

(15)

Open Court.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL.

ALLAHABAD BENCH, ALLAHABAD.

original Application No. 685 of 1997.

/day

Allahabad: this the 5th of September, 2002.

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

Hon'ble Maj Gen K.K. Srivastava, A.M.

Suraj Bali, aged about 47 years,
S/o Late Shri Kallu Ram, R/o
C/o Nanaku Lal, Block Hospital,
Shankargarh, District Allahabad.

.....Applicant

Counsel for the applicant: Sri R. Verma, Adv.

Versus.

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager(P) Northern
Eastern Railway, Lucknow.

.....Respondents.

Counsel for the respondents: Sri A.K. Gaur, Adv.

O_R_D_E_R_(oral)

(By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.)

This O.A. under section 19 of the A.T. Act, 1965,
the applicant has challenged the order dated 06.02.1997,
by which the respondents have accepted the offer of
voluntary retirement made by the applicant.

2. The facts of the case are that the applicant
was serving as Office Superintendent Grade-2. He
submitted an application ~~for~~ offering ~~to~~ retirement
voluntarily from service on 27.11.1996. This application
was accepted by the Competent Authority on 06.02.1997
with a direction that the applicant shall retire
from service on 28.2.97. It is claimed by the applicant



that on 21.02.1997, he made representation withdrawing his offer of voluntary retirement. It ^{had} reached the respondents on 24.02.1997, but request of the applicant was not considered and he has been illegally voluntarily retired from service w.e.f 28.02.1997.

3. Sri R. Verma, learned counsel for the applicant has submitted that as the effective date was 28.02.1997, and the representation of the applicant withdrawing the letter dated 27.11.1996 reached to the respondents on 24th Feb.1997, the resignation could not be given effect to, and therefore, the impugned order is wholly illegal and arbitrary. Reliance has been placed in the case of J.N. Srivastava Vs Union of India and another(1998) SCC (L&S) 1251. The Hon'ble Supreme Court in the aforesaid judgement has held as under:-

"----"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted, by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta Vs Union of India. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31.1.1990.---".

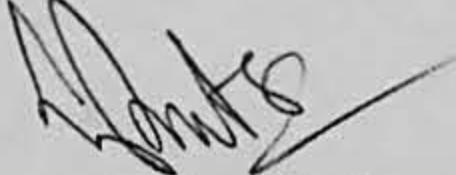
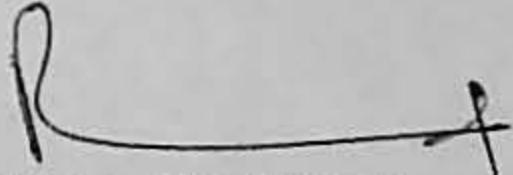
4. The view taken by the Hon'ble Supreme Court squarely covers the facts of the present case. In the present case, though the offer of voluntary retirement was accepted on 06.02.1997, but the effective date was 28.02.1997 and till that date reached, the relationship between master and servant continued and the applicant was fully entitled to withdraw his offer before the relationship came to an end. In view of the aforesaid, impugned order cannot be sustained.

5. Sri A.K. Gaur, learned counsel for the respondents

submitted that the applicant was facing a major penalty, ^{that} proceedings and to avoid, he had offered voluntary retirement. It is also submitted that several other complaints were made against the applicant. However, in the present case we are not concerned with the alleged facts. If there are charges against the applicant, it shall be open for the respondents to initiate the disciplinary proceedings.

6. For the reasons stated above, this O.A. is allowed and the order dated 6.2.97 is quashed. The applicant shall be reinstated on the post. However, applicant shall be entitled for 50% of the back wages during which he was out of service.

No costs.


Member (A)
Vice-Chairman.

/Manish/