

15

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

**ORIGINAL APPLICATION NO. 212/2009**

**Date of order: 16-4-2010**

**HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Dr. J.C. Kansara S/o Shri Madan Lal Kansara, aged 45 years, by caste Kansara, R/o "Maa Kripa" Uppla Bas, Hathi Ram ka Oda, Jodhpur.

: Applicant

Rep. By Mr. P.D. Bohra : Counsel for the applicant.

**Versus**

1. The Union of India through the Joint Secretary, Department of Industrial Policy & Promotion of Ministry of Industry Udyog Bhawan, New Delhi.
2. The Salt Commissioner, Office of the Salt Commissioner, Lavan Bhawan, 2-A, Lavan Marg, Jhalana Dungari, Jaipur.
3. The Asstt. Salt Commissioner, Jodhpur. 480-A, Pal Link Road, Jodhpur.

: Respondents.

Rep. By Mr. Vikas Seovl, proxy counsel for  
Mr. Vinit Mathur : Counsel for the respondents.

**ORDER**

**Per Mr. V.K. Kapoor, Administrative Member.**

Dr. J.C. Kansara has filed present O.A against the order of Asstt, Salt Commissioner, Jodhpur (respondent 3) dated 14 Sept, 2009 (Ann.A-1A). The applicant has sought reliefs that are as follows:-

"In view of the facts and grounds mentioned in above paragraphs the applicant humbly prays that by an appropriate order or direction, the order dated 24.06.2009 (Annexure-A/1A) and dated 14.09.2009 (Annexure-A/1) passed by the respondents may kindly be declared illegal and be quashed and set aside with cost and an extension of services may also be given to the applicant.

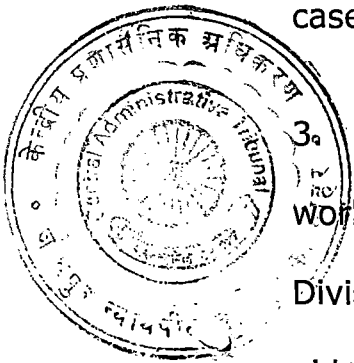
Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case, may kindly be passed in favour of the applicant."

2. The factual matrix of the case is that the applicant was appointed as LDC in respondent department on 14.5.1984; he was

*V.K. Kapoor*

12

promoted as salt inspector in the department of salt commissioner office. He was transferred from divisional office, Jodhpur to factory office, Phalodi vide order dt 28.5.2009. The applicant moved an application to Salt Commissioner on 15.5.2009 for voluntary retirement (Ann.A-2); but was transferred from Jodhpur to Phalodi vide order dt 28.5.2009. Vide order dt 24.6.2009, he was made to retire on 01.11.2009 & his application for voluntary retirement was accepted (Ann.A-1A). Applicant gave representation on 31.7.2009 to treat his letter for voluntary retirement as void & requested to extend his voluntary retirement period commencing from 01.11.2009. The respondent 3 after going through merits of the case, rejected his application vide order dt 14 Sept, 2009 (Ann.A-4).



The respondents in reply have narrated considering applicant's work experience, he was transferred from factory office, Phalodi to Division office, Jodhpur for one year on administrative exigencies vide order dt 17.8.2007 (Ann.R-1,R-2). Further, he was allowed to continue at Jodhpur to clear the pending office work at Jodhpur (Ann.R-3, R-4, R-5) where he continued upto 31.05.2009. Applicant was relieved from divisional office, Jodhpur w.e.f 31.5.2009 with a direction to report at factory office, Phalodi vide order dt 28.5.2009 (Ann.R-6), the advance was paid to him (Ann.R-7, R-8). He did not resume his duty at Phalodi and applied for leave, submitted medical certificate (Ann.R-9,R-12). Applicant was given notice on 09.10.2009 to join his duties at Phalodi but he preferred to remain on EL vide letter dt 15.10.2009 (Ann.R-13, R-14). He gave letter on 15.5.2009 to take a voluntary retirement w.e.f. 01.11.2009 (Ann.R-15); he

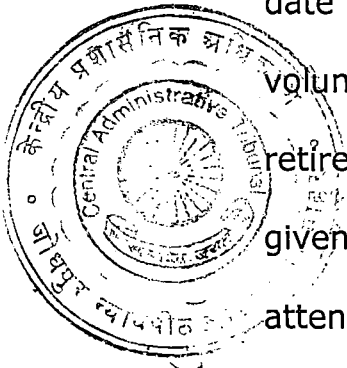
Upoor

1/3

was retired vide Salt Commissioner's order dt 24.6.2009 (Ann.R-16, R-17). He moved an application on 31.7.2009 to postpone the date of voluntary retirement (Ann.R-18, R-19). The government servant has no right to withdraw the notice of voluntary retirement; vide orders 14.9.2009, he was asked to submit his pension papers (Ann.R-20). The govt servant is not at liberty to choose retirement date & withdraw as per will. The applicant did not join his duty at Phalodi from 01.6.2009; he was not keen to serve in govt deptt.

4(a) Learned counsel for the applicant has narrated while arguing that he applied for voluntary retirement in family interest; effective date is from 01.11.2009. He has not withdrawn this application of voluntary retirement; he has used word 'postponing' this voluntary retirement. In the order dt 14.9.2009 (Ann.A-1), no reasons are given for rejecting his representation dt 31.7.2009. He has drawn attention of Tribunal's order dt 23.10.2009 in the present case that has covered practically all the points. In support of his contention, he has cited the case of J.N. Srivastava vs. UOI & Anr case No.6573 of 1997 reported in 1998 SCC (L&S) 1251 and Union of India & Ors. vs. Murlidhar R. Hinge 2009 LAB 1B 2695. Looking to the poor economic condition of the applicant, his contentions to extend the date of voluntary retirement should be accepted.

4(b) learned counsel for respondents in arguments has stated that the applicant gave application for voluntary retirement on 15 May, 2009, thereby requesting to be retired from 01 Nov, 2009. The clear grounds are not given as to why he wants to postpone or withdraw the voluntary retirement. The case laws cited by him are not

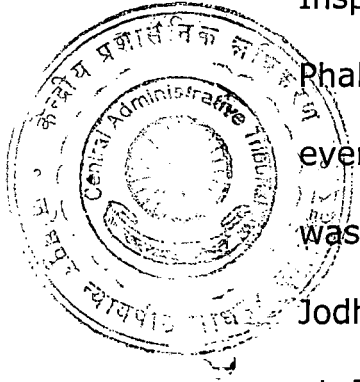


Upoor

1/19

applicable as retirement cannot be conditional, no precondition be laid down by him for voluntary retirement; he cannot dictate the govt. department for getting his case accepted. The language of the letter is deceptive; what sort of assurance is given to him, is not specified; no such particulars are there in his letter dt 31.7.2009. After giving notice to him, his application for voluntary retirement was approved; order of the respondent dept is clear and specific; no ground exists that requires intervention in the present case.

5. The applicant entered into the department of Salt (commissioner of salt) on 14.5.1984; later he continued to work as Inspector of salt at Jodhpur. He was transferred from Jodhpur to Phalodi vide order dt 28 May, 2009. The chronological order of events are given by the respondents; the post of inspector of salt was transferred from factory office, Phalodi to divisional office, Jodhpur for one year on 17.8.2007 (Ann.R-1), applicant was posted at Jodhpur vide order dt 17.8.2007 (Ann.R-2). He was asked to work at Jodhpur, the period of stay at Jodhpur was extended (Ann.R-3, R-4, R-5) and he was made to continue at Phalodi. On expiry of tenure of this post, he was transferred to Phalodi, all necessary expenses were given to him vide order dt 28 May, 2009 (Ann.A-3), 19 May, 2009 (Ann.R-6 to R-8). He was relieved from division office, Jodhpur on 31.5.2009 with direction to report at Phalodi, but he proceeded on leave and went on extending the leave, but did not join at Phalodi (Ann.R-9 to R-14). During his transfer from Jodhpur to Phalodi, he moved an application on 15.5.2009 (Ann.A-2) to take a voluntary retirement on 01.11.2009

Upoor

15

for some urgent reason. His application for voluntary retirement was approved on 24.6.2009 (Ann.A-1A). On 31.7.2009, he moved a representation to Salt Commissioner (respt 2) to defer his voluntary retirement to be effective from 01.11.2009. The Commissioner of Salt, Jodhpur office after due thought rejected the application dt 31.7.2009 put forth by the applicant for postponing & extending his date of voluntary retirement vide order dt 14 Sept, 2009 (Ann.A-1).

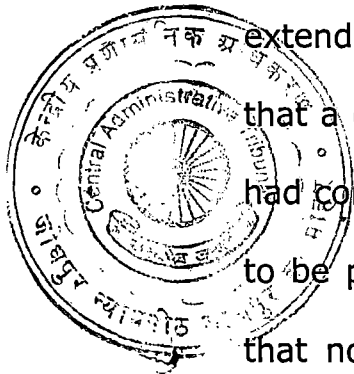
6. After giving through the details, it is apparent on the fact of record that applicant felt harassed in view of his shifting from Jodhpur to Phalodi. The post of Inspector of Salt was shifted from Phalodi to Jodhpur for about 1½ years on which the applicant was accommodated. The action in regard to transfer of post of salt inspector was in process in May, 2009; in the meantime, he put up his case of voluntary retirement on 15.5.2009. It is equally an accepted fact that the applicant did not want to proceed to Phalodi where he was supposed to join on 31.5.2009. Instead of joining at Phalodi, the applicant proceeded on leave and went on extending leave on one pretext or the other. Later, he moved an application to respondent 2 in which he requested to postpone & extend the date of voluntary retirement. He has narrated various reasons like discrimination, harassment and injustice for which he was forced to apply for voluntary retirement w.e.f 01.11.2009. Keeping in view to continue more in government service and his family interest, he decided to defer his voluntary retirement commencing from 01 Nov, 2009 thereby requested to treat his letter dt 15.5.2009 as void

Upur

16

completely. The respondent 2 after due thought rejected applicant's plea, directed him to send his pension papers for further action.

7. From record, it is apparent that during the course of transfer of the post of salt inspector during May, 2009, the department gave him a long rope, applicant was asked to join at Phalodi on 31 May, 2009. The department accommodated him at Jodhpur for almost 1½ years at divisional office, Jodhpur but when it was not possible, he was shifted to Phalodi, a place not too far off from Jodhpur. The applicant was rigid on his stand, did not give his joining at Phalodi. Instead of reporting at Phalodi, he proceeded on leave and kept on

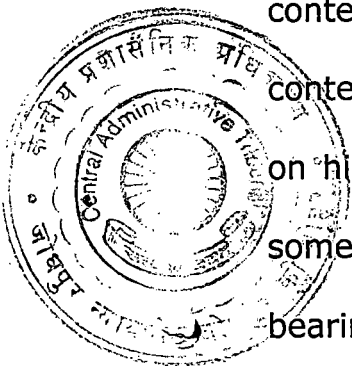


extending leave for various reasons. This is pertinent to mention that a government servant is not supposed to dictate his terms. He had completed quite some time at Jodhpur, this does not entitle him to be posted there for a longer span. The applicant has contended that notice of voluntary retirement can be withdrawn from/before the effective date relying upon UOI & Ors. vs. Murlidhar R. Hinge 2009 LAB 1C 2665 of Bombay High Court and also apex Court judgment dt 22.9.1997 in J.N. Srivastava vs UOI & Anr. in CA No. 6573 of 1997-1998 SCC (L&S) 1251. The learned counsel for respondents has quoted the case of Gurcharan Narang vs. the State Bank of India & Ors. CWP 6072/2001 of Punjab & Harayana High Court, in which a parallel is drawn between this citation and present case. The relevant portion is as under:-

"the petitioner submitted an application that he is interest in voluntary retirement but with pension and in case the pensionable service is not completed by the date of retirement should be treated as cancelled and withdrawn. The Bank rejected the conditional withdrawal so sought by the petitioner"

*[Signature]*

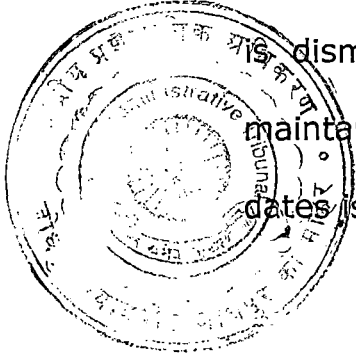
In 2003 (1) SLR 1 order dt 17.12.2002, the apex court has held that the scheme of voluntary retirement is contractual in nature, thus the petitioner/applicant cannot be permitted to seek voluntary retirement after the scheme came to an end. Similar is case with Shambhu Murari Sinha vs. Project and Development of India & Anr reported in 2000 SCC (L&S) 741. Here, withdrawal before the voluntary retirement is permissible but the present case does not relate to withdrawal, it is deferment of voluntary retirement date from 01.11.2009. The citation of Bombay High Court Union of India & Ors. vs. Mulidhar R. Hinge in 2009 LAB. I.C. 2965 of deferment of voluntary retirement is not applicable as the contents in the present case are somewhat different. In the present context, the applicant has shown a high handedness & was adamant on his stand not to join his services at Phalodi. He has spoken of some positive assurance from higher level that do not have a direct bearing on the subject matter. His official behaviour/ demeanour being quite distinct from the official conduct, it was unbecoming of a govt. employee, thus he enjoys no sympathy in the eyes of law. Thus, no case is made out for extending his date of voluntary retirement & permitting him to withdraw this application dt 15.5.2009. The action of official respondents was just and proper in rejecting his case for extending voluntary retirement vide order dt 14 Sept, 2009. In fact, the relief sought by the applicant cannot be accepted as voluntary retirement had come into force right from its acceptance on 28.5.2009. His application for deferment of voluntary Retirement from 01.11.2009 was also rejected on 14.9.2009. This leaves practically no room for the Tribunal for any intervention.



Upoor

18

8. In the light of deliberations made above, no interference is required/called for in the orders of respondents dt. 24.6.2009 (Ann.A/1A) and 14.9.2009 (Ann.A/1). Resultantly, the present OA is dismissed with no order as to costs. The interim order for maintaining the status quo on 23.10.2009 and continued till further dates is vacated and stands withdrawn.



  
[V.K. Kapoor ]  
Administrative Member.

rss



दिनांक 17/12/18 के आदेशानुसार  
मेरी उपस्थिति में दिनांक 10/2/16  
को आग-~~हवा~~ का पट किया गए।

अनुपम अभिलेखी  
कौन्सिल प्रशासक, न्याय-कारण  
जोधपुर न्यायमंडल, जोधपुर

Recd Copy  
For (P.D. Bhatnagar)  
22.4.10

23/4