

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.121/11

Friday this the 13th day of January 2012

C O R A M :

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

K.R.Radhakrishnan,
Deputy General Manager (Retired),
Inertial Systems Electronics Production,
ISRO Inertial System Unit,
Vattiyoorkavu, Thiruvananthapuram – 13.Applicant

(By Advocate Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. Senior Head PGA,
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
2. The Director,
Vikram Sarabhai Space Centre,
Thiruvananthapuram – 695 022.
3. Union of India represented by the Chairman,
Department of Space, Bangalore.
4. The Director, IISU,
Vikram Sarabhai Space Centre,
Vattiyoorkavu, Thiruvananthapuram – 13.Respondents

(By Advocate Mr.Sunil Jacob Jose,SCGSC)

This application having been heard on 10th January 2012 this
Tribunal on 13th January 2012 delivered the following :-

ORDER

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

The applicant is aggrieved by the order of rejection of his request for
withdrawal of his application for voluntary retirement. Annexure A 7 order
dated 03-12-2010 impugned herein refers.

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2. The bare minimum facts of the case required to decide the issue involved in this case are as under :-

3. The applicant while working as Scientist/Engineer SG under the fourth respondent submitted an application to go on for voluntary retirement, vide Annexure A-1 letter dated 22-07-2010 ~~refers~~. He had requested for relieving him w.e.f. 15-11-2010. However, by 11-11-2010, the applicant sent another communication stating that he proposed to withdraw his application opting for VRS submitted on 22-07-2010. It was on this very same day, i.e. 11-11-2010 that the Administrative Officer, P & G Administration, Thiruvananthapuram informed the applicant that his notice dated 22-07-2010 for voluntary retirement under Rule 48 A of the CCS(Pension) Rules, 1972 has been accepted by the Department and that he would be relieved of his duties with effect from the forenoon of 15-11-2010. Annexure A-3 refers. The applicant renewed his request for withdrawal of his earlier application for voluntary retirement, vide Annexure A-4 letter dated 15-11-2010. A like communication was also addressed to the third respondent, vide Annexure A-5. Meanwhile the applicant was relieved of his duties, vide order dated 15-11-2010 at Annexure A-6. It was, however, through Annexure A-7 order dated 03-12-2010 that the applicant was informed that his request for voluntary retirement was duly considered in the Department of Space, Bangalore and the Department has conveyed that his withdrawal notice for Voluntary Retirement has not been accepted by the competent authority.

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4. The applicant has filed this OA on the following amongst other grounds :-

- (a) Withdrawal before the voluntary retirement becomes effective could be made.
- (b) The Decision of the Apex Court in the case of J.N. Srivastava vs Union of India (1998) 5 SCC 461 supports the case of the applicant. So is the decision of the Apex Court in the case of Power Finance Corporation Ltd vs Pramod Kumar Bhatia (1997) 4 SCC 280.

5. Respondents have contested the OA. According to them, on receipt of the request for voluntary retirement by the applicant, the second and fourth respondents had duly considered and recommended the case of the applicant for consideration by the Competent Authority, i.e. the Secretary, Department of Space and the latter, vide Annexure R-1 order dated 09-11-2010 conveyed his acceptance of the request of the applicant for voluntary retirement and asked the 2nd respondent to relieve the applicant on 15-11-2010. This was duly communicated to the applicant vide A-3 Memorandum dated 11-11-2010. According to the respondents, thereafter, the applicant on the same day, i.e. 11-11-2010 sent a communication to the 2nd respondent in a very casual manner and merely mentioning therein "I propose to withdraw my application opting for VRS submitted earlier dated 22nd July, 2010." without specifying any reason for his withdrawal of request for Voluntary Retirement. The Competent Authority, on careful consideration of all aspects, decided not to accept the applicant's request for withdrawal of Voluntary Retirement. Once the

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application for Voluntary Retirement is accepted, it is a settled law that any request for withdrawal of notice for Voluntary Retirement shall also require acceptance by the Competent Authority. The Authority considered the withdrawal request but did not accept the same. Submission of request for Voluntary Retirement without indicating any reason for withdrawal of Notice for Voluntary Retirement does not confer any legitimate right to the applicant to be allowed to continue in service. No rule specifies that it is obligatory on the part of the Competent Authority to accept the withdrawal notice for Voluntary Retirement submitted by an employee. As such, Annexure A-7 issued by the respondents is well within the rule provisions and it cannot be termed as illegal or arbitrary.

6. The applicant has filed his rejoinder reiterating the contentions as contained in the OA and adding a copy of his representation dated 11-11-2010 wherein the endorsement of the respondents reflected, "*Since relieving order already issued by DOS, it is not possible to consider this now.*" He has also filed copy of his further representation dated 05-02-2011. He has also stated that the respondents never sought for any reasons in both instances and had not taken their decisions based on 'lack of reasons'. Again, the statement in para 8 of the reply is not in consonance with contents in Annexure A-8 and A-10.

7. Additional reply, rebutting the contentions in the rejoinder had been filed by the respondents, against which the applicant has filed additional rejoinder.

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8. Counsel for the applicant submitted that the question is whether at the time of making request for withdrawal of the application for voluntary retirement, ~~whether~~ the jural relationship (Employer – Employee) subsists and so long as it subsists, the withdrawal request could be given. The applicant being a scientist thought that brevity would suffice and no elaborate reason could be given. He had heavily relied upon the decision in the case of **Balram Gupta vs Union of India 1987 (Supp) SCC 228.**

9. Counsel for the respondents submitted that Rule 48 A of the Pension Rules requires that such withdrawal needs acceptance of the competent authority and after duly considering the case, the competent authority declined to permit the applicant to withdraw his request for voluntary retirement.

10. Arguments were heard and documents perused. Admittedly, it is Rule 48 A of the CCS (Pension) Rules, 1972 that applies to this case and the same reads as under:-

"48-A. Retirement on completion of 20 years' qualifying service.— (1) At any time after a government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

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(4) 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.

11. One of the main contentions of the respondents is "Once the application for Voluntary Retirement is accepted, it is a settled law that any request for withdrawal of notice for Voluntary Retirement shall also require acceptance by the Competent Authority." The relevant part of the rules specifies that *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.* Thus, permission for withdrawal of letter of voluntary retirement is a pre-requisite, and it is rather, irrespective of whether the earlier request for retirement has been accepted or is under consideration. In other words, once an individual has opted to retire and has made a request accordingly, then, for withdrawal not only that he should address the competent authority for such withdrawal but also that he is precluded from withdrawing his notice except with the specific approval of such authority.

12. Thus, the competent authority shall have to accord his approval for such withdrawal. The question is whether the authority has power to decline such approval. The rule does not specifically indicate such a power but it must be implied that such a power to refuse is implied in the rule. For, in the case of Achutananda Purohit vs State of Orissa. (1976) 3 SCC 183, in respect of according approval for assessment, the Apex Court has held :-

" The power to approve implies the power to disapprove or modify..."

13. In the case of State of H.P. Vs Ganesh Wood Products (1995) 6 SCC 363, the Apex Court has stated as under :-

Now, it cannot be denied that the power to approve includes the power to decline approval and the power to disapprove.

14. Thus, the competent authority does enjoy power to disapprove also.

15. The next question to be considered is under what circumstances, could such a power to decline approval be invoked? Certainly the same cannot be arbitrary or whimsical. The Apex Court in the case of Rash Lal Yadav (Dr) vs State of Bihar (1994) 5 SCC 267 has observed :-

"where a statute confers wide powers on an administrative authority coupled with wide discretion, the possibility of its arbitrary use can be controlled or checked by insisting on their being exercised in a manner which can be said to be procedurally fair."

16. In Balram Gupta, the Apex Court inter alia held as under :-

" 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 jeopardize the 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."

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17. The reason for refusal as could be seen in Annexure A-8 Endorsement is that since the request for retirement has been accepted, request for withdrawal cannot be approved. This reason is not contemplated in the rules. As such this reason cannot be accepted.

18. It has been stated in the reply that reason for refusal to accept request for withdrawal is that no reason has been spelt out in the application for such withdrawal. True, no reason has been given. Nevertheless, change in the mind of the applicant could be read through in his request. This change in the mind could have been by way of advice from friends and relatives (as in Balram Gupta) or by a wisdom dawn on the applicant himself. If spelling out such a reason for withdrawal is an inevitable requirement, nothing prevented the respondents to seek the same immediately after the filing of the application for such withdrawal. There was no communication in this regard.

19. Thus, the fact that the letter of withdrawal only succeeded the letter of acceptance as contended by the respondents does not hamper the right of the applicant to apply for approval for withdrawal of the application for retirement. Again, non furnishing of the reason also cannot be a ground for denying the approval.

20. Certain earlier decisions, in addition to Balram Gupta (supra) relied upon by the counsel for the applicant goes in support of the applicant. The same are as under :-

(a) 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.

(b) 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* 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.

(c) 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.

(d) In the case of Union of India v. Wing Commander T. Parthasarathy,(2001) 1 SCC 158, the Apex Court has held as under :-

"9. The reliance placed upon the so-called policy decision which obligated the respondent to furnish a certificate to the extent that he was fully aware of the fact that he cannot later seek for cancellation of the application once made for premature retirement cannot, in our view, be destructive of the right of the respondent, in law, to withdraw his request for premature retirement before it ever became operative and effective and effected termination of his status and relation with the Department."

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21. From the above decisions, it is evident, that a liberal view has to be taken in so far acceptance of the request for withdrawal of application for retirement by the government servant. This does not, however, mean that under no circumstances should approval for withdrawal be withheld. Power to withhold approval could certainly be exercised, for justifiable reasons as for example :-

- (a) in anticipation of the retirement of the applicant, if alternate arrangement has already been made in the place of the applicant, resumption of duties by the applicant would result in administrative inconvenience and would cause prejudice to all concerned.
- (b) if a cadre is declared as a dying cadre and the incumbent to the post applies for voluntary retirement from a prospective date and if arrangement for abolition of the said post has been made in advance from the intended date of retirement, request for withdrawal of application for retirement would lead to complexities in getting the abolished post resurrected. Under such circumstances, refusal to accord approval for withdrawal is fully justified.
- (c) If a person first applies for retirement and then withdraws the same and again for the second time he repeats the same, it is a kind of harassment to the administration and in such case too, refusal is fully justified.

22. The case of the applicant is pure and simple. He had applied for retirement and before the intended date of retirement, he chose to withdraw the same. In between, no alternative arrangement has been made, nor is the post likely to be abolished. In fact services of an experienced scientist may only be useful to the organization. Thus, the decision of the respondents to refuse approval for withdrawal of the letter of retirement has to be held as bad in law. It is so declared. Annexure A-7 is, therefore, quashed and set aside.

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23. The result of the above quashing of the order would mean that the applicant is entitled to be reinstated in service.

24. Coming to the next question of consequential benefits claimed, the impugned order had been passed in December, 2010 and the applicant filed this OA in February, 2011. Minimum time has been consumed by the applicant in approaching the Tribunal. Reply to the OA was filed by the respondents on 27-05-2011 and the applicant filed his rejoinder in September, 2011. Additional reply was filed by the respondents in December, 2011. Thus, there is no unreasonable delay in completion of pleadings and the hearing also has taken place immediately. The period of one year plus i.e. from the date of relieving on 15-11-2010 till the date of reinstatement in the near future, should be treated only as duty with pay and allowances, notwithstanding the fact that the applicant could not perform any duty during this period.

25. The applicant is stated to have been paid a part of his terminal benefits and it has also been stated that such payment has been entertained by the applicant under protest. The extent of payment so far made and the amount payable to the applicant by way of pay and allowances for the period of absence from 15-11-2010 till the date of reinstatement should be compared and any amount paid to the applicant in excess of the pay and allowances shall be got refunded in one lump sum ~~to~~ by the respondents. If any amount is due to the applicant, the same should be paid by the respondents.

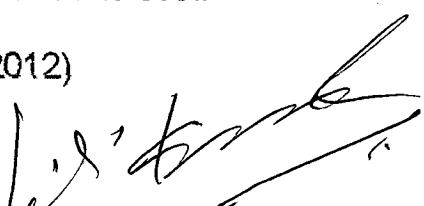


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26. The OA is thus, allowed. Respondents are directed to pass suitable orders for reinstatement of the applicant within a period of two months from the date of communication of this order. The period of absence has to be treated as on duty with pay and allowances. The period shall also count for working out increment admissible to the applicant. Amount payable by or to the applicant be worked out and the same settled expeditiously. OA is thus allowed.

27. Under the circumstances, there shall be no orders as to cost.

(Dated this the 13th day of January 2012)



Dr.K.B.S.RAJAN
JUDICIAL MEMBER

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