

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

ORIGINAL APPLICATION NO. 243/2005

Date of order: 6-4-2010

CORAM:

**HON'BLE MR. JUSTICE S.M.M. ALAM, JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

**Tripal Chand son of Sh. Bhagirath ji, R/o Bhaiyon Ki Pole,
Ghantaghar, Jodhpur, (Rajasthan) Ex- Messenger, Pass
No. 211, Yard Group, in the O/o Commandant, 6 FOD, C/o
56 APO.**

...Applicant.

Mr. S.K. Malik, counsel for applicant.

VERSUS

1. Union of India through the Secretary, Ministry of Defence, Raksha Bhawan, South Block, New Delhi 110010.
2. The Director General Ordinance Services, Master General of Ordinance Services, Army Head Quarters, DHQ P.O. New Delhi 110010.
3. The Commandant, 6 Field Ordinance Depot, Pin 909 906, C/O 56 APO.

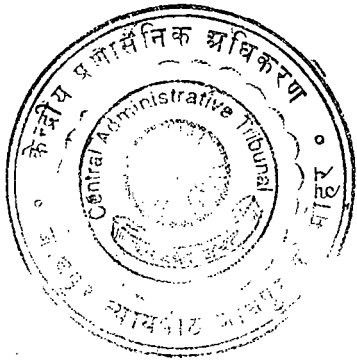
... Respondents.

Mr. M. Godara proxy for Mr. Vinit Mathur , counsel for respondents.

ORDER

Per Hon'ble Mr. Justice S.M.M. Alam, (JM)

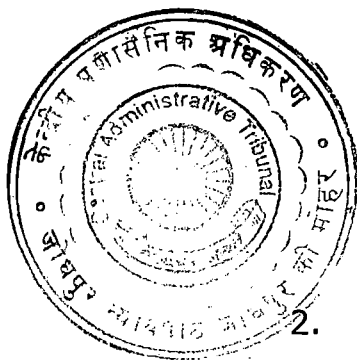
1. This Original Application has been preferred by applicant, Tripal Chand, Ex-Messenger, bearing Pass No. 211, Yard Group,



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o/o Commandant, 6 FOD, C/o 56 APO claiming mainly the following reliefs:-

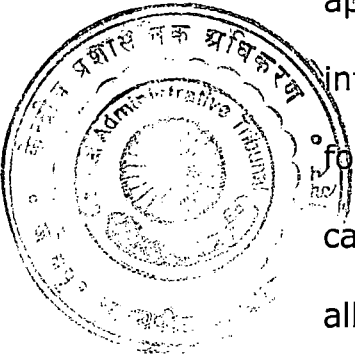
- (a) By an appropriate order, writ or directions, impugned action/ Order of the respondents by which applicant has been Voluntarily retired from service, be declared illegal and be quashed and set aside by this Hon'ble Tribunal as if the same was never issued/passed against the applicant.
- (b) By an appropriate order, writ or directions, respondents may be directed to reinstate the applicant on duty immediately with all consequential benefits including the pay and allowances for the period he remained out of employment, so as to avoid starvation to him and his family members.



The brief facts of the case are as follows:-

2. The applicant was appointed in the O/o Respondent no.3 on the post of Messenger. He was carrying out his duties to the entire satisfaction of the respondents. Due to his illness the applicant was in mental tension. He informed about his anxiety to Respondent no.3 who started putting pressure on him to seek voluntary retirement, but, the applicant did not agree and thereafter the Respondent no.3 started harassing the applicant and so under coercion and due to pressure and mental agony and harassment the applicant was forced to submit his letter of voluntary retirement w.e.f. 31.5.2005 vide his application at Annexure A-1 dated 18.11.2004. After submitting his

application for voluntary retirement the applicant became more worried about his family future since there was no other means of livelihood and so on 24.1.2005 the applicant submitted his application before Respondent no.3 for withdrawal of his application for voluntary retirement. The said application was received by the respondent on the same date. The copy of the said application has been annexed As Annexure A-2. Since no reply was received from the respondents the applicant again submitted an application before respondent no.3 on 22.3.2005 requesting to treat his application dated 18.11.2005 as cancelled. The said application was received in the office and was ordered to be forwarded to the higher authorities vide Annexure A-3. Since, no reply of the said application was given so the applicant again sent an application on 25.5.2005 (Annexure A-4) informing the respondents his intention to cancel his application for voluntary retirement. It is stated that applicant's request for cancellation of his application for voluntary retirement was not at all considered by the respondents and in an arbitrary and illegal manner the applicant was asked to retire from service w.e.f. 31.5.2005 despite the fact that the applicant had already withdrawn the application for voluntary retirement well within the time and accordingly the said respondents issued a certificate that the applicant has retired from service w.e.f. 31.5.2005 (Annexure A-5). It has been stated that the order whereby the applicant was forced to retire w.e.f. 31.5.2005 is bad in law in view of the fact that much before the period of



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expiry of date of notice period, the applicant had withdrawn his application for voluntary retirement from service.

3. On filing of the application notices were issued to the respondents and they appeared before this Tribunal through Advocate and filed their joint reply, refuting the allegation leveled by the applicant.

4. In the reply the respondents have categorically denied the averments made by the applicant that he had submitted applications before the respondent no.3, whereby he had withdrawn his option for voluntary retirement from service. However, it appears that respondents have filed additional affidavit of Kishan Lal and Sunil Kumar Garg, both employees of the respondent department. In his affidavit Sh. Kishan Lal has stated that Sh. Tripal Chand came to him for submitting the application of withdrawal of his application for Voluntary Retirement from Service, but he refused to accept the same as it was neither through proper channel nor with the covering letter. He has further stated on oath that he (Tripal Chand) requested him to give such remarks in writing on the application itself so that on that basis he could get his application forwarded through his group officer otherwise he would not be able to remember the same being illiterate and being of old age and thus he (Kishan Lal) took the application and endorsed NFA (not for action) and marked his initial on the original application as well as on the duplicate copy. Sh. Sunil Kumar Garg, also an employee of the department, has stated in his affidavit that Sh.

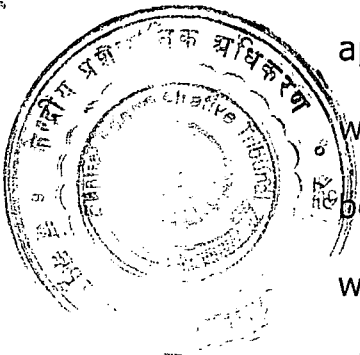


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Tripal Chand came to him ⁻⁵⁻ alongwith his application for cancellation of his VRS and he had advised him to make the same through proper channel, but, he refused to do so and forced him to accept the same in the same condition and thereafter the application was received by him and the same was immediately brought to the notice of the Administrative Officer. An explanation has been given in the affidavit that after meeting the Administrative Officer Sh. Tripal Chand asked him to return back the application and he returned the same.

5. We have heard Lawyers of both the parties and also perused the pleadings on record as well as the documents brought on record. From the facts stated above and on perusal of the material available on record, we are satisfied that the applicant Sh. Tripal Chand had submitted his application for withdrawal of his Voluntary Retirement from Service (VRS) before the authority concerned much before the date on which it was to become effective as this fact has been admitted in the affidavit of Sh. Kishan Lal and Sunil Kumar Garg, both employees of the respondent department. Although both the persons had tried to persuade this Tribunal that the application was returned back to the applicant, but the submission is not convincing as the same is not supported by any document. Thus, the admitted fact is that the application for withdrawal of VRS application of the applicant was filed much before the date on which the applicant was to be retired. Under the above



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circumstances, the question which arises in this Originals Application, for consideration is :-

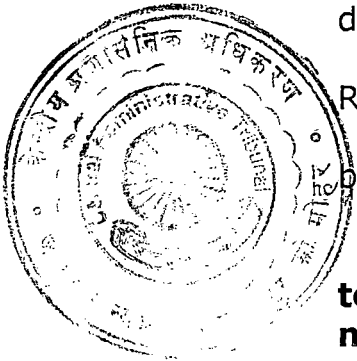
6. Whether it is open to a person having exercised option of voluntary retirement to withdraw the said request after its acceptance, but before it is made effective?

7. We have already mentioned the dates on which the application for withdrawal of the option of voluntary retirement was filed. These dates are 24.1.2005, 22.3.2005 and 25.05.2005. Admittedly the applicant was to retire as per the option for voluntary retirement from service on 31.5.2005. All the dates mentioned above shows that the applicant had filed application for withdrawal of his option of VRS much before the date on which he was to retire. Rule 48-A (4) of CCS (Pension) Rules, 1972 is very clear on this point, which is quoted herein below:-

"48-A (4)- A 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 intended date of his retirement."

Thus, the provisions contained under Rule 48-A (4) of CCS CCA (Pension) Rules, 1972 permits any employee to withdraw his option for voluntary retirement before the intended date of his retirement. The facts mentioned above established beyond doubt that the applicant had filed at least 3 applications for withdrawal of his option for voluntary retirement much before the intended



date of his retirement. There are several rulings of the Hon'ble Apex Court which permits an employee to withdraw his option for voluntary retirement from service before the expiry of the notice period. In this regard we place reliance upon the decision of the Hon'ble Apex Court in the case of **J.N. Srivastava Vs. Union of India** and another 1988 SCC (L&S) 1251 and in the case of **Shambhu Murari Sinha Vs. Project & Development India & Another** 2000 SCC (L & S) 741. We would like to quote para 5 of this decision which is relevant in the instant case :-

" From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent Management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which for all practical purposes, would be the 'effective date' as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by three decisions, namely, Balram Gupta Vs. Union of India, J.N. Srivastava Vs. Union of India and Power Finance Corpn. Ltd. Vs. Pramod Kumar Bhatia in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the 'effective date'." That being so, the appeal is allowed. The impugned Judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."


8. Applying the law as laid down in the above mentioned decisions we find that in the instant case the option for voluntary retirement was definitely withdrawn before the

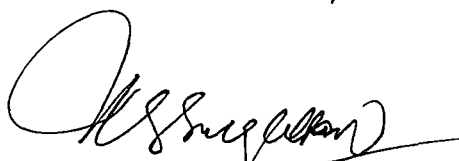


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effective date which was 31.5.2005 and so there is no legal obstacle to hold that the applicant was legally entitled to withdraw his application. Under the circumstances, mentioned above, we are inclined to hold that the non-acceptance of the applicant's request for permitting him to withdraw his option for voluntary retirement from service by the respondents and forcing him to retire w.e.f. 31.5.2005 was an illegal act of the respondents. Accordingly, we are of the view that this Original Application has got merits and should be allowed.

9. In the result this O.A. is allowed and the orders whereby the applicant has been asked to voluntary retired w.e.f. 31.5.2005 is hereby quashed and set aside with direction that the applicant shall be allowed to continue in service without any break in his service and shall be entitled to get his back wages with all consequential benefits. The respondents are directed to issue office order in the light of the directions contained in this order immediately after the receipt of the copy of this order. In the circumstances, of the case there will be no order for costs.




(DR. K.S. SUGATHAN)
ADMINISTRATIVE MEMBER


(JUSTICE S.M.M. ALAM)
JUDICIAL MEMBER

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