

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 915/89 of 199

T.A. No: of 199

DATE OF DECISION: -----

Aulad Husain

PETITIONER.

Dr Satish Durech

ADVOCATE FOR THE
PETITIONER

V E R S U S

Union of India & Ors

RESPONDENTS

L R K Dija

ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. Maharajan JM.

The Hon'ble Miss Usha Sen

- X1. Whether Reporters of local papers may be allowed to see the judgement?
- X2. To be referred to the Reporter or not?
- X3. Whether their Lordships wish to see the fair copy of the judgement?
- ✓4. Whether to be circulated to all other Benches?

Usha Sen
SIGNATURE

JAYANTI/

THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

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Original Application No. 915 of 1989

Aulad Hussain	...	Applicant
	Versus	
Union of India and others	...	Respondents
	-:-	

HON'BLE MR MAHARAJDIN, MEMBER(J)
HON'BLE MISS USHA SEN, MEMBER(A)

(by Hon'ble Miss Usha Sen, Member- A)

The counsel for the parties were heard.

The facts of the case are as below :

The applicant while working as Head Fitter under the Superintendent, Carriage and Wagon, G.M.C., Kanpur, in the organisation of the Divisional Rail Manager, N.Railway, Allahabad, submitted an application for voluntary retirement on 8-1-87 (Annexure-1 to Compilation II). His due date of retirement on superannuation was 31-11-89. The date from which he intended to retire was not mentioned in the application but it was requested that he may be allowed retirement at the earliest. The request was accepted by the competent authority vide a letter signed on 23-4-87 but dated 30-4-87 in which it was stated that the voluntary retirement had been accepted with immediate effect. A copy of this letter has been annexed as Annexure 1 to Compilation I by the applicant. The applicant states that he received this communication on 5-5-87. He has further stated that on 20-4-87 he sent a letter to the D.R.M., N.Railway, Allahabad, withdrawing his voluntary retirement. This letter (Annexure-2) in is stated to have been received in the office of the D.R.M. on 22-4-87. It is seen that this is not a letter but ~~an~~ an

Compilation II)

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affidavit in which he has sworn that he had applied for voluntary retirement but was desirous of withdrawing the same and therefore "the learned authority may kindly be pleased to permit the deponent to withdraw the application for voluntary retirement and in the alternative the said application be treated as dismissed being not pressed." This affidavit is not addressed to any official. The applicant sent another application to the D.R.M. on 5-5-87 for withdrawal of the application for voluntary retirement. Similar request was made in subsequent representation; dated 29-6-87, 28-7-87 and 21-8-87. These four representations dated 5-5-87 and onwards have been replied to by the office of the D.R.M. vide their letter dated 3-12-87 (Annexure 2 ⁱⁿ ~~to~~ Compilation ^I ~~II~~) stating that his request for withdrawal of the application for voluntary retirement had not been accepted. It is observed that there ~~xxxxxxx~~ is no reference to the affidavit of 20-4-87 *ibid* in this reply. Nor is there anything on record to show that this affidavit was responded by the office of the D.R.M..

The applicant has challenged the action of the respondent in not accepting his withdrawal of the application for voluntary retirement as ^{> illegal} ~~alleged~~ because he states that he withdrew the same by the letter dated 20-4-87 (which is an affidavit) before the acceptance of the retirement vide the letter of 30-4-87 (Annexure 1 to Compilation I) was communicated. He further states that in fact he was actually relieved from his office on 24-6-87 which is evident from the record of the case. During the

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course of hearing the counsel for the applicant cited the case of Union of India etc. versus Gopal Chandra Mishra and others (A.I.R. - 1978 - S.C. - 694) which was referred to by the Delhi High Court in ^{their} ~~this~~ judgment in the case of Union of India vs. ^{Narendralal} ~~Chandralal~~ Bhattacharya, wherein the Supreme Court had held that " in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective and it becomes effective when it operates to terminate the employment."

The respondents have argued that all the representations of the applicant for withdrawal of his request for voluntary retirement were received by the competent authority after communication of the acceptance of the retirement vide ^{& aforementioned} the ~~supra~~ letter signed on 23-4-87 and despatched from their office on 30-4-87 (Annexure 1 to Compilation I).

We have examined the case. In our view the affidavit dated 20-4-87 (supra) in which he expressed the desire to withdraw the request for voluntary retirement cannot be treated as an application to the appropriate authority as it is not addressed to any authority although the applicant claims that this affidavit was received in the office of the D.R.M., Northern Railway, Allahabad on 22-4-87. It is also significant to note that there is nothing on record to show as to why this affidavit was not mentioned by the respondents in their letter of 3-12-87 (Annexure 2 to Compilation II) while rejecting his request for withdrawal as contained in his representations dated

reported in All India
Services Law Journal
1983(2) p-418,

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5-5-87, 29-6-87, 28-7-87 and 21-8-87. Nor has this affidavit been replied to separately by the respondents on the face of the record. It is also observed that the applicant has ^{no} ~~not~~ contended that his representation dated 5-5-87 for withdrawal of request for retirement was sent before receipt of the communication of acceptance of retirement by the competent authority. In between the affidavit of 20-4-87 and the representation of 5-5-87 there was no communication from the applicant in this matter to his superior authority. We also note that in the letter of acceptance of the retirement it was stated that the retirement had been accepted with immediate effect. It appears from the letter of 25-6-87 at Annexure-5 that he was allowed to be retained in service ~~by~~ by his immediate superior upto 24-6-87 because his representation of 5-5-87 for withdrawal had been forwarded to the D.R.M., Northern Railway, Allahabad, for decision and as no reply to the same was received till 25-6-87 he was "finally retired with effect from 24-6-87." It is thus clear that his first application as such, for withdrawal was sent only on 5-5-87 and not before the communication of the acceptance of retirement "with immediate effect" was received by the applicant. One argument could thus be that the applicant's continuance in service upto 24-6-87 even after the acceptance of the retirement vide the letter of 30-4-87 at Annexure 1 to Compilation I, was without any contractual force ^{between} ~~before~~ the applicant and the respondents. Even if for the sake of argument it be stated that his continuance in

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service upto 24-6-87 after the acceptance of the retirement was a continuance of the contract between the employee~~s~~, and the employee which began with the acceptance by the applicant of the ^{offer} ~~offer~~ of appointment in the Indian Railways, then also the proviso under Rule 56(k)(2) of Fundamental Rules would go against the plea of the applicant that the authorities had no legal right to reject the request for withdrawal because it had been made before he was relieved on 24-6-87. This rule and its proviso are reproduced below :

" A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority :

Provided that the request for withdrawal shall be within the intended date of his retirement."

It would be seen from the rule that no election for voluntary retirement can be withdrawn unilaterally but requires the approval of the appointing authority with the further condition that the request for withdrawal should have been made within the intended date of his retirement. In the present case the applicant had asked for voluntary retirement on 8-1-87 ^{and for its acceptance} at the earliest without specifying any date of the "intended retirement". The retirement was actually accepted before receipt of the communication of withdrawal by the appointing authority.

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Still further, the appointing authority had the legal right to refuse to accept the request for withdrawal in terms of the proviso to Rule 56(k) *ibid*. No reasons for such refusal were also required to be given by the authority.

It is very significant here to state that in the judgment of the Delhi High Court in the Union of India versus ^{reported in All India Service Law Journal 1983 (2) page 418,} Harendralal Bhattacharya (*supra*), which was quoted by the

counsel of the applicant it was observed that there was no sub-rule under Rule 56 of the Fundamental Rules which made any provision regarding withdrawal of the notice of voluntary retirement given under Fundamental Rule ~~56(k)~~ 56(K).

In fact it was also observed that sub-rule (2) of Rule 48 of the Central Civil Services (Pension) Rules 1972

provided that withdrawal of notice for voluntary retirement under this Rule 48 could be done with the specific approval of the appointing authority provided that the request for withdrawal was made within the intended date of retirement but there was no corresponding sub-rule under Fundamental

Rule 56. However, it is obvious that such a sub-rule has ^{of Fundamental Rules} since been provided even under rule 56 ~~ibid~~, though it may not have existed when the judgment in the case of Union

of India vs. Harendralal Bhattacharya was delivered on 8-7-83. It is also noteworthy that in his application

of 8-1-87 for voluntary retirement the applicant had not mentioned any specific rule under which he was seeking

voluntary retirement. It ~~could~~ could have been either under Rule 48 of Central Civil Services (Pension) Rules 1972 or under Fundamental Rules 56(k). Since the request for

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withdrawal was refused by the competent authority which discretion vested in ^{him} ~~him~~ under the provisions of the relevant rules as mentioned above even if the request for withdrawal had been made within the intended date of retirement, we cannot agree with the contention of the applicant that the rejection of the request for

withdrawal was illegal because it had been made according to him before the acceptance of the retirement or before he was actually relieved from office. In the present case it cannot even be established without doubt for reasons

given in our discussion ³ ~~2~~ above, that his withdrawal can at all be considered to have been made within the intended date of retirement. On both counts, therefore, the application deserves to be dismissed which we hereby do. No order as to costs.

Urdu Sen
MEMBER (A)


MEMBER (J)

DATED: Allahabad, 09.3.94.
(VKS PS)
