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CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 11th DAY OF MARCH 1997

Original Application No. 146 of 1993

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.D.S.BAWEJA, MEMBER(A)

M.N. Pande, Chargeman Gr.II
S/o late Shri M.R. Pande, r/o 105
Nashville Road, Dehradun

.. Applicant

BY ADVOCATE SHRI A.K. GAUR

Versus

1. The Union of India represented through the Secretary to the Govt. of India Department of Research & Development Ministry of Defence, South Block New Delhi- 110 001
2. The Director Defence Electronics Application Laboratory(DEAL), Raipur Road, Dehradun

.. Respondents

KM.SADHANA SRIVASTAVA advocate

O R D E R (Reserved)

JUSTICE B.C.SAKSENA,V.C.

We have heard the learned counsels for the parties. Through this O.A. the applicant challenges an order dated 10.1.1992 filed as Annexure A1. Through this letter the applicant was informed that his case regarding withdrawal of notice of voluntary retirement has already been examined by the Defence Electronics Appliances Laboratory(DEAL) and a reply had been sent to him vide letter dated 17.9.91. That letter has been filed as Annexure CA 16 alongwith the counter affidavit. In the said letter it has been indicated that the applicant's request for withdrawal of notice of voluntary retirement has been considered but it is not covered by the rules and hence cannot be agreed.

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2. The applicant has also sought a relief that his application dated 14.1.91 seeking voluntary retirement w.e.f. 21.1.1991 be ignored and may not be given effect to. He has further prayed that his application dated 5.7.91, 1.8.91, 9.12.91 and 24.12.91 seeking permission to withdraw application for voluntary retirement be accepted. His further prayer is that the entire period of his absence from 22.1.91 till he is allowed to join his duties be regularised as per rules.

3. The brief facts may be noted. the applicant was last holding the post of Chargeman Gr.II in the (DEAL) in the Ministry of Defence, department of Defence Research and Development. From the pleadings on record the applicant through an application dated 27.2.89 sought voluntary retirement a copy of this application has been annexed as Annexure CA-3. Therein the applicant had specifically stated that due to his family circumstances he does not wish to continue in service and he may be given premature~~r~~ retirement in view of the circumstances and the application dated 27.2.89 be treated as three months prior notice. In reply to this application through CA-4 the applicant was informed that he joined government service on 17.6.89 and would be completing 20 years of service on 16.6.89. It was also noted that during the service period upto January 1989 he had availed 15 days E.L. on private affairs which were not counted towards his qualifying service. It was also indicated that he remained on deputation with the Indian School of Mines Dhanbad for a period of four months. For the said period no pension contribution and leave salary have been paid to the (DEAL), Dehradun by the Indian School of Mines Dhanbad and therefore the deputation period will not count towards the qualifying service. It was also indicated that the E.L. for 30 days availed by the

processed. Annexure CA-13 is also on record which is a letter dated 31.7.92 sent to the Director, (DEAL), Dehradun by the Asstt. Director(Personnel) for the Director General Research and Development. In this letter it has been indicated that the case of the applicant for withdrawal of his resignation has been examined ~~and in consideration~~ ^{consultation} with the Department of Personnel and Training and it has been observed that the notice of voluntary retirement has been accepted w.e.f. 21.1.91 at the request of the official after curtailing the minimum period of three months notice w.e.f. 21.1.91. Therefore after the notice became effective, there is no question of reinstating the official. It was also stated that the official applied for cancellation of the voluntary retirement on 13.8.91 which was not within the intended date of retirement as prescribed in Rule 48-A, Sub-Rule 4 of the Pension Rules. It was also indicated that the rejection of the request for withdrawal of notice of voluntary retirement was therefore in order. It was also indicated that the official has not adduced any fresh grounds for reconsideration of his case except that he is facing financial hardship. This is not a case of undue hardship and certainly do not merit relaxation under Rule 88 of the CCS(Pension) Rules.

4. The applicant filed a rejoinder affidavit. He through the rejoinder pleaded that his application for voluntary retirement dated 27.2.89 hence the application dated 14.1.91 cannot be treated as notice for voluntary retirement, since the notice period of three months as indicated in the application dated 27.2.89 had already expired. In the rejoinder affidavit the applicant took the plea that after expiry of three months notice period from the date of the application dated 27.2.89 the

the respondents were not required to intimate him that his case for voluntary retirement is under consideration and was being processed. It has also pleaded that it was not open for the respondents after having processed the matter to have asked for a fresh date for voluntary retirement. The applicant laid great stress on the provisions of Sub-rule (3-A) of Rule 48-A of the CCS(Pension) Rules and took the plea in the rejoinder that ~~unless~~ the request in writing ^{has to be} was with a notice of not less than three months and reasons were required to be indicated. His request for voluntary retirement w.e.f. 21.1.91 ~~since he~~ did not fulfill the requirement ^{and thus} of notice period, could not have been made the basis ~~of~~ to voluntarily retire the applicant w.e.f 21.1.91.

5. A supplementary affidavit was filed by the respondents wherein certain detailed facts to meet the plea in the rejoinder affidavit have been indicated. The applicant has filed a supplementary rejoinder by which he has again reiterated the plea taken in the rejoinder affidavit.

6. We have heard the learned counsels for the parties and we shall refer to the relevant pleadings while considering the submission.

7. The learned counsel for the applicant submitted that the applicant when ^{he} gave the notice for voluntary retirement with three months notice on 27.2.89, he admittedly was not satisfied ^{ing} the conditions of 20 years qualifying service. His qualifying service ~~was~~ fell short by four months as some portion of his service on deputation has not been counted. The learned counsel submitted that in view of this since the applicant has not completed 20 years of qualifying service the

application dated 27.2.89 seeking voluntary retirement is rejected.

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the application dated 27.2.89 seeking voluntary retirement became infructuous and non-est and could not have been acted upon at any future date.

8. The respondents in their supplementary affidavit had indicated that the applicant continuously after 27.2.89 application insisted for acceptance of his voluntary retirement. The applicant in the supplementary rejoinder denies this. But this denial does not appear to be correct. Alongwith the supplementary affidavit the respondents have filed Annexure SA-I application dated 10.4.91. This application had been submitted as indicated therein in reference to the Director(DEAL) Dehradun's letter dated 12.2.90 by which the applicant has been asked to intimate fresh date of his voluntary retirement. The applicant indicated by means of Annexure SA-I that he had intimated the fresh date of retirement but he had not been informed of anything so far. The applicant requested that immediate necessary action to finalise his case for voluntary retirement from the date as mentioned in his earlier application be taken and he may be paid retirement benefits viz pension, gratuity, amount of leave encashment, commutation of pension etc. This evidently refers to the application dated 14.1.91.

The documents on record go to show that repeatedly the authorities have asked ^{the applicant} to complete the relevant papers and submit the no dues certificate so that his post retirement benefits may be processed and paid to him. The applicant had delayed submission of the necessary papers and ultimately after lapse of few months he through his application dated 13.8.91 sought the cancellation of his ^{notice of} voluntary retirement. As noted hereinabove the applicant has also in this OA sought a

relief that his subsequent applications seeking permission to withdraw the application for voluntary retirement may be accepted. The submission of the learned counsel for the applicant is self contradictory. On the one hand, he submits that the application dated 27.2.89 which became infructuous after expiry of three months notice period given thereby and on that basis he has further submitted that the order dated 14.1.91 accepting the applicant's voluntary retirement from 21.1.91 was illegal and the said letter of 14.1.91 could not have been treated as intimating a date for voluntary retirement. The applicant cannot be permitted to maintain on the one hand ^{that} his application seeking voluntary retirement were ineffective and non-est and on the other hand plead that the ^{rejection of} request for withdrawal of the notice of retirement was illegal. It will stand to reason only if the notice of voluntary retirement was valid and subsisting that a request for withdrawal could have been made.

9. The question involved in this OA depends on the interpretation of Sub-rule (3-A) of Rule 48-A of the CCS(Pension) Rules. Sub-rule(1) of Rule 48-A provides that at any time after a Government servant has completed twenty years qualifying service, by giving notice of not less than three months in writing to the appointing authority, retire from service. Sub-rule(2) provides that the notice of voluntary retirement given under sub-rule(1) shall require acceptance by the appointing authority. In the facts of the present case it would be evident that the applicant had sought voluntary retirement through his application dated 27.2.89. By that time the applicant had not put in the requisite 20 years qualifying service as indicated in letter dated 1/2/89

4.5.89 Annexure CA-4 which has already been referred to hereinabove. The applicant was being informed in response to his application that the matter is under process with the Indian School of Mines, Dhanbad and subsequently he was informed that the matter has been finalised and verified by the Audit Authority and the applicant by letter dated 12.2.90 was asked to intimate a fresh date from which he wished to seek voluntary retirement. The applicant admittedly by a letter dated 14.1.91 intimated that he wished to be prematurely retired w.e.f. 21.1.91. The submission of the learned counsel for the applicant was that this letter dated 14.1.91 did not comply with the requirement of three months notice. On the other hand, the learned counsel for the respondents urged that in view of the provisions of sub-rule(3-A) (a) (b) ~~submitted that~~ the government servant may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor; and sub-rule(b) provides that the appointing authority may consider such request for the curtailment of period of notice for three months on merits and if it is satisfied that the curtailment of period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months. Sub-rule (4) is also significant which provides that the Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority: provided that the request for withdrawal shall be made before the expiry of notice period. *BSR* *1 BSR*

10. The application dated 14.1.91 clearly indicated the date from which the applicant wanted to be retired as 21.1.91. The said letter also gave reasons for seeking voluntary retirement viz his domestic circumstances. The question therefore is whether the application dated 14.1.91 could have been accepted under the provisions of sub-rule(3-A) of Rule 48-A. In our opinion the applicant wanted to curtail the notice period and has given reasons therefore and hence such a request could have been accepted and had been accepted by the Competent authority vide order dated 21.1.91. The backgraound of the facts ~~was~~ also be relevant. The applicant had sought his voluntary retirement by application dated 27.2.89. It remain under process and ultimately by letter dated 21.1.91 the request had been acceded to as a special case.***

11. The respondents are right in pleading that the applicant's application dated 14.1.91 was with reference to a letter dated 12.2.90. A fresh date of seeking voluntary retirement was asked for. From February 1990 the applicant delayed the matter and submitted the application dated 14.1.91 specifically indicating that because of his personal circumstance he was unable to serve any more and requested to be relieved w.e.f. 21.1.91. This letter of the applicant clearly could have been accepted by the Competent Authority in view of the provisions of sub-rule (3-A), (a), (b) of Rule 48-A.

12. Significantly, though in the supplementary rejoinder the applicant now pleads that his application dated 27.2.89 had become infructuous and non-est and could not have been acted upon any future date but the applicant did not intimate this when various communications were sent to him indicating that the

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matter with regard to the short fall in the 20 years qualifying service is being processed. On the contrary, even after the communication dated 21.1.91 the applicant wanted the authorities to finalise the matter and make payment of his dues consequent to his retirement.

13. The learned counsel for the applicant has cited the following decisions:

- (1) Union of India etc Vs. Gopal Chandra Mishra reported in A.I.R 1978 Supreme Court 694.
- (2) Balram Gupta Vs. Union of India and another reported in 1988 SCC(L&S) 126
- (3) M.S. Narasimha Murthy Vs. Collector of Customs and Ors reported in (1988) 8 ATC 106
- (4) Balbir Singh Negi Vs. Union of India and Ors reported in 1996 SCC(L&S) 900

14. In the first said case the facts disclosed are that Hon'ble Satish Chandra, the then Judge of the Allahabad High court sent a letter on 7.5.77 intimating the President of India of his desire to resign the office of the Judge of the High court and it was also indicated that the resignation shall be effective from 1.8.77. On 15.7.77 the said Hon. Judge wrote a letter to the President of India indicating that he wished to revoke and cancel the intention expressed by him to resign on 1.8.1977. In the circumstances it was held that the mere sending of the letter dated 7.5.77 to the President did not constitute a final and complete act of resignation nor a juristic act, it could be withdrawn at any time before 1.8.77 upto which date it was wholly inoperative and ineffective. The facts in the said case are not imperimateria with the facts of the present case before us. Here, by the applications dated 14.1.91 the applicant sought to be permitted to prematurely retired 1 *BCR*

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w.e.f. 21.1.91. The said letter of resignation was accepted and the applicant was struck off from 21.1.91. He subsequently, on 5.7.91 sought to withdraw his request for voluntary retirement i.e. six months after the intended date of resignation indicated in his own application dated 14.1.91. The applicant therefore cannot draw any support from the decision in Union of India Vs Gopal Chandra Mishra.

15. The second decision in Balram Gupta's case would show that by letter dated 24.12.1980 the appellant offered to voluntarily retire from service w.e.f. 31.3.1981. The respondent-Government by its letter dated January 20, 1981 allowed the appellant to do so. The appellant however, changed ^{his} mind and by letter dated 31.1.1981 sought to withdraw ~~of~~ notice of voluntary retirement. The said request was disallowed under Rule 48-A(4). It needs to be noted that the intended date of voluntary retirement was 31.3.81 and the communication withdrawing the notice of voluntary retirement was very much prior to the date of the intended date of retirement. In the facts of the said case it was held that the proviso stipulate that the request for withdrawal shall be made from the intended date of retirement that has been done. The decision in the said case hinged on the question whether the administration could have withheld the permission to withdraw which was made very much before the intended date of voluntary retirement and ~~not~~ before the intended date of voluntary retirement and it was held that unless valid reasons are indicated. In the said case also it was indicated that in the application withdrawing the notice for voluntary retirement the appellant had indicated that there was a

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change in the circumstance namely the persistence of personal request of the staff and relations to change his attitude and induced to withdraw the notice.

In the present case the applicant through his application dated 14.1.91 had repeated the same circumstances which impelled him to seek voluntary retirement as done by the application dated 27.2.89.i.e. personal domestic circumstances. The respondents have pleaded that the applicant had sought cancellation of notice of his request for voluntary retirement through his representation dated 13.8.91 whereas the applicant in his pleadings has indicated that he sought withdrawal of the notice of the voluntary retirement through his application dated 5.7.91. The said letter has not been placed on record by either of the parties. The respondents in their supplementary counter affidavit have indicated that the said application dated 5.7.91 was in response to DEAL's letter dated 12.6.91 which refers to all other letter intimating him about the acceptance of his request for voluntary retirement. Therefore the fact appears to be that it is only subsequently by a letter dated 13.8.91 that the applicant sought cancellation of his request for voluntary retirement. This decision is also unhelpful.

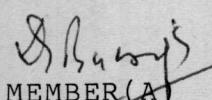
5. The third decision is by a Division bench of Bangalore Bench of the Tribunal. Therein also the fact was that the applicant therein had sought voluntary retirement from service by a letter dated 22/25.9.87. That notice of voluntary retirement was accepted by the collector of Central Excise Bangalore, the Competent authority by an order dated 30.10.87 and the applicant was permitted to retire from service with effect from the

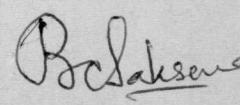
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afternoon of 22.12.87. The applicant through a letter dated 13.11.87 requested that his notice of voluntary retirement may be treated as withdrawn. From these facts it would be clear that the intended and permitted date of voluntary retirement was 22.12.87 and the request for withdrawing the notice of voluntary retirement had been given on 13.11.87 much before the said intended date. This decision also therefore is wholly unhelpful. It only applies the ratio the decision in Balram Gupta's case and another case referred to herein above.

15. The last case viz Balbir Singh Negi's case also goes to show that the petitioner therein had submitted an application for voluntary retirement on 18.2.91. It was accepted on 2.5.91 effective from 30.6.91 as requested by him. The applicant by letter dated 23.5.91 sought to withdraw the notice of voluntary retirement which he had submitted. Since the application seeking withdrawal of notice of voluntary retirement had been submitted prior to the intended and effective date of voluntary retirement the principles laid down in Balram Gupta's case were applied. The said decision is also unhelpful.

16. In view of the discussion hereinabove, there is no merit in the O.A which is accordingly dismissed. Parties shall bear their own costs.


MEMBER(A)


VICE CHAIRMAN

Dated: March 11th 1997

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