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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. NO. 1836/2004

New Delhi this the 6th day of July, 2006

Hon'ble Mrs. Meera Chhibber, Member (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)

Inspector Gambhir Singh Rana
No. D-1118 (Now D-I/1063) Retired,
Son of late Shri R.S. Rana,
R/o G-116-117, Uttam Nagar,
New Delhi. ...

Applicant.

(By Advocate Shri Arvind Singh)

Versus

1. Union of India,
through Commissioner of Police, Delhi,
Police Headquarters, MSO Building,
I.P. Estate, New Delhi.

2. Special Commissioner of Police/Intelligence,
Police Headquarters, I.P. Estate,
M.S.O. Building, New Delhi. ...

Respondents.

(By Advocate Ms. Rashmi Chopra)

ORDER (ORAL)

Hon'ble Mrs. Meera Chhibber, Member (J)

By this O.A., applicant has challenged the order dated 18.6.2001 (page 28) whereby his three month's notice seeking voluntary retirement w.e.f. 30.6.2001 was accepted and the order dated 29.7.2003 (page 29) whereby his request to allow him to join the duties by recalling voluntary retirement order was rejected. He has also sought reinstatement in 8th Bn. DAP and payment of entire pay and allowances by regularizing the period of his retirement by



grant of leave of any kind due or extraordinary leave, seniority, promotion, etc. etc.

2. It is stated by the applicant that on 29.3.2001, he gave a notice for voluntary retirement under Section 48 of the CCS (Pension) Rules (page 68), which was accepted by the respondents, on 18.6.2001 w.e.f. 30.6.2001 (page 28).

3. It is submitted by the applicant that this acceptance of voluntary retirement is bad in law because his appointing authority was Commissioner of Police whereas he had addressed the notice to the Special Commissioner of Police (Intelligence) who is lower in rank than the Commissioner of Police. To substantiate his averment, he relied on page 99 to show that his order of promotion to Promotion List 'F' was issued from the office of Commissioner of Police. He also relied on the judgment given by Hon'ble Supreme Court in the case of State of Punjab and Ors. Vs. Balwinder Singh, reported in 2006 (III) SLT page 120.

4. He next contended that he had to give his voluntary retirement because he was forced by the respondents to seek voluntary retirement as he was being harassed. Even earlier also, he had to apply for voluntary retirement in 1990 because he was not being granted his due promotion and he was granted his promotion only after he approached the Tribunal, therefore, when he challenged acceptance of his voluntary retirement earlier, the same was quashed by this Tribunal in OA 388/94, decided on 22.7.1999 (page 103). He thus submitted that even now also, respondents have confirmed him as Inspector on 29.10.2001 (page 70) i.e. after he had given his voluntary retirement notice. Therefore, it clearly shows that he was forced to apply for voluntary retirement and he




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had not given notice of voluntary retirement out of his free will. Counsel for the applicant further submitted that CCS (Pension) Rules are not applicable to Delhi Police personnel.

5. Respondents, on the other hand, have opposed this O.A. They have stated that earlier also, applicant sought voluntary retirement by giving an application on 29.12.1990 but that was a conditional application inasmuch as he had stated that he is not being promoted, therefore, either he may be promoted to the rank of Inspector or three month's notice for voluntary retirement may be accepted. His voluntary retirement notice was accepted w.e.f. 31.3.1991. However, the same was quashed in O.A. No. 388/94 by the Tribunal as the request was conditional. Respondents were directed to reinstate the applicant as Inspector with full consequential benefits. Accordingly, he was reinstated in service with all consequential benefits vide order dated 23.3.2000.

6. After taking all the benefits, applicant again tendered his three month's notice seeking voluntary retirement w.e.f. 1.7.2001 under VRS Scheme vide his application dated 29.3.2001, that is with a gap of one year. This time respondents saw his move and applicant was informed immediately that there is no such Scheme named as VRS in this Branch. Therefore, he should clarify whether he was willing to proceed on voluntary retirement on the existing rules or otherwise. Applicant clarified that he was willing to proceed on voluntary retirement on the existing rules. As such, his voluntary retirement was accepted w.e.f. 30.6.2001 vide order dated 18.6.2001 (copy of same was received by the applicant on 29.6.2001). He even recorded in DD No. 6 dated 1.7.2001 that he stood relieved w.e.f. 1.7.2001. Thereafter, respondents asked him



to sign his pension papers but he kept on gaining time on one pretext or the other. He was confirmed as Inspector along with others by the respondents with effect from a retrospective date. It was at this stage that applicant changed his mind and requested vide letter dated 10.12.2001 (page 72 at 75) that his voluntary retirement may be cancelled and he be allowed to join the post of Inspector. It was an after thought as he already stood retired w.e.f. 1.7.2001. Therefore, his request was not permissible in law. The same was accordingly rejected.

7. They have also explained that under the Rules, appointing authority for Inspector of Police, is Additional Commissioner of Police and Commissioner of Police is not the appointing authority for Inspector of Police, as alleged by applicant. Moreover, applicant was fully aware that his appointing authority is Additional Commissioner of Police, therefore, he himself gave the notice to the Special Commissioner of Police and gave representation to the Commissioner of Police, who was the next higher authority. Therefore, the contention of applicant is not sustainable in law. In order to substantiate her case, counsel for the respondents produced notification dated 31.12.1980 to show Rules 3 and 4 of the Delhi Police (Appointment and Recruitment) Rules, 1980. She also produced Notification dated 17.12.1980 to show that CCS (Pension) Rules, 1972 are clearly made applicable to all Subordinates, Civilian and Class IV employees of the Delhi Police in addition to the rules and regulations made under the Delhi Police Act. Counsel for the respondents thus submitted that there is no merit in the O.A. The same may accordingly be dismissed. She also produced the original records for court's perusal.

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8. We have heard both the counsel and perused the pleadings as well.

9. Perusal of the notice given by the applicant under Rule 48 of the CCS (Pension) Rules dated 29.3.2001 shows that no other condition was mentioned in the notice except that he had sought permission to proceed on voluntary retirement under the VRS Scheme otherwise he had clearly stated that he has already completed 30 years of qualifying service as on 27.3.2001 and his notice may be treated as last and final three month's notice. This was addressed to the Special Commissioner of Police/Intelligence, PHQ, I.P Estate, New Delhi. On his application itself, remarks were given that no such Scheme of VRS has been received in the office, therefore, it may be clarified whether applicant is willing to proceed on voluntary retirement on existing rules or otherwise. He was also directed to give the exact date from which he wanted to retire voluntarily. The applicant clarified on the same letter that he is willing to proceed on voluntary retirement as per the existing rules w.e.f. 1.7.2001. Therefore, he had himself given up the request for VRS also. It was thus a plain notice given under Rule 48 of the CCS (Pension) Rules for seeking voluntary retirement. There was no condition mentioned in this notice nor it was stated that he had given it under some pressure or due to any compulsion or harassment. On the contrary, it was clearly mentioned that the notice may be treated as last and final three month's notice. Therefore, simply because applicant was confirmed subsequently by an order dated 29.10.2001 along with number of other persons from a retrospective date, it can hardly be stated that applicant was being harassed. It is relevant to note that order of confirmation on

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page 70 had confirmed as many as 12 other persons apart from the applicant and they were all confirmed from a retrospective date. Therefore, it is wrong to suggest that applicant was being harassed by the respondents. It is just a matter of chance that he was confirmed subsequently. Since in notice of voluntary retirement, no condition was mentioned nor it was stated he is seeking it due to denial of confirmation, his contention that he was forced to seek voluntary retirement is not sustainable in law. The same is accordingly rejected.

10. The next contention of applicant is also without any substance. Vide notice dated 17.12.1980, the Administrator had made it clear that CCS (Pension) Rules, 1972 shall apply to all subordinates, civilian and Class IV employees of Delhi Police. Similarly, Delhi Police (Appointment and Recruitment) Rules specifically defined in Rule 3 "appellate authority" in relation to Inspector of Police to be the Additional Commissioner of Police.

11. Rule 4 of the above rules makes it further clear that the authority to whom the power of appointment of Inspector is delegated, is Additional Commissioner of Police and the power to confirm also vests in the prescribed appointing authority, therefore, it is wrong to suggest that applicant's appointing authority is Commissioner of Police. Reliance placed by applicant on page 99 is absolutely misplaced because that is not the promotion order. It only brought the name of applicant in List F u/r 17 (ii) of Delhi Police (Promotion and Confirmation) Rules which, for ready reference, reads as under:

"List-F (Technical)



Confirmed Sub-Inspector (Specialised/Technical), who have put in a minimum of 6 years service in the rank of Sub-Inspector in their respective cadres, shall be eligible. The selection shall be made on the basis of the recommendations of the Departmental Promotion Committee. The names of selected Sub-Inspector shall be brought on List-F (Specialised/Technical) in order of their respective seniority, keeping in view the number of vacancies likely to fall vacant in the following one year, and they shall be promoted to the rank of Inspectors in their respective cadres as and when vacancies become available".

The above paragraph clearly shows that promotions were yet to be issued and this was not the promotion order. In any case, the above order was also issued by the ACP, HQrs on behalf of Deputy Commissioner of Police, Special Branch, therefore, by no stretch of imagination can it be stated that applicant was promoted by the Commissioner of Police. It is also relevant to note that even the confirmation order was passed by DCP HQrs for Joint Commissioner of Police (page 118).

12. At this juncture, it would be relevant to refer to AIR 1967 SC 459 at 462 wherein it has clearly been held as follows:

"Now as we read S.14 (3) (iii) of the Act, it is obvious that the power of appointment is only in the Assistant Secretary, though that power has to be exercised on the advice of the Committee constituted under S.16 of the Act. Even assuming that the recommendation of the Committee is necessary before appointment is made by the Assistant Secretary, the fact still remains that it is not the Committee which appoints, and the appointment is made only by the Assistant Secretary. Even if the word "advice" in this provision is equated to the word "recommendation" it is still clear that the Committee only recommends and it is the Assistant Secretary who is the appointing authority on the recommendation of the Committee. It may be that the Assistant Secretary cannot make the appointment without the advice or recommendation of the Committee. Even so, in law, the appointing authority is only the Assistant Secretary, though this power is to be exercised on the advice or recommendation of the Committee. In these circumstances, it cannot be said that there is any different intention appearing from the fact that the appointment has



to be made on the recommendation or advice of the Commission. The appointing authority would still be the Assistant Secretary and no one else, and there is no reason why, if he is the appointing authority, he cannot dismiss those appointed by him with the aid of S.18 of the 1915 Act. We cannot, therefore, agree with this view of the High Court".

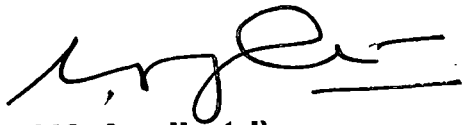
13. The present case is on a better footing because there is nothing to suggest that Commissioner of Police was the authority in making the promotion of Inspectors.

14. In view of above discussion, we find no merit in this contention, therefore, this contention is also rejected. Counsel for the applicant had relied on 2006 III SLJ 120 but perusal of same shows no question of law was decided in the said case. On the contrary, the matter was remitted back to the Hon'ble High Court for fresh consideration on merits. It was specifically mentioned by Hon'ble Supreme Court that their Lordships have not expressed any opinion on the merits of the case, therefore, reliance placed on this judgment by the applicant is absolutely misplaced. It does not advance the case of applicant at all.

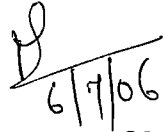
15. No other point was argued by the counsel for applicant. Law on the point of voluntary retirement is that if a person withdraws the notice for voluntary retirement before the intended date of notice period, it has to be allowed but there is no rule which permits a person to seek cancellation of voluntary retirement after voluntary retirement has been given effect to by master and servant both. In the instant case, applicant already stood voluntarily retired w.e.f. 01.7.2001 whereas he requested for cancellation of voluntary retirement only on 10.12.2001 which was definitely an after thought, therefore, his request was rightly rejected by the respondents.



16. In view of above discussion, O.A. is found to be bereft of any merit. The same is accordingly dismissed. No order as to costs.



(V.K. Agnihotri)
Member (A)


6/7/06.

(Mrs. Meera Chhibber)
Member (J)

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