Authority applied its mind judiciously to the matter both while accepting the voluntary retirement on 4.12.1989 and rejecting the request for withdrawal of the notice on 29.12.1989. They have relied upon the judgement given in the case of Tirath Singh Vs. U.O.I. (1990 (3) SLJ 222) decided by the Chandigarh Bench of this Tribunal in support of their contentions.

5. The applicant has argued that in the Tirath Singh's case, withdrawal was sought after expiry of the notice period and as such it is quite distinguishable. He has relied on the judgement given by the Hon'ble Supreme Court in case of Balram Gupta Vs. Union of India (1989(ii) SLR 170 SC). The relevant portions of the above judgement are reproduced below:

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"In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected.

We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of uncertainty, a certain amount of flexibility is required, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees."

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6. In the notice of voluntary retirement, the applicant had simply mentioned 'due to my family circumstances, I am not in a position to continue my service in your Organisation'. In the request of withdrawal of notice, he had referred to 'mental depression' and had mentioned that 'now on careful reconsideration, I have realised that it would not be in my interest to take voluntary retirement would further aggravate my domestic circumstances.'

✓ 7. In our opinion, the explanation given by the applicant for withdrawal of his notice was adequate and ratio of the decision of the Supreme Court in the case of Balram Gupta Vs. U.O.I. is applicable to this case also. The notice was sought to be withdrawn before the expiry of the notice period for which the applicant was entitled to in law. The acceptance of notice of voluntary retirement on 4.12.1989 will have no legal effect. We therefore, allow the application with the following directions:-

(1) We set aside and quash the impugned order dated 4.12.1989 passed by the respondents retiring the applicant from service w.e.f. 1.1.1990,

(2) The applicant shall be deemed to have continued in service as Planning Draftsman

(3) The applicant would be entitled to arrears of Pay and allowances and all consequential benefits.

SW (4) In view of the above, the applicant would be entitled to Government

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accommodation on payment of normal
licence fee.

There will be no order as to costs.

B.N. Dhoondiyal
(B.N. DHOUNDIYAL 7/6/81)
MEMBER (A)

P.K. Kartha
(P.K. KARTHA)
VICE CHAIRMAN