

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 546/2003

MONDAY THIS THE 10th DAY OF APRIL 2006

C O R A M

**HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE GEORGE PARACKEN, JUDICIAL MEMBER**

P.K. Ramar S/o P.K. Kanaran
Security Guard
Prasar Bharathi Broadcasting Corporation of India
AIR, Calicut.
residing at Sreesadanam, P.O. Parannur
Via Narikuni, Pullalloor
Calicut District.

Applicant

By Advocate Mr. Sivan Madathil

Vs.

1 The Station Engineer
Prasar Bharathi Broadcastting Corporation of India
All India Radio, Calicut-32

2 Prasar Bharathi Broadcasting Corporation of India
All India Radio
Calicut-32
rep. by its Chief Executive

3 Union of India
rep. By Secretary to Government
Ministry of Information & Broadcasting
New Delhi.

Respondents

By Advocate Mr. George Joseph, ACGSC.

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant, an ex-serviceman working as Security Guard under the Station Engineer, Prasar Bharathi Boradcasting Corporation, Calicut who

voluntarily retired from service, is aggrieved that his request to cancel the notice of retirement and to permit him to continue in service was not accepted by the respondents.

2 It has been submitted that the applicant was suffering from various ailment and was forced to take medical leave on several occasions and as his physical condition did not permit him to work, he had applied for medical leave from 16.2.2003 to 5.5.2003 and had resumed duty on 6.5.2003. It is alleged that on 7.5.2003 the 1st respondent called him to his office and compelled him to sign a printed form enabling him to take retirement and he had signed under pressure. On realisation that he has two and half years more service, he had made a request on 19.5.2003 to permit him to withdraw the retirement notice but he was served with order dated 28.5.2003 stating that he would stand retired from service w.e.f. 1.6.2003. Subsequently, he had met the first respondent and requested for consideration of his request but all his appeals/representations have been of no avail. Since no other statutory remedy is available he has approached this Tribunal.

3 A reply statement has been filed on behalf of the respondents stating that the applicant had served the department for 15 years 4 months and 7 days and during this period he was on leave for four years availing of 700 days of Extra Ordinary Leave in addition to 400 days E.L. and 300 days HPL mostly on medical grounds. He was never prompt in his duties but was shown maximum sympathy and consideration being an ex-serviceman. He had also been given several memos, warnings and adverse remarks. Finally coming to the realisation that he could not go on

with such unlawful activities for long, he decided to quit office by giving voluntary retirement notice on 7.5.2003 seeking immediate retirement waiving the stipulated notice period of three months. They have further denied that a printed form was got signed by him since he had submitted his application in plain paper and Annexure A-2 representation said to have been submitted before the Station Engineer had been received in the office. If it had been received within the intended date of voluntary retirement his request would have been considered.

4 In the rejoinder filed by the applicant, he denied that he was ever unauthorisedly absent in his whole career and stated that he had not received any warning or adverse remark. He has also filed a separate affidavit stating that he had approached the Accountant's office with a letter in his own handwriting for withdrawal of the notice, who refused to accept the same and then it was placed before the Administration office when he was asked to submit it before the Station Engineer who is the first respondent and the same was submitted before the first respondent who received it and had gone through it and said that he would look into it. He affirmed that he had written Annexure A-2 letter in his own handwriting and the contention put forward by the first respondent that he had not received the letter was an afterthought to defeat his genuine claim.

5 The first respondent filed a reply to the rejoinder reiterating the earlier contentions and denied that he had ever compelled the applicant to sign any printed form. He also stated that he was not aware of any representation as in Annexure A-2. A detailed reply statement was also filed by the first respondent. It is pointed out that on 5th May, 2003, the

applicant came to the room of the first respondent and informed him of his desire to take voluntary retirement due to his failing health conditions and financial problems. He also informed that he was having several outstanding loans from banks and other private sources and in order to overcome all those problems, the only option left to him was to seek immediate voluntary retirement. Succumbing to the pleas of the applicant the first respondent agreed to accept his voluntary retirement notice and the applicant presented the notice only on 7.5.2003 seeking voluntary retirement w.e.f. 31.5.2003 after waiving the stipulated three months notice period. The allegation that he had forced the applicant to sign the papers is denied as totally false and baseless. It is also stated that the respondents were not in receipt of any request of the applicant dated 19.5.2003 for withdrawal of the notice of voluntary retirement. The action of the applicant in approaching this Tribunal is only an afterthought after opting for retirement due to poor health conditions and financial problems. Hence the OA is devoid of any merit.

6 Since the whole case revolves round the question whether the applicant had sent Annexure A-2 representation for withdrawal of his notice for voluntary retirement and the respondents having emphatically denied the receipt of this representation, we called for the relevant files from the respondents. The respondents have produced the file as well as the service register of the applicant. We have perused the records submitted and have also heard the learned counsel for the parties.

7 The question regarding the validity of the withdrawal of voluntary retirement notice is no longer in dispute and has been settled by several

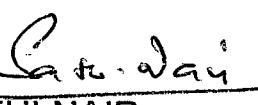
pronouncements of the Hon'ble Supreme Court. An employee who has given notice of voluntary retirement is entitled to withdraw that notice before the expiry of the notice period even if such a notice had been accepted by the competent authority. Here the disputed question is whether the applicant did submit a letter for withdrawal of the notice. He has produced Annexure A-2 dated 19.5.2003 which is written by hand. The respondents have denied that any such request either verbal or written as stated by the applicant has been received by them. We have verified the concerned file produced by the respondents. The notings in the file corroborate the statement of the respondents that the applicant submitted an application on 7.5.2003 requesting for waiving three months notice period and to permit him to retire voluntarily from service w.e.f. 31.5.2003. The request was examined on file and the note was put up on 15.5.2003 and it was approved by the Station Engineer on 21.5.2003. The order was issued on 29.5.2003 and there is nothing to show in this file that the applicant had submitted any written request for withdrawal of the voluntary retirement notice. The contention of the applicant is that he had submitted the representation to the Accountant who had refused to receive the same and it was advised by the Administration office to submit it before the Station Engineer and them Station Engineer received the same and said that he would look in to the same. The first respondent has in his affidavit filed along with the reply statement strongly refuted that he had received any such request and if at all such a request was handed over by the applicant to the first respondent he should be put to strict proof of his claim. The applicant has not produced any such proof and the handwritten request at Annexure A-2 produced by him is neither addressed to anybody nor does it carry any stamp of the office to whom it is handed over. It is

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seen from the files that the final order retiring him from service was issued only on 29.5.2003 and during the period of 10 days the applicant had enough opportunity to bring the matter again to the notice of the first respondent or to send a letter by registered post, etc. if he was really interested in continuing in service. When he had personally met the first respondent on two earlier occasions before the submission of the notice and also to submit the notice on 7.3.2003, nothing prevented him from meeting the first respondent again in person. We are therefore inclined to accept the averment of the respondents that there was no pressure brought up on the applicant to submit the request for voluntary retirement and that the respondents had not received or deliberately withheld his request to withdraw it later. In the absence of any proof to the contrary produced before us we can only come to the conclusion as stated by the respondents that it is an afterthought and that the applicant's claims have no basis. The prayer of the applicant is therefore rejected. The OA is accordingly dismissed. No costs.

Dated 10.4.2006.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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