

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.282/2010

Date of decision: 11-11-2010

**Hon'ble Mr. Justice Syed Md Mahfooz Alam, Judicial Member.
Hon'ble Mr. Sudhir Kumar Administrative Member.**

N.D. Bhati S/o late Shri Bhoj Raj Bhati, aged about 52 years, R/o Opposite Old Octroi Post, Gajnor Road, Bikaner, at present employed on the post of Superintendent in the office of Custom Division, Bikaner.

: Applicant.

Rep. By Mr. J.K. Mishra : Counsel for the applicant.

Versus

1. Union of India through Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Commissioner of Central Excise, Cadre Control, O/o Chief Commissioner, Central Excise (JZ), New Central Revenue Building, Statue Circle, C-Scheme, Jaipur, Rajasthan.
3. Dy. Commissioner, Custom Division, Bikaner, Opposite Chetan Mahadev Mandir, Jaipur Raod, Bikaner.

: Respondents.

Rep. By Mr. M. Godara Proxy counsel for
Mr. Vinit Mathur : Counsel for the respondents.

ORDER

Per Mr. Justice S.M.M. Alam, Judicial Member.

Heard both the parties on the point of admission. Perused the original application as well as its annexures, also perused reply filed by the respondents alongwith its annexures and other relevant papers attached with the file.

2. This OA was filed on behalf of applicant N.D. Bhati, who was employed on the post of Superintendent in the office of Custom Division, Bikaner, for grant of following reliefs:-



"(i) That impugned order dated 27.09.2010 (Ann.A/1) rejecting the application of withdrawal of voluntary retirement application of the petitioner and retiring him from service with effect from 01.10.2010 (FN) may be declared illegal and the same may be quashed. The respondents may directed to accept the subsequent application of withdrawing his voluntary retirement application and treat him in service as if he has not voluntarily retired from service and allow all consequential benefits.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

It appears from the record that by order dated 30.09.2010 an interim order was passed in favour of the applicant and the order dated 27.09.2010 and 28.09.2010 passed by the respondents has stayed.



The brief facts of the case are as follows:-

The applicant was initially appointed on the post of UDC in the year 1982. He was promoted to the post of Superintendent in the year 2005. On 08.04.2010 he was transferred from Bikaner to Miazlar, Custom Division, Jaisalmer where he joined on 07.06.2010. But before his joining, he submitted a representation before the authority concerned for his retransfer to Bikaner. On 23.06.2010 he gave a notice of three months for seeking voluntary retirement under rule 48-A of the Rules and requested for his retirement w.e.f. 01.10.2010. In the meantime vide order dated 27.08.2010 he was transferred to Bikaner on his request. On the same day i.e. 27.08.2010 he filed an application for withdrawal of his application for VRS, this withdrawal application is annexure-A/6. However, the competent authority vide order dated

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27.09.2010 accepted the notice given by the applicant dated 23.06.2010 seeking voluntary retirement and permitted him to retire from service w.e.f. 01.10.2010 as per rule 48-A (1) and (2) of CCS (Pension) Rules, 1972. The competent authority also rejected the prayer of the applicant for withdrawing the application of VRS vide Ann.A/2. Both these orders are under challenged.

4. The grounds for filing the original application is that as per provisions contained under rule 48-A of CCS Pension Rules, 1972 a government servant after completion of twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority can seek retirement from service. However, clause-4 (proviso) of the said rules provides that a Government servant, who has elected to retire under the said rule, can file application for withdrawing the notice before the expiry of the intended date of his retirement. The contention of the learned advocate of the applicant is that as per provisions contained under clause-4 of Rule 48-A of CCS Pension Rules, 1972, the applicant file application for withdrawal of the notice for voluntary retirement. But the authority without applying its mind and without assigning any reason rejecting his prayer, which is not in accordance with law and so Annex.A/1 and Annex.A/2 should be set aside. In support of his argument the learned advocate of the applicant has placed reliance upon the decision of the Apex Court given in the case of **Balram Gupta vs. Union of India & Anr.** in Civil Appeal No.2057 of 1987 and in the case of **J.N.**





**Srivastava vs. Union of India and Anr. in Civil Appeal
Nos.6573-6574 of 1997/SLP(C) Nos. 8500-8501 of 1997.**

5. On the other hand, the case of the respondents is that Rule 48A (1) of CCA (CCS) Rules, 1972 does not give any right to any employee to seek voluntary retirement as per his will and wishes. The fact is that the applicant has abused the process of law by seeking voluntary retirement thrice and so he is in the habit of moving application for voluntary retirement whenever he is assigned any duties or he is transferred from one place to another.


The respondents' case is that when the applicant was transferred from Bikaner to Jaisalmer-Miajilar, he gave notice for voluntary retirement but when against he was transferred to Bikaner, he filed application for withdrawal of VRS. According to submission of the learned advocate of the respondents, this conduct of the applicant is unbecoming of a Government employee and so the competent authority rejected his prayer although on two previous occasions the competent authority permitted the applicant to withdraw his notice for VRS.

6. No doubt clause-4 of Rule 48 of CCS Pension Rules, 1972 provides opportunity to the employee to withdraw his notice for voluntary retirement before the intended date of his retirement but this relaxation is subject to the approval of the authority and as per rule, the competent authority is empowered to reject the prayer of withdrawal of VRS notice. The language of rule 4 of Rule 48 of



CCS Pension Rules, 1972 does not show that it is mandatory for the competent authority to allow the application for withdrawal of VRS on each and every occasion. However, the contention of the learned advocate of the applicant is that in the similar circumstance the Hon'ble Gujarat High Court in the case of **H.S. Chhadia vs. Union of India & Ors.** (Annex.A/7) has set aside the order of the authority rejecting the prayer of withdrawal of notice of VRS.

7. We perused the judgment given by the Hon'bel Gujarat High Court in the case of **H.H. Chhadia vs. Union of India & Ors.** (Supra) as well as two decisions of the Hon'ble Apex Court given in the case of **Balram Gupta vs. Union of India & Anr** (Supra) and **J.N. Srivastav vs. Union of India & Anr** (Supra). We are of the view that all the three above mentioned judgment stand on different facts and different footing. In the present case, the background is that on three different occasions whenever the applicant felt some inconvenience, he gave notice for seeking VRS. This goes to show that the applicant kept the authority under threat, which goes to show that his official behaviour/demeanor was quite distinct from official conduct and unbecoming of a Government employee. It is not in dispute that on two previous occasions, the competent authority allowed him to withdraw his application for VRS but when the authority felt that the applicant was using this provision of law as a weapon for extracting relief from the higher officers, the authority rejected his application. And





we are of the view that the authority was justified and well within his limit to pass order rejecting the prayer of the application for withdrawal of his VRS third time. Under this circumstance mentioned above we do not find any arbitrariness or illegality in the impugned order, which are under challenge. Thus, we are of the opinion that the O.A. deserves to be dismissed.



In the result, we do not find any merit in this application as such this original application stands dismissed at admission stage itself. The order of stay dated 30.09.2010 stands vacated. However, in the circumstances of the case, there is no order as to costs.


 [Sudhir Kumar]
 Administrative Member


 [Justice S.M.M. Alam]
 Judicial Member

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