

open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

original Application No. 782 of 2002.

This the 23rd. day of September 2002.

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

veer pal Singh Vaidwan, S/o late Sukhbir Singh, R/o
Quarter No. Type II/2, Telephone Colony, Barraut,
District Baghpat.

Applicant.

By Advocate : In person.

versus.

1. union of India through Secretary, Department of Telecom, Ministry of Communication & I.T., Sanchar Bhawan, New Delhi.
2. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Ltd., Cannought place, New Delhi.
3. The General Manager, Telecom District, Meerut G.P.O., Meerut Cantt.,
4. The Divisional Engineer(phones), Barraut Telephone Exchange, Barraut, District Baghpat.

Respondents.

By Advocate : Sri Amit Sthalekar.

ORDER (ORAL)

MRS. MEERA CHHIBBER, MEMBER(J)

This O.A. has been filed by the applicant against the order dated June 2002 (Annexure A-9) whereby his representation dated 6.4.2002 (Annexure A-7) for withdrawal of retirement notice have been rejected.

2. The brief facts as stated by the applicant are that the applicant was appointed by the G.M., Delhi Telephones on 3.10.1978 as time scale Clerk and was presently holding the post of Senior

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Telecom Operating Assistant. It is stated by the applicant that the applicant is on deputation to B.S.N.L. till such time he gets absorption in the corporation, therefore, he is still governed by Rule 48 A of CCS (Pension) Rules.

3. It is submitted by the applicant that looking at the scheme of Government, he gave an application for retirement on 8.3.2002. His application for ready reference reads as under:-

"Sub:- Request for Retirement

Sir,

Most Respectfully I beg to state that under the present liabilities of my family, it is not possible for me to continue in service, therefore, I hereby request your kind honour that I may kindly be granted permission to retire from service. An early action into the matter is highly solicited please.

Thanking you in anticipation."

4. However, on 15.03.2002 when he came to know that the benefit of current scheme of Government was not being given to him, clause (b) of Sub-Rule 6 of Rule 48-A would not apply to him, he immediately gave an application on 15.03.2002 itself withdrawing the notice for retirement. The letter dated 15.3.2002 (Annexure-A-5) for ready reference reads as under:-

"Sub:- Withdrawal of Application dated 8.3.02 for retirement.

Sir,

Most respectfully I beg to state that the day on which I have requested for retirement, the harassment is geared up and I have been illegally forced on 15.3.2002 to hand over the charge of my seat to Shri H.S. Aggarawal Sr.T.O.A. (G) Baraut without giving me any benefit of retirement, therefore, under these compelling circumstances I hereby withdraw my application dated 08.03.2002 for retirement.

Thanking you in anticipation."

5. It is submitted by the applicant that the order was delivered to the applicant on 20.03.2002



by registered post retiring him with effect from 16.03.2002 issued by the D.E. (Phones) who is subordinate to the appointing authority G.M., but charge was taken from him on 15.03.2002 itself arbitrarily. The order dated 15.03.2002 (Page 23) for ready reference reads as Under:-

"Sub:-Voluntary retirement from Govt. Service Case of Sh. Veer Pal Singh Vaidwan, TOA (G) O/o SDET Baraut.

With reference to his application dated 8.03.2002 and in compliance to GMTD MT letter no : E-1 Genral/Vig-Disc/90-95/244 Dated 26.02.2002 and E-7/VPS Vaidwan/VR/2001-02/8 Dated 15.3.2002 Sh. Veer Pal Singh Vaidwan TOA (G) presently working under SDET Baraut is hereby permitted to retire voluntarily from Govt. Service w.e.f. 16.03.2002 A/Nbon in terms of Rule-48-A of CCS (Pension) Rules 1972. The charge of Sh. V.P.S. Vaidwan may be made over to Sh. H.S. Agrawal temporarily.

The Charge relinquishing report may be furnished to all concerned."

6. Being aggrieved the applicant moved a representation on 6.4.2002 (Annexure A-7) stating therein that Shri Vipin Kumar is temporary working as an officiating D.E., otherwise, he is senior S.D.E. as such not competent to accept the notice of retirement. He has also stated that since he is not being given the benefits of V.R.S., he may be allowed to withdraw the notice of retirement.

7. The applicant had also filed an O.A. No.424/02 which was disposed off on 23.04.02 directing the G.M. to decide the representation of the applicant by a reasoned and speaking order within two months (Annexure A-8).

8. The G.M. rejected the representation vide order dated June, 2002 upholding the order dated 15.03.2002 (Annexure A-9). The applicant has challenged this order. He has relied on Supreme Court Judg-ment

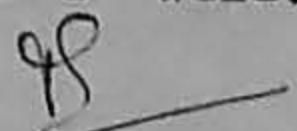
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reported in 1998 (9) SCC 559 in the case of J.N. Srivastava versus U.O.I. and others.

9. The respondents have opposed the O.A. and have stated since applicant himself had requested the respondents to take an early action for voluntary retirement, the request was accepted by D.E. (Phones) on 15.03.02 permitting the applicant to retire w.e.f. 16.03.2002 in terms of Rule 48-A of CCS (Pension) Rules 1972. His withdrawal dated 15.03.2002 was received in the office only on 20.03.2002 but since his request was already accepted, he was informed that his withdrawal could not be considered now. His representation was considered properly and a detailed order was passed thereon. They have further submitted that the applicant should have verified as to what benefit he would be entitled to at the time of giving his notice for voluntary retirement. He cannot now be heard of saying that since no benefit of V.R.S. were being given, he wanted to withdraw the notice of voluntary retirement. They have submitted that they were well within their rights to accept the notice forthwith as the applicant did not say his retirement should be after three months.

10. They have also explained the other points raised by applicant regarding competence of the officer who accepted the resignation therefore, according to them there is no illegality in the orders passed by them and O.A is liable to be rejected.

11. We have heard the applicant who appeared in person as well as respondents counsel Sh. Amit sthalekar and perused the pleadings as well.



12. The points involved in this case is very short and we find the same is fully covered by the Supreme Court Judgement. The applicant had given his notice for voluntary retirement on 8-3-2002 which was accepted by respondents ~~and~~ vide letter dated 15-3-2002 (page23) applicant who was working as TOA(G) under SDET Baraut was permitted to retire w.e.f. 16.3.2002 but before 16.3.2002 the applicant gave his withdrawal on 15.3.2002 itself on the ground that no retirement benefits are being given thereof he wishes to withdraw the application dated 8-3-2002 (page45).

13. It is thus seen that retirement was to be given effect w.e.f. 16.3.02 but withdrawal was given on 15.3.02 itself therefore it was before the effective date as per respondent's letter also. It has been held by Hon'ble Supreme Court in J.M.Srivastava's case 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 applicant therein was accordingly held to be deemed to have continued in service with full arrears of salary and other ^{entitlements} ~~entitlements~~ and other ~~entitlements~~ enrolments, Subject to adjustment of any amounts already paid to applicant.

14. In normal course the period of notice for voluntary retirement has to be 3 months but since respondents had referred to subrule 3A of Rule 48A we had seen it from that angle as well and find that the applicant's case would be covered under proviso to sub rule 4 of Rule 48 A of CCS(pension)

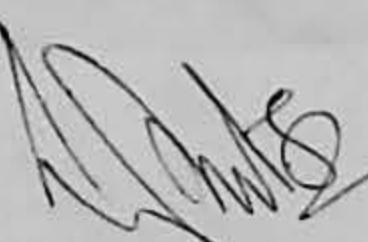
Rules 1972.

15. We accordingly hold that the rejection of applicant's request for withdrawl, ^{wde} letter dated 15-3-2002 and the order dated June 2002 rejecting the representation of applicant are wrong and not sustainable in law on this ground ^{alone}. Since the matter is fully covered by Hon'ble Supreme Court on this point we have not gone ^{on} other points at all. The orders dated 15-3-2002(page23) and June 2002 (page25) are quashed and set aside, the applicant shall be deemed to be in service w.e.f 16.3.2002 with all consequential benefits including arrears of ~~aka~~ salary subject to adjustment of any amount already paid.

16. In view of the orders passed above the O.A is allowed with no order as to costs.



Member-J



Member-A

Girish/