

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Transfer Application No. 1763 of 1987

(Writ petition no. 348 of 1985)

Keshaw Ram Garg ... Petitioner

Vs.

Union of India and others ... Opp. Parties

Hon'ble Mr. K. Obayya, AM,

Hon'ble Mr. J.P. Sharma, JM

(Delivered by Hon'ble J.P. Sharma, JM)

The petitioner, while working as Junior Scientific Officer under the respondent no. 1/Ministry of Defence, Government of India, applied for his premature retirement from service on 18-7-1983 w.e.f. 31-12-1984. After moving this application on 18-7-1983, the petitioner by order dated 22-7-1983 was ordered to be transferred to Bombay ICS (WI). The petitioner on the same day i.e. 22-7-1983 informed the Chief Inspector, Chief Inspectorate of Textiles & Clothing that he has already submitted an application addressed to the Secretary, Government of India, Ministry of Defence, New-Delhi, requesting for his premature retirement from service w.e.f. 31-12-1984. The petitioner by means of his application dated 22-7-1983 has further requested that if it is not possible to retain him at Kanpur beyond 26th July 1983, then he may be allowed to retire from service with immediate effect. It appears that the order of transfer dated 22-7-1983 was subsequently cancelled. The petitioner in the meantime on 29th September 1984 i.e. about three months before the proposed date of premature retirement moved an application to withdraw this application dated 22-7-1983. By the order dated 18th December, 1984, the request for premature retirement w.e.f. 31-12-1984

(afternoon) has been accepted. On 4-1-1985 writ petition no. 348 of 1985, was filed by the petitioner in the Hon'ble High Court of Judicature at Allahabad for the following reliefs;

- i) issue a writ, direction or order in the nature of certiorari quashing the order dated 18-12-1984 retiring the petitioner from service w.e.f. 31-12-1984 (Annexure-6 to the writ petition);
- ii) issue a writ, direction or order in the nature of mandamus directing the opposite parties to withdraw the premature retirement letter and to allow the petitioner to remain in service;
- iii) issue a writ of prohibition commanding the opposite parties to restrain themselves from giving effect the letter dated 18-12-1984;
- iv) issue any other writ, direction or order to which this Hon'ble Court may deem fit and proper in the circumstances of the case;

2. The brief facts of the case are that the petitioner was appointed as Junior Scientific Assistant-II in December 1957 and was promoted scale by scale upto Junior Scientific Officer by 1979. The petitioner made an application on 18-7-1983 for premature retirement which was accepted by the communication dated 18-9-1984 and the petitioner was retired prematurely on his request w.e.f. 31-12-1984. The petitioner was not granted any stay by the Hon'ble High Court at Allahabad. The matter stood transferred to the Administrative Tribunal under Section 29 of the Administrative Tribunals Act, 1985, and was registered as Transfer Application no. 1763 of 1987. The applicant/petitioner challenges the premature retirement on the ground that the order/communicated to him was passed after he had sent his withdrawal of his request for premature retirement dated 18-7-83 on 29-9-84. He further said that the order has been passed without following the procedure prescribed. It has also been contended by the petitioner that his appointing authority at the relevant time was the Chief Inspector of Textiles and Clothing. Second promotion to the petitioner was allowed by the Director General/opposite party no. 2 and the last promotion by the Defence Secretary/respondent no. 1. According to the petitioner it is not clear, who has passed

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the impugned order (Annexure-6) of voluntarily premature retirement of the applicant. Annexure-6 for the sake of appraisal is reproduced below: -

"  
PRE-MATURE RETIREMENT

Reference: Your application dated 29-9-1984

As per Government Order received telegraphically today in this establishment you have to retire from service w.e.f. 31-12-1984 (A/N).

You are advised to report in this office as early as possible to complete formalities of relieve.

Please note that you are going to be struck off strength of this establishment w.e.f. 31-12-1984 (A/N) in acceptance of your request for premature retirement.

Please acknowledge receipt."

3. The respondents contested this application and filed a counter affidavit. In the counter affidavit the various contentions raised by the petitioner have been denied. The opposite parties in the counter affidavit have stated that the appointing authority in respect of the post of Senior Scientific Assistant- and Junior Scientific Assistant- is the Director General of Inspection, DGI, Headquarters, New-Delhi. The petitioner even in the month of December 1984 in the last fortnight requested for grant of sick leave and he was informed vide letter no. F/44/AD-3 dated 1-1-1985 that as per his own request the petitioner has been retired prematurely from service w.e.f. 31-12-1984 (afternoon) by the competent authority and, therefore, the question of leave beyond the said date of retirement does not arise.

4. The respondents also denied the fact that the petitioner did not successfully complete the technical course in the department and in this connection referred to report from the Director of Defence Institute of Work Study, Mussorie. The petitioner had been stationed at Kanpur for over 25 years. His terms of service in the department are that he is liable to be transferred anywhere in the

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country. The appointing authority issued permanent transfer order in respect of 9 officers including that of the petitioner vide order no. 88352/DGI (ADM-6) dated 13-7-1983. The transfer order is marked as Annexure CA-1. This letter was received in the establishment on 18-7-1983 and that the applicant having come to know about this transfer order moved an application dated 18-7-83 asking for voluntary and premature retirement from service w.e.f. 31-12-1984 on the ground of family circumstances. The petitioner requested for grant of 5 years extra benefit over his qualifying period of service for the purpose of terminal benefits such as pension and gratuity. According to respondents this was a calculated move from him so as to avoid his transfer from Kanpur to Bombay for which orders were issued by the competent authority. After receipt of the order of transfer the petitioner moved the application for premature retirement. The application for premature retirement is marked as Annexure CA-2 to the counter affidavit. The petitioner was asked vide letter No. C/15340/B/AD-10 dated 30-7-1983 to give an undertaking to the effect that he will not withdraw his request for voluntary and premature retirement at a later stage. The petitioner gave the undertaking dated 3-8-1983 (Annexure CA-3 to the counter affidavit) and this undertaking was forwarded to the Director General of Inspection, who is the appointing authority of the petitioner alongwith the recommendation (Annexure CA-4 to the counter affidavit). The petitioner submitted representation in which he specifically mentioned that he has asked for voluntary and premature retirement w.e.f. 31-12-1984 due to his family circumstances and his movement from Kanpur to Bombay for a period of  $1\frac{1}{2}$  years period may not be insisted by the Government. Thus, on his representation it was recommended that his request for premature retirement w.e.f. 31-12-1984 be accepted. The Director General, Inspection Headquarters was also requested to defer with the posting of the applicant to Bombay till the competent authority takes a decision on the request of premature retirement of the

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petitioner. Subsequently the vacancy of Junior Scientific Officer upon which the petitioner was transferred was to be filled up by another Junior Scientific Officer JL Chug, who in compliance of the order of Government moved from Bombay to Kanpur and on this the petitioner moved an application for cancellation of his premature retirement. This application was again forwarded to the headquarter with the report of Deputy Assistant Controller on 17th October 1984 (marked as Annexure CA-5 to the counter affidavit). The impugned order has been received telegraphically from the Government (Annexure CA-6 to the counter affidavit). Thus, the respondents have opposed the reliefs claimed by the petitioner.

5. A rejoinder affidavit has also been filed almost giving the same facts as stated in the petition. However, the petitioner has contended in the rejoinder affidavit that promotion to the post of Scientific Officer is made by Defence Ministry, while the order impugned has been passed by the <sup>Director</sup> General, Research and Development.

6. The matter is old one and as such has been taken for hearing. None appeared from the side of the respondents and so the matter was taken ex parte. The learned counsel for the respondents had noted the date of hearing, but is not present nor he has sent any request for adjournment.

7. The learned counsel for the petitioner has raised firstly the point that the request for premature retirement has been withdrawn prior to its acceptance and in this connection relied on the decision of Balram Gupta Vs. Union of India and others 1987 SC 2354. In this case notice of three months was given by the employee as required under the CCS Pension Rules 1972, Rule 48-A (4) and subsequently this notice was withdrawn, but the withdrawal was not allowed. In this reported case the request for withdrawal was made within three months and further no other employee was available for the job. The offer for retirement and later on

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withdrawal of the same happened in so quick succession that it cannot be said that any administrative set-up or arrangement was affected. However, in the present case the applicant was transferred from Kanpur to Bombay alongwith 8 others Junior Scientific Officers on 13-7-1983. The petitioner after coming to know of this order in order to ignore the same moved the application for premature retirement on 18-7-83 and also wanted retirement <sup>1/3</sup> year afterward i.e. with effect from 31-12-1984. The request for withdrawal was made only on 29-9-1984 when one Sri Chug from Bombay was transferred to Kanpur in place of the petitioner and he has joined at Kanpur. Thus, the facts of this reported case rather go against the petitioner.

8. It has further been argued on behalf of the counsel for the petitioner that the order of retirement is not a speaking order, but it is according to Rule 48-A of CCS Pension Rules, 1972, in conformity with Fundamental Rule 56. Thus, there is nothing wrong in this order. The learned counsel for the petitioner has referred to an authority 'AIR 1978 SC, page 851 'Mohinder Singh Gill Vs. Chief Election Commissioner. This authority is not at all relevant to the controversy involved in the present case. It deals with an order passed by a statutory authority in an election matter so it does not help the petitioner at all.

9. The learned counsel for the petitioner has invited our attention to the effect that the order of premature retirement (Annexure-6) has <sup>not</sup> been passed by the competent authority, but it is not so. The order of premature retirement has been passed by the Ministry of Defence, who is an authority competent to pass such order. The promotion order of the petitioner RA-1 does not at all go to show otherwise.

10. The learned counsel for the petitioner has further referred to the fact that the principle of estoppel does not arise at all in the matter of the petitioner. In this connection he has referred to

AIR 1952 SC, page 145 'Dhyan Singh and others Vs. Jugul Kishore and others'. This authority rather goes against the applicant. Section 115 specifically lays down that firstly there must be representation of existing facts and in the present case the petitioner in order to settle permanently at Kanpur made the request for premature retirement. In the reported case there was promise for future but that is not so in the present case. . The petitioner in his representation has clearly mentioned that on account of family circumstances he may not be shifted from Kanpur for a period of 1  $\frac{1}{2}$  years and after that he be retired prematurely from 31-12-1984 by giving him another 5 years qualifying service for retirement benefits. Not only this, but the petitioner has made another application on 3-8-1983 that he will not withdraw his request for premature retirement at a later date as he does not want to move out of Kanpur because of family circumstances. Thus, the applicant made a representation in clear terms and the respondents have acted on his representation by allowing him to live at Kanpur till his retirement. Thus, the prayer of the applicant is also barred by principle of estoppel.

11. In ~~XXXXXX~~ the authority 'Balram Gupta Vs. Union of India and others' (supra) the Hon'ble Supreme Court laid emphasis on the fact that the applicant who has withdrawn his letter of resignation has given reasons which appear reasonable. In the present case, however, the applicant has not given any reason whatsoever in his letter of withdrawal dated 29th September 1984. He has merely written "in connection with my above application for premature retirement, I beg to state that my family circumstances have been changed and I am not now in a position to take the premature retirement from service w.e.f. 31-12-1984. My above application may, therefore, kindly be treated as cancelled" (Annexure-5 to the writ petition). It would thus appear that the applicant has not given any reason whatsoever. However, the respondents in para 21 of the counter affidavit have specifically alleged that the applicant did not elaborate the changed

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circumstances in the family. It has been further observed in para 23 that under the relevant rules/procedure only three months notice is required by the government servant for premature retirement from a prospective date. In the present case the premature retirement has been sought by the applicant at his own will and he gave 17 months' notice to the Government. The respondents in para 11 of the counter affidavit have clearly stated that the application for withdrawal was not bonafide and only when the vacancy at Bombay was filled up by JL Chugh, the applicant moved the letter of withdrawal. In reply to the contents of para 11 of the counter affidavit the applicant in his rejoinder affidavit has not said anything controverting the said facts and has stated that Sri Chugh was senior to the petitioner and had a longer stay than the petitioner at Kanpur. Another fact that is most important is in the letter of withdrawal of premature retirement. The petitione-r has not mentioned that he is prepared to comply with the order of transfer from Kanpur to Bombay. Thus, as per the authority of Galram Gupta referred to hereinabove the petitioner has not made out a case that there existed certain reasonable grounds to move the application for withdrawal of application for premature retirement.

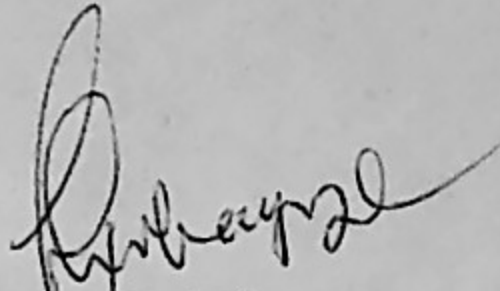
12. The decision in the case of Dharam Chandra Sharma Vs. Union of India decided by Chandigarh Bench ATR 1989 (1) (CAT) 302 does not help the applicant because in that case the applicant has given reasons for withdrawing his resignation on the ground that he was not both mentally and physically fit.

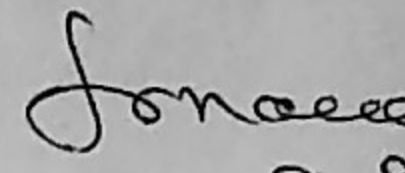
13. Normally the application of the applicant should have been entertained within three months from the date of application i.e. 18-10-1983 and if the applicant did not receive any communication, then after the expiry of six months from the date of this application, he would have been deemed to have retired prematurely from service. Thus, the applicant has no right to act after six months in a manner which is prejudicial to the interest of the employer.

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The delay in attending the application for withdrawal was that the applicant made representation for his stay at Kanpur till the prospective date of premature retirement i.e. 31-12-1984. Thus, the applicant has no case on any of the points canvassed before us. The writ petition/transfer application is devoid of merit and is dismissed accordingly.

Parties shall bear their own costs.

  
MEMBER (J)

  
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MEMBER (A)

Allahabad : Dated

August 9, 1990

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