

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.295 OF 1999
Cuttack this the 7th day of October, 1999

Sukhendu Kumar Ray Choudhury

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO*

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
7.10.99

7.10.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 295 OF 1999
Cuttack this the 7th day of October, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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Sukhendu Kumar Ray Choudhury,
aged about 50 years, S/o. Sunil Kumar
Ray Choudhury, previously working as
Sr.Field Assistant(G), A.R.C.Delhi
-presently residing at Birat Bazar
Charbatia, Choudwar, Dist: Cuttack

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Applicant

By the Advocates : M/s.A.Kanungo
S.R.Mishra

-Versus-

1. Union of India represented through
its Secretary, Deptt. of Civil Aviation
New Delhi
2. The Director General,
Aviation Research Centre,
Cabinet Secretariat,
Block V (East), R.K.Puram
New Delhi
3. The Director,
Aviation Research Centre,
AIR Wing, Palam, New Delhi
4. The Asst.Director (A)
Aviation Research Centre,
Cabinet Secretariat, Block (V) East
R.K.Puram, New Delhi

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Respondents

By the Advocates : Mr.S.B.Jena
Addl.Standing Counsel
(Central)

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ORDER

MR.G.NARASIMHAM, MEMBER(JUDICIAL): Applicant while serving as Sr.Field Assistant(G), A.R.C., Delhi, submitted a notice of voluntary retirement on 22.9.1997(Annexure-3) intimating retirement with effect from 1.1.1998. Again on 3.1.1998, he addressed a letter (Annexure-A/4) seeking withdrawal of the notice of retirement. But notice of retirement was accepted by the competent authority on 26.11.1997 and communicated through letter dated 1.1.1998 (Annexure-R/3) with an order that the applicant was relieved with effect from forenoon of 1.1.1998. In letter dated 3.2.1998 (Annexure-A/6), representation seeking withdrawal of notice of retirement was disallowed. This application has been filed for quashing Annexure-A/6 and for direction to Department to reinstate the applicant with consequential benefits. These facts are not in controversy.

2. In this application under Section 19 of the Administrative Tribunals Act, 1985, the case of the applicant is that he was on leave from 5.1.1990 to 2.5.1998 (perhaps 5.1.1990 is 5.1.1998) on which date the order of relief vide Annexure-5 was served on him along with rejection of representation for withdrawal of notice of retirement (para. 4.11). On 5.1.1998 itself, the Chief Administrative Officer, Palam, under whom the applicant was serving had received the acceptance of notice for voluntary retirement with a direction to relieve the applicant with effect from 1.1.1998. In otherwords, his case is that ^{order} accepting of notice for voluntary retirement was served on him after he sent representation dated 3.1.1998 seeking withdrawal.

3. In the counter it is not clear on which date

the Chief Administrative Officer, Palam, under whom the applicant was serving did receive Annexure-5. Their case is that ~~since~~ his notice for voluntary retirement was accepted and became effective from 1.1.1998, he sought withdrawal of the same on 3.1.1998 and Representation for withdrawal of notice for voluntary retirement, under the rules can be considered by the competent authority only when it is made prior to the date the voluntary retirement becomes effective and as such notice of dated 3.1.1998 for withdrawing the notice for voluntary retirement was rightly rejected. Further the respondents submit that applicant being on leave from 5.1.1998 to 2.5.1998 is not borne out from their record. Statement of the applicant in this connection, according to them, is not only fake but also misleading.

The applicant filed rejoinder reiterating about his leave.

4. Heard Shri A.Kanungo, learned counsel for the applicant and Shri S.B.Jena, learned Addl.Standing Counsel appearing for the respondents. Also perused the records.

~~Under~~ Rule-48(A) CCS (Pension) Rules, 1972 deals with voluntary retirement. Under Sub-rule I of this Rule, a Government servant, who has completed 20 years of qualifying service may by giving notice of not less than three months by writing to the competent authority may retire from service. Under Sub-rule ii this notice of voluntary retirement shall require acceptance by the competent authority; provided that where the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective on

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the date of expiry of the said period.

5. The applicant, admittedly completed more than 20 years of service by the time he issued notice for voluntary retirement on 22.9.1997. He is entitled to retire with effect from 1.1.1998 as is evident from that notice, i.e. three months nine days thereafter. It is also not in dispute that the appointing authority did not want to grant permission. Hence under sub-rule-ii, the retirement became effective from 1.1.1998 itself. The representation dated 3.1.1998 for withdrawing notice for voluntary retirement, under Sub-rule-4 of Rule 48(A) was to be made before the intended date of retirement. In otherwords, once the retirement is accepted and it becomes effective, withdrawal of such retirement notice thereafter is not permissible under law.

Even the factual aspect as to the applicant's taking leave is open to doubt. In para-5.11 of the application, as earlier stated, his version is that he was on leave with effect from 5.1.1990(perhaps 5.1.1998) to 2.5.1998. But in the rejoinder he came with a different and inconsistent story (para.2) that he was allowed to work till 5.1.1998 inasmuch as with effect from 1.6.1998 to 9.1.1998 he was on leave and that was sanctioned. No authority will be a fool to sanction leave from 1.6.1998 to 9.1.1998(emphasis ours). Again at the end of that para he comes up with a different version by saying that on 5.2.1998 he joined after availing leave and on that date he was served with the relieving order. Again in para-5 of the rejoinder(in the middle portion) he avers that he was on leave with effect from 6.1.1998 to 9.1.1998 and extended upto 5.2.1998. Thus his version

about taking leave being not consistent is not reliable.

Be that as it may, as per the legal position discussed above, the retirement having been effective on 1.1.1998 and applicant's representation for withdrawal of notice for voluntary retirement having made ^{thereafter} on 3.1.1998 was rightly not entertained by the Department.

In the result, we do not see any merit in this application, which is accordingly dismissed, but without any order as to costs.

(Signature)
(SOMNATH SOM)
VICE-CHAIRMAN
7.10.99

B.K.SAHOO

(Signature) 7.10.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)