

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.609/2001.

Tuesday this the 22nd day of April 2002.

CORAM:

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

K.Chithambaran,
Sub Postmaster Aluva North P.O.,
Aluva-683103.

Applicant

(By Advocate Shri P.C.Sebastian)

Vs.

1. The Director of Postal Services,
Central Region, Kochi-682 016.
2. The Senior Superintendent of
Post Offices, Aluva Division,
Aluva-683 101.
3. The Union of India, represented by
Secretary, Ministry of Communications,
Department of Posts,
New Delhi.

Respondents

(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 22nd April 2002
the Tribunal on the same day delivered the following:

O R D E R


HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant, Sub Postmaster, Aluva North P.O. applied for five days' leave w.e.f. 11.6.2001 alleging that his mother who was wholly dependent on him was seriously ill and hospitalised. Finding that a substitute had not been arranged and no possibility of the leave being granted on 11.6.2001 he requested the first respondent to grant him permission to retire from service under Rule 48-A of CCS(Pension) Rules 1972 with immediate effect dispensing with the requirement of normal notice of three months. On 26.6.2001 the first respondent issued A-1 memo accepting the applicant's notice for voluntary retirement dated 11.6.2001 and permitted him to retire from service on


1.7.2001. When the applicant came to know of that order, on 29.6.2001 he immediately submitted a request to the first respondent seeking permission to withdraw his resignation as the reason for his resignation did not exist any longer. However, the applicant was informed by order dated 13.7.2001 (A2) that he had been treated as relieved from the afternoon of 1.7.2001 and directing him to hand over the charge to Shri Prabhakaran Nair. Aggrieved the applicant has filed this application seeking to set aside A-1 and A-2 declaring that he is entitled to continue in service pursuant to Annexure A5 request and for a direction to the respondents to allow the applicant to continue in service disregarding the request for voluntary retirement dated 11.6.2001.

2. When the application came up for hearing on admission on 16.7.2001, the O.A. was admitted and the operation of the impugned orders A-1 and A-2 were kept in abeyance. The applicant is, therefore, continuing in service on the basis of the interim order.

3. The respondents resist the claim of the applicant. They contend that before giving a notice for voluntary retirement, the applicant should have been fully aware of all the aspects and that the competent authority not finding any merit in the applicant's request for permission to withdraw his notice for voluntary retirement, came to the conclusion that the applicant is not entitled to continue in service and therefore, the impugned orders are perfectly legal and justified.



4. On a careful scrutiny of the materials placed on record and on hearing the learned counsel on either side, I find no justification in the action of the first respondent in not permitting the applicant to withdraw his notice for voluntary retirement. It has been held by the Apex Court in a catena of rulings that a Government Servant who has given notice for voluntary retirement under Rule 48-A of the Civil Services (Pension) Rules, can be permitted to withdraw his resignation before the date on which the resignation would take effect, even in a case where the competent authority had already accepted the resignation and communicated the same to the Government servant. In a recent ruling of the Apex Court in JN Srivastava Vs. Union of India and another (1998) 9 SCC 559 the Apex Court had held that, even if the voluntary retirement notice is moved by an employee and accepted by the competent authority within the time fixed, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement before the date of retirement is reached. In this case, even by the impugned order Annexure A1 the applicant's retirement was to take effect from 1.7.2001 while the applicant had applied for permission to withdraw the notice for voluntary retirement on 29.6.2001. Since no administrative difficulty has been caused by the withdrawal of the notice for voluntary retirement by the applicant, I find no reason why the competent authority should stand in the way of the applicant's continuing. The contention of the respondents that there was no merit in the claim of the applicant for withdrawing the notice for voluntary retirement is meaningless. The merit is that on change of circumstances and on reconsideration the applicant came to a considered conclusion that it would be in his best



interest to withdraw the resignation and to continue in service. As the applicant's retirement did not take effect, when he made the request for withdrawal and even thereafter the order Annexure Aw directing the applicant to hand over charge and that he would be deemed to have been relieved on 1.7.2001, is arbitrary and irrational.

5. In the result, the application is allowed. Annexures A1 and A2 are set aside and the respondents are directed to allow the applicant to continue in service till the date of his superannuation unless his services are otherwise terminated in accordance with law for any valid ground. There is no order as to costs.

Dated the 22nd April, 2002.



A.V. HARIDASAN
VICE CHAIRMAN

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A P P E N D I X

Applicant's Annexures:

1. A-1: True copy of Memo No.ST/101-13/2000 (Pt) dated 26.6.2001 issued by the 1st respondent.
2. A-2: True copy of the Phone message No.B56 dated 13.7.01 issued by the 2nd respondent.
3. A-3: True copy of letter No.B 56 dated 27.6.2001 issued by the 2nd respondent.
4. A-4: True copy of the Phone message No.B8 dated 29.6.01 issued by the 2nd respondent.
5. A-5: True copy of the representation dated 29.6.01 submitted by applicant to 1st respondent.

Respondents' Annexures:

1. R-1: A true photocopy of the letter dated 11.6.2001.

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