

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 119 OF 2007

Friday, this the 4th day of January, 2008.

CORAM :

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

V.N.Bhaskaran

**BOSUN, Central Institute of Fisheries, Nautical and
Engineering Training, Cochin**

Residing at : CIFNET Quarters Type III

No.4, Pulleppadi, Cochin

:

Applicant

(By Advocate Mr. I.G.Manoharan)

Versus

1. **Union of India represented by the Secretary
to Government of India
Ministry of Agriculture
Department of Animal Husbandry, Dairying and Fisheries
New Delhi**

2. **The Director
Central Institute of Fisheries, Nautical and
Engineering Training,
Foreshore Road, Cochin - 16 :** **Respondents**

(By Advocate Mr. TPM Ibrahim Khan, SCGSC)

The application having been heard on 17.12.2007, the Tribunal
on 04.01.2008 delivered the following :

O R D E R

HON'BLE Dr. K.B.S.RAJAN, JUDICIAL MEMBER

The applicant is aggrieved by order dated 08.01.2007 (Annexure
A-1) whereby his request for withdrawal of application for voluntary
retirement with effect from, 01.01.2007 has been rejected.

2. **The following is the background of the case :-**

The applicant preferred a representation in February, 2006
requesting the authorities not to effect any transfer as he had only two
years to retire. That application was rejected consequent to which he filed



OA 244/06. As the applicant expressed his desire to seek voluntary retirement in case his application could not be favourably considered by the Department, the said O.A was disposed of directing the applicant to file a comprehensive request for voluntary retirement. The representation dated 06.05.2006 of the applicant was rejected and the applicant was issued with a transfer order. The applicant thereafter filed OA 481/06 praying for retention in service at Cochin with permission to retire voluntarily after 31.12.2006. This O.A was allowed by order dated 31.08.2006 vide Annexure A-2. Accordingly the respondents issued an order dated 11.10.2006 permitting the applicant to voluntarily retire with effect from 01.01.2007 vide Annexure A-3. In addition the applicant was issued with a transfer order on 01.11.2006 transferring the applicant to Chennai where he would serve till the end of the remaining period of his service. After giving a representation against the transfer, the applicant out of compulsion had to report for duty at Chennai on 08.11.2006. Since the very purpose of the applicant in seeking voluntary retirement was to remain at Cochin but the same was frustrated by the transfer of the applicant to Chennai, the applicant felt it just and necessary that he reconsiders his desire to voluntarily retire and accordingly he had preferred an application dated 06.11.2006 requesting for permission to withdraw his request for voluntary retirement. Annexure A-5 communication dated 06.11.2006 refers. OA 855/06 was filed by the applicant praying for a direction to the respondents to take immediate steps to dispose of the applicant's representation dated 06.11.2006 and to pass necessary orders permitting the applicant to discharge his duties till the age of superannuation disregarding his earlier request for voluntary retirement. As the representation of the applicant was not by then decided, OA 855/06 was rejected with liberty to the applicant to take proper course of action in case on the decisions of the respondents upon his representation the applicant be adverse. Annexure

A-7 order dated 15.12.2006 refers. The applicant had moved the Hon'ble High Court against the earlier order in OA 481/06 whereby a direction to the respondents was given to decide the applicant's representation dated 06.05.2006. The Hon'ble High Court had however, disposed of the said Writ Petition permitting the applicant to challenge the order dated 08.01.2007 (Annexure A-1) whereby the applicant's request for withdrawal of his application for voluntary retirement was rejected. While passing the above order, certain observations were made by the Hon'ble High Court against which the respondents had preferred a Revision Petition No.718/07 which was however, rejected vide order dated 06.08.2007 (filed by the applicant alongwith MA 928/07).

3. By this O.A the applicant has challenged the decision of the respondents in rejecting the applicant's request for withdrawal of his application for voluntary retirement.

4. Respondents have contested the O.A. According to them, the representation of the applicant dated 06.11.2006 stated to have been preferred was not received by them at all. As such, the request of the applicant was not entertained. In addition, according to the respondents, as the voluntary retirement application already stood accepted vide Annexure A-4 dated 01.11.2006, after acceptance the question of any right available to the applicant in seeking withdrawal of request of voluntary retirement does not arise.

5. Applicant had filed rejoinder whereby he contended that the application for withdrawal of request for voluntary retirement can be made at any time and the only condition is the same shall be prior to actual date of voluntary retirement and is independent of acceptance or otherwise of

the request for voluntary retirement.

6. Counsel for applicant submitted that since the applicant was to voluntarily retire only with effect from 01.01.2007 his application dated 06.11.2006 ought to have been considered. It has also been submitted that though the respondents claim that they have not received the said request of 06.11.2006, a little later, as on 08.11.2006, the applicant did forward a copy of his earlier representation dated 06.11.2006 and the respondents ought to have acted on the basis of the copy of the letter dated 06.11.2006. In other words, necessary request for voluntary retirement having been made prior to the actual date of retirement, the applicant's request cannot be rejected.

7. Respondents counsel however submitted that the applicant was communicated of the acceptance of his application for voluntary retirement. Arguments were heard and documents perused.

8. The relevant rule (48 A(4) of the CCS Pension Rules) on the subject reads as under:-

"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."

9. The Apex court has occasions to deal with the subject matter of right to withdraw letter of resignation/voluntary retirement before the effective date of such resignation/voluntary retirement. Such decisions have been referred to in one of the later decisions in *Srikantha S.M. v. Bharath Earth Movers Ltd.*, (2005) 8 SCC 314, wherein the Apex Court has held as under :-

13. In *Union of India v. Gopal Chandra Misra* (1978) 2 SCC 301 this Court held that a complete and effective act of resigning an office is one which severs the link of the resignor with his office and terminates its tenure.

14. In *Balram Gupta v. Union of India* 1987 Supp SCC 228 this Court reiterated the principle in *Gopal Chandra Misra* and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servants.

15. The learned counsel for the parties drew our attention to some of the decisions of this Court on the point. In *Punjab National Bank v. P.K. Mittal* 1989 Supp (2) SCC 175 an employee resigned from service of the Bank by a communication dated 21-1-1986. It was to be effective from 30-6-1986. The Deputy General Manager who was the competent authority under the Service Regulations, accepted the resignation as per the letter of resignation i.e. with effect from 30-6-1986. The employee, however, received a letter from the Bank on 7-2-1986 informing him that his resignation letter had been accepted by the competent authority with immediate effect and consequently he was being relieved from the service of the Bank with effect from that day i.e. from 7-2-1986. The employee, therefore, filed a petition challenging the validity of the purported acceptance of his resignation with effect from 7-2-1986 and for a direction to the Bank to treat him in service up to 30-6-1986 by granting all consequential benefits. The matter, however, did not end there. On 15-4-1986, the employee addressed a letter to the Bank purporting to withdraw his resignation letter dated 21-1-1986. The question which came up for consideration was as to whether the subsequent development could be taken into account and whether the employee continued in service in view of the withdrawal of resignation dated 15-4-1986. Accepting the contention of the employee that he continued in service, the Court held that his resignation could take effect from 30-6-1986 or on expiry of three months' period provided in the Service Regulations and before that period he could withdraw the resignation. Since he had withdrawn the resignation before 30-6-1986, he continued to remain in service with the Bank.

.....

18. In *Balram Gupta* referred to above, the employee withdrew his notice of voluntary retirement on account of persistent and personal requests from the staff members. But the prayer for withdrawal was not allowed by the employer on the ground that it had already been accepted by the Government. Moreover, Rule 48-A(4) of the Central Civil Services (Pension) Rules, 1972 precluded the government servant from withdrawing his notice except with specific approval of the appointing authority.

19. Deprecating the stand taken by the Government, this Court held that it was not proper for the Government not to accede to the request of the employee. 'In the modern age we should not put embargo upon people's choice or freedom', stated the Court

20. The Court added:

'In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardise

Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways 'to ease out' uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees.'

21. In *Power Finance Corpn. Ltd. v. Pramod Kumar Bhatia* (1997) 4 SCC 280 a workman applied for voluntary retirement pursuant to the scheme framed by the Corporation to relieve surplus staff. The Corporation vide an order dated 20-12-1994 accepted voluntary retirement of the workman with effect from 31-12-1994 subject to certain conditions. Subsequently, however, the Corporation withdrew the scheme. It was held that the order dated 20-12-1994 was conditional and unless the employee was relieved from the duty on the fulfillment of those conditions, the order of voluntary retirement did not become effective. The employee, therefore, could not assert that the voluntary retirement was effective and claim benefits on that basis.

22. The Court said:

'7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently.'
(emphasis supplied)

23. In *J.N. Srivastava v. Union of India* (1998) 9 SCC 559 a notice of voluntary retirement was given by an employee on 3-10-1989 which was to come into effect from 31-1-1990. The notice was accepted by the Government on 2-11-1989 but the employee withdrew the notice vide his letter dated 11-12-1989. It was held that withdrawal was permissible though it was accepted by the Government, since it was to be made effective from 31-1-1990 and before that date it was withdrawn.

24. In *Shambhu Murari Sinha v. Project and Development India* (2000) 5 SCC 621 (*Shambhu Murari Sinha I*) an application for voluntary retirement of an employee dated 18-10-1995 was accepted by the employer vide letter dated 30-7-1997 with further intimation that release memo along with detailed particulars will

follow. The workman was actually relieved on 26-9-1997. In the meanwhile, however, by a letter dated 7-8-1997, he withdrew the application dated 18-10-1995, by which he sought voluntary retirement. It was held that the effective date of voluntary retirement was 26-9-1997 and before that date it was permissible for the workman to withdraw his retirement. The appellant was, therefore, held entitled to remain in service.

25. In *Shambhu Murari Sinha v. Project and Development India Ltd.* (2002) 3 SCC 437 (*Shambhu Murari Sinha II*), the view taken in *Shambhu Murari Sinha I* 6 was reiterated. It was held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had *locus penitentiae* to withdraw his proposal for voluntary retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work.

26. On the basis of the above decisions, in our opinion, the learned counsel for the appellant is right in contending that though the respondent Company had accepted the resignation of the appellant on 4-1-1993 and was ordered to be relieved on that day, by a subsequent letter, he was granted casual leave from 5-1-1993 to 13-1-1993. Moreover, he was informed that he would be relieved after office hours on 15-1-1993. The *vinculum juris* □, therefore, in our considered opinion, continued and the relationship of employer and employee did not come to an end on 4-1-1993. The relieving order and payment of salary also make it abundantly clear that he was continued in service of the Company up to 15-1-1993.

.....

28. The next question is, as to what benefits the appellant is entitled to. As he withdrew the resignation and yet he was not allowed to work, he is entitled to all consequential benefits. The learned counsel for the respondent Company no doubt contended that after 15-1-1993, the appellant had not *actually* worked and therefore, even if this Court holds that the action of the respondent Company was not in consonance with law, at the most, the appellant might be entitled to other benefits except the salary which should have been paid to him. According to the counsel, the principle of 'no work, no pay' would apply and when the appellant has admittedly not worked, he cannot claim salary for the said period.

29. We must frankly admit that we are unable to uphold the contention of the respondent Company. A similar situation had arisen in *J.N. Srivastava* 5 and a similar argument was advanced by the employer. The Court, however, negated the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, the benefits were granted to him. In *Shambhu Murari Sinha II* 7 also, this Court held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to 'full salary and allowances' of the entire period he was kept out of service. In *Balram Gupta* 2 in spite of specific provision precluding the government servant from withdrawing notice of retirement, this Court granted all consequential benefits to him. The

appellant is, therefore, entitled to salary and other benefits.

30. For the foregoing reasons, in our opinion, the appeal deserves to be allowed and is accordingly allowed. The action of the respondent Company in accepting the resignation of the appellant from 4-1-1993 and not allowing him to work is declared illegal and unlawful. It is, therefore, hereby set aside. The orders passed by the learned Single Judge and the Division Bench upholding the action of the Company are also set aside. The respondent Company is directed to treat the appellant in continuous service up to the age of superannuation i.e. 31-12-1994 and give him all benefits including arrears of salary. The Company may adjust any amount paid to the appellant on 15-1-1993 or thereafter. The appeal is accordingly allowed with costs.

10. The ratio in the above decision is that till such time the relationship of employer-employee subsists, the employee has right to withdraw his application for resignation/voluntary retirement. And in the instant case the rule provides for such a withdrawal only with the specific approval of such authority. That approval cannot be denied save for valid reasons. In this case, rejection of applicant's request for withdrawal of his application for voluntary retirement, vide order dated 08-01-2007 does not go in terms of the above law laid down by the Apex Court.

11. From the above decision of the Apex Court the law that could be discerned is that an employee who has sought voluntary retirement, could seek withdrawal of his request even after the acceptance of the same by the employer, but before he is actually retired from service.

12. when the above law is telescoped upon the facts and circumstances of the case of the applicant the same would go to prove that the respondents are not correct in rejecting the request of the applicant for withdrawal of his application for voluntary retirement. That the application of 6-11-2006 was not received by the respondents is of no consequence, since, they have acknowledged and referred to further communication dated 08-12-2006 of the applicant with which the applicant had annexed a copy of the earlier application dated 6-11-2006. That should suffice for consideration by the respondents of the case of the

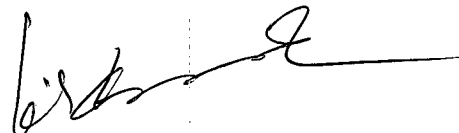
applicant for withdrawal of his earlier application for voluntary retirement.

Rejection of the application of the applicant for withdrawal is patently illegal. 2

13. Vide order dated 20.02.2007, respondents were directed to keep in abeyance Annexure A-1 order dated 08.01.2007 and the applicant is continuing in the job. He is due for retirement under normal course by April, 2008 or so. As the respondents have acted illegally in passing Annexure A-1 order the same is liable to be quashed and set aside. Accordingly order dated 08.01.2007 is quashed and set aside. It is declared that the applicant's request for voluntary retirement shall not be acted upon and he shall continue till the date of his superannuation. Respondents are directed accordingly.

14. The OA is allowed. Under the above circumstances, no costs.

Dated, the 4th January, 2008.



K.B.S. RAJAN
JUDICIAL MEMBER

vs