

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No. 388/1992 ~~xxxx~~
~~xxxxxx~~

DATE OF DECISION 26.8.1992

C.J. Mathew Applicant (s)

Shri T.K. Chandrasekhar Das Advocate for the Applicant (s)

Versus

Union of India represented by Respondent (s)
the Secretary,

Ministry of Industry,

Nirman Bhavan, New Delhi-110011, and 2 others

Mr. A.A. Abul Hassan, ACGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V. HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 4.3.1992 the applicant who had been working as Assistant Director, Small Industries Service Institute under the Development Commissioner, Small ^{Scale} Industries has challenged the impugned order dated 21st February 1992 (Annexure-V) permitting him to retire voluntarily with effect from 28.2.1992 as also the order dated 28.2.92 (Annexure-VI) relieving him of his duties with effect from 28.2.1992 and has prayed that the respondents be directed to allow the applicant to continue in service as Assistant Director.

2. According to the applicant while working as Assistant Director Grade II at Trichur he sought voluntary retirement by his application dated 29.11.1991 (Annexure-1) desiring to retire with effect from 1.3.1992 under Rule 48-A of CCS (Pension) Rules, 1972. This was done by him as his wife was bedridden and there was nobody to look after her. In the meantime he changed his

mind as his daughter came home to attend to her mother and by his letter dated 26.2.1992 (Annexure-II) he withdrew the notice of voluntary retirement at Annexure-I and sought permission to continue in service. He followed it up by a telegram (Annexure-III) dated 27.2.1992. However, he was served with the impugned communication dated 21.2.1992 at Annexure-V accepting his voluntary retirement, which was forwarded to him vide the impugned communication dated 28.2.92 at Annexure-VI. According to the applicant he received both these orders only on 3.3.92. Immediately thereafter he sent the representation dated 3.3.92 (Annexure-VII) drawing the attention of respondent No.2 to his withdrawal letter dated 26.2.1992 and appealed him to allow the applicant to continue in service. The applicant has contended that since he withdrew the offer of voluntary retirement on 26.2.92 well before 1.3.1992 on which date he had proposed to retire voluntarily, the respondents could not retire him by Annexure-V order which was communicated to him only after the applicant had revoked his offer of voluntary retirement. He has referred to sub-rule (4) of Rule 48A which lays down that the "requests for withdrawal shall be made before the intended date of his retirement". He has also referred to proviso to sub-rule (2) of Rule 48A, according to which the voluntary retirement automatically becomes effective from the date of expiry of the period of notice if the appointing authority does not refuse to grant the permission of retirement. He has argued that the Department could treat the applicant as retired only after 1.3.92 unless he withdraws his offer before that date. Thus he is entitled to be

treated to be continued in service notwithstanding his relief on 3.3.1992.

3. In the counter affidavit the respondents have stated that on the basis of the notice of voluntary retirement dated 29.11.1991 the second respondent after completing the required formalities, by his order dated 21.2.1992 accepted the voluntary retirement with effect from the afternoon of 28.2.1992 on completion of the 3 months period of notice because 29.2.92 and 1.3.92 were closed holidays for the Central Government offices. This order dated 21.2.1992 of respondent No.1 was received in the Trichur office on 24.2.1992 along with its original addressed and marked to the applicant. According to the respondents though it was shown to the applicant on the same day for delivery he was not inclined to accept it. On the other hand, on 26.2.92 in the afternoon, he gave a letter addressed to respondent No.2 requesting for withdrawal of his notice of voluntary retirement. The applicant contacted the Director at his residence on 27.2.1992 on the phone and had a detailed discussion with him. As a result of this discussion, the applicant expressed his willingness to take voluntary retirement with effect from 1.3.92 and that he could be relieved from service from 28.2.1992 afternoon with date of voluntary retirement ^{being} /_{at} 1.3.92. The respondents have stated that the Assistant Director(Admn.) recorded this position on 27.2.92 as at Ext R1(A) which was seen by the applicant and initialled by him on 27.2.92 in token of his knowledge of the same. The applicant's averment that after sending his withdrawal application dated 26.2.92

and ^{the} telegram dated 27.2.92 he had received no reply from the respondents till 3.3.92 is not true. On 28.2.92 the applicant had applied for casual leave and was not present in the office but the office had received a copy of the telegram dated 27.2.92 sent by the applicant which had been issued by him at 1835 hours on 27.2.92. However, on the basis of the applicant's acceptance of the Assistant Director's note dated 27.2.92 (Ext.R1(A)) and telex message of the Development Commissioner, the Trichur office issued the impugned order dated 28.2.92 relieving the applicant on the same day. But as the applicant was not available in the office, the order could not be delivered to him. ^{The days of} 29.2.92, 1.3.92 and 2.3.92 were closed holidays and the applicant turned up in the office on 3.3.92 when the impugned orders at Annexures-V and VI were delivered to him. On the same day he sent a representation to respondent No.2 to allow him to continue in service. The respondents have referred to sub-rule(4) of Rule 48A of the CCS(Pension)Rules, according to which a Government servant is precluded from withdrawing his notice except with the specific approval of the competent authority provided that the request for withdrawal is made before the intended date of his retirement. Thus automatic withdrawal of notice of voluntary retirement is not contemplated. In the present case the request for withdrawal was received in the office of respondent No.2 at New Delhi after the office hours on 28.2.92 and the next two days, i.e, 29.2.92 and 1.3.92 were closed holidays. They have also referred to Ext.R1(A) to say that the applicant had accepted to retire voluntarily with effect

from 1.3.92 and his request withdrawing voluntary retirement was made only after he had seen the acceptance order dated 21.2.1992. They have argued that it is not practicable to wait till the last date and then accept the request for voluntary retirement.

4. In the rejoinder the applicant has emphatically denied that the order dated 21.2.92 was shown to him on 24.2.92 and insists that he was served with the order dated 21.2.92 only on 3.3.92. He has not denied having seen and initialled the note of the Assistant Director at Ext.R1(A) after having a discussion with the Assistant Director (Administration), but contends that his initialling the note should not mean that he had accepted the voluntary retirement. On the other hand he had sent applications subsequently withdrawing the notice of voluntary retirement. The applicant states that he "cannot exactly recollect what the Assistant Director (Administration) recorded when my initial was obtained".

5. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant had sought voluntary retirement under Rule 48-A of the CCS(Pension) Rules on 29.11.1991 (Annexure-I) as follows:-

"I desire to retire from service on 1.3.1992 under Rules 48-A of C.C.S. (Pension) Rules 1972. I request the Development Commissioner to kindly accept this request as my notice required under the rules and oblige to issue orders accordingly."

The Presidential permission for voluntary retirement was accorded to him vide the impugned order dated 21st February, 92

as follows:-

"The President is pleased to permit Shri C.J.Mathew, Asstt.Director.Gr.I(Met.) Small Industries Service Institute ,Trichur to retire voluntarily from Govt. service with effect from 28.2.1992 under Rule 48-A of CCS (Pension) Rules 1972 as amended from time to time."

The aforesaid order was communicated to the applicant vide the impugned order dated 28.2.1992 at Annexure-VI. According to the applicant he addressed a letter through proper channel on 26th February, 1992 (Annexure-II) praying that his notice of voluntary retirement should be treated as withdrawn and to allow him to continue in service as follows:-

" In my letter cited, I had opted for voluntary retirement with effect from 1.3.1992. But due to certain personal reasons, I wish to withdraw the above notice and propose to continue in service. I, therefore, request the Development Commissioner to kindly treat my notice for voluntary retirement withdrawn and also to allow me to continue in service."

The respondents, however, have averred that the impugned communication dated 21.2.1992 at Annexure-V had been shown to the applicant on 24.2.1992 when it was received at Trichur office. The applicant denies having seen this communication on 24.2.92 and also denies having had any information about the acceptance of his voluntary retirement till he received Annexure-VI communication on 3.3.92. The respondents, however, have produced a copy of the note recorded by the Assistant Director(Administration) dated 27.2.92 at Ext.R.1(A) duly initialled by the applicant on 27.2.92 which reads as follows:-

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"It is understood from Shri C.J.Mathew, AD.Gr.II (Met) that he contacted our Director over phone in this AN and had detailed discussion in connection with the withdrawal of his Voluntary Retirement notice. Now he is prepared to take Voluntary Retirement on the expiry of the notice period. His notice period is 3 months from 1.12.91. Hence he may be relieved of his service from 28.2.92 AN with date of retirement on 1.3.92."

The applicant has not denied this document but has stated in the rejoinder that "the correctness of Ext.R1(a) note is disputed as I cannot exactly recollect what the Assistant Director (Administration) recorded when my initial was obtained. At any rate it cannot be treated as one withdrawing my withdrawal of notice of voluntary retirement". From the above facts we are convinced that the applicant knew about the acceptance of his notice of voluntary retirement at least on 27.2.92 and when the note was recorded after he had a discussion on the phone with the Director, he had not yet made up his mind to withdraw the notice of voluntary retirement. There seems to be an after thought on the basis of which he changed his mind and sent the communication at Annexure -II praying for treating the notice to be withdrawn. Though this letter is dated 26th February, 1992, in view of Ext.R1(a), quoted above and duly initialled by him, we are not sure whether this communication is not ante-dated. Our doubt is reinforced by the fact that, according to the applicant himself, he sent a telegram withdrawing his notice to respondents 2 and 3 at Annexures III and IV on 27th February, 1992 at 6.35 p.m., i.e., after the office hours. The only working day between the despatch of the communication withdrawing the notice of voluntary retirement and the date, i.e., 1.3.92 when his voluntary

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retirement was to take effect was the 28th of February, 1992. The 29th of February and 1st of March, 1992 being Saturday and Sunday were closed days. On 28.2.1992, i.e, the only working day, the applicant admittedly was not present in the office and applied for casual leave. It is, thus, clear that not only did the applicant withdraw the notice of voluntary retirement just on the eve of the last available working day before the notice was to expire, but also he ensured that he is not present in office on that working day. The competent authority who was to permit him to withdraw the notice was respondent 1 in Delhi.

Thus the applicant not only made it practically impossible for the competent authority to decide about the acceptance of the withdrawal of notice before the expiry of the notice period, but also made it impossible for such a decision to be communicated to the applicant on his last working day. Neither in the notice of voluntary retirement at Annexure-I nor in the communication withdrawing the notice at Annexure-VI, did the applicant even remotely advert to any reason whatsoever why he was giving a notice for voluntary retirement and why subsequently he was withdrawing the notice. In the main application he has stated some reasons which appear to us to be an after thought. If these reasons were actually genuine he should have definitely mentioned the same in Annexures I and II.

6. Now coming to the points of law. Since the applicant was seeking voluntary retirement admittedly under Rule 48-A of the CCS(Pension)Rules, it will be relevant to quote the sub-rules (2) and (4) of that rule relevant to this case. Sub-rule(2) of Rule 48-A reads as follows:-

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"(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."

Sub-rule(4) of the same rule reads as follows:-

"(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:

Provided that the request for withdrawal shall be made before the intended date of his retirement." (emphasis added) &

The above will show that a notice of voluntary retirement requires a tacit or implied acceptance of the appointing authority. If the tacit acceptance is not received before the expiry of the notice period, the implied acceptance is taken for granted from the date of expiry of the notice period. In the instant case the competent authority communicated the tacit acceptance to the applicant vide the impugned orders dated 21.2.92 and 28.2.92 before the notice period expired on 1.3.1992 which incidentally was a Sunday. The applicant's initials at Ext.R.1(A) clearly show that he knew about the acceptance of his voluntary retirement. In Balram Gupta vs. Union of India and another, AIR 1987 SC 2354 it was held by the Hon'ble Supreme Court that "on the principle of general law the offer of relinquishment could have been withdrawn by the appellant before the date it became effective if sub-rule (4) of Rule 48-A was not there". The Hon'ble Supreme Court in that case relying upon their earlier decision in Raj Kumar vs. Union of India (AIR 1969 SC 180) observed that till the resignation was accepted by the

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appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus."

7. Since in the instant case under sub-rule(4) of Rule 48-A, withdrawal of the notice of voluntary retirement was possible only with the approval of the competent authority but the applicant did leave no room whatsoever for the competent authority to give proper permission, by depriving the authority of any reasonable time or any stated reasons, to our mind, the applicant cannot be allowed locus poenitentiae. A Constitution Bench of the Supreme Court by a majority of four to one in Union of India and others vs. Gopal Chandra Misra and others, (1978)2 SCC 301 concluded as follows:-

"The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date, can be withdrawn by him at any time before it becomes effective, i.e, before it effects termination of the tenure of the office/post or the employment". (emphasis added)

The above conclusion will show that the established law that a Government servant can at any time withdraw his resignation or notice of voluntary retirement, before the same becomes

effective, applies where provisions like sub-rule(4) of Rule 48-A of CCS(Pension) Rules are not in existence. Where they are, permission of the competent authority for withdrawal of notice is a condition precedent before the notice can be deemed to have been withdrawn. In Tirath Singh vs. Union of India and another, (1991) 15 ATC 416, this view was upheld.

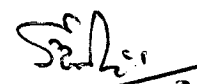
8. In the above circumstances we are of the view that the applicant did not properly seek permission to withdraw the notice of voluntary retirement in accordance with sub-rule(4) of Rule 48-A of the CCS(Pension) Rules by giving reasonable time to the competent authority to take a decision and giving appropriate reasons for withdrawal of the notice to enable the competent authority to give a reasoned decision ^{in time &} accepting or rejecting the withdrawal.

9. The only flaw in the impugned order at Annexure-V dated 21.2.92 is that the applicant was permitted to retire voluntarily with effect from 28.2.92 whereas he had sought retirement with effect from 1.3.1992. As however 29th of February and 1st of March, 1992 were not working days being Saturday and Sunday, the flaw in the impugned notice is a technical flaw which does not vitiate the impugned order.

10. In the conspectus of facts and circumstances we allow this application only to the extent of declaring that the voluntary retirement of the applicant will take effect from 1st of March 1992 instead of 28.2.92 with all consequential benefits and that the impugned order dated 21.2.92 at Annexure-V will stand modified to that extent.

There will be no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN