

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 620/88
~~KA~~ ~~XX~~ ~~No~~

198

DATE OF DECISION 16.10.1989

Shri S.G.Deodhar

Petitioner

Advocate for the Petitioner(s)

Versus

Accountant General (Audit-I), Maharashtra & Another.

Respondent

Mr.S.R.Atre.

Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. M.B.Mujumdar, Member(J),

The Hon'ble Mr. P.S.Chaudhuri, Member(A).

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

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.620/88.

Shri S.G.Deodhar.

... Applicant.

V/s.

Accountant General (Audit -I),
Maharashtra, C.G.O. Building,
Bombay and another.

... Respondents.

Coram: Hon'ble Member(J), Shri M.B.Mujumdar,
Hon'ble Member(A), Shri P.S.Chaudhuri.

Appearances:

Applicant in person.
Mr.S.R.Atre (for
Mr.P.M.Pradhan) for
the respondents.

ORAL JUDGMENT:-

Dated: 16.10.1989

(Per Shri M.B.Mujumdar, Member(J))

The applicant Shri S.G.Deodhar was appointed as Lower Division Clerk (LDC) in 1953. In September, 1962 he was promoted as Auditor, i.e. Upper Division Clerk (UDC). In 1975 he was promoted as Selection Grade Auditor. In 1983 he was posted in the Pension Wing. While working in that wing he found that there was mis-classification of provisional pensions for a number of years. He decided to bring this to the notice of the higher authorities. He submitted a note to the higher authority in August, 1983, but no decision was taken on that note for a long time. The Accountant General's Office was to be bifurcated into two wings, viz. Accounts Office and Audit Office w.e.f. 1.3.1984. On 29.2.1984 he sent a letter of protest to Accounts Officer in charge of Administration regarding the mis-classification of provisional pension cases for a number of years. The applicant opted for Audit Wing and hence from 1.3.1984 he started working in the Audit Office.

2. On 5.4.1984 the applicant sent a letter to the Accountant General Audit II, Maharashtra, stating that he desired to retire from Government service w.e.f.

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31.7.1984 (A.N.). He mentioned in that letter that he had completed 31 years and so he may be allowed weightage of two years service admissible according to the latest orders. He sent that letter along with a covering letter in which he pointed out that in the previous year also he had applied for voluntary retirement, but that request was not granted. He explained in the covering letter as to why he was choosing to retire voluntarily. The Accounts Officer by his memo dt. 5.5.1984 informed the applicant that he could see Senior Deputy Accountant General (Administration) on any date convenient to him. Accordingly the applicant met the then Sr. Deputy Accountant General, Shri Ramnarayanan. But Shri Ramnarayanan was transferred before he could take any decision. He was succeeded by Shri Vishwanathan. Audit Officer (Administration) informed the applicant by his letter dt. 31.7.1984 that no action could be taken on the letter of the applicant for voluntary retirement unless a clearly worded unconditional letter to that effect was received. The applicant therefore, sent letter dt. 9.5.1985 stating that he desired to retire from service w.e.f. 14.11.1985(A.N.) under Rule 48A of CCS (Pension) Rules, 1972. Though this letter was unconditional, in the covering letter of the same date he mentioned the circumstances in which he was seeking voluntary retirement. At the end of the covering letter he mentioned that he desired to place on record that the administration had forced him to retire and that he be informed that he would be relieved from office on 14.10.1985. By memo dt. 21.5.85 Audit Officer (Administration) replied that in view of the covering letter his request for voluntary retirement was not being processed further. He was, however, further informed that if he really desired to retire voluntarily from Government service he should give notice of voluntary

retirement immediately without attaching any condition. In pursuance of this letter the applicant sent letter dt. 18.3.1986 stating that he desired to retire from Government service w.e.f. 30.6.1986 (A.N.) under Rule 48 of Central Civil Service (Pension) Rules, 1972. Again that letter was sent with a covering letter of the same date. In the covering letter he pointed out that he was tired and had decided to retire so as to be able to write on some topics independently. In the last paragraph of the covering letter he stated that he was sending an unconditional application as demanded in the memo and it may kindly be processed as early as possible. He also added that he desired to avail two Leave Travel Concessions during the next 3 months. By office order dt. 16.5.1986 Audit Officer (Administration) directed that the applicant shall stand retired from Government service w.e.f. 1.7.1986 (F.N.). However, the applicant sent a letter dt. 2.6.1986 mentioning that if he was given an assurance that the note submitted by him would be examined, he would like to continue in service. This suggestion was rejected on 6.6.1986, reiterating that the order retiring him from Government service w.e.f. 1.7.1986 (F.N.) would stand. The applicant thereafter sent a number of representations withdrawing his request for voluntary retirement and also protesting against the acceptance of his request for voluntary retirement. Those representations were turned down by the authorities. It is worthwhile to quote the last letter dt. 16.1.1987 from Audit Officer (Administration). It reads as under:

"To:
Shri S.G.Deodhar,
9, Manglya,
Chaware Wadi, Mulund(East),
Bombay - 400 081.

Dt.16.1.1987

Subject: Representation of Shri S.G.Deodhar,
regarding voluntary retirement.

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Sir,

With reference to your representation

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dated 15.9.1986, addressed to Comptroller and Auditor General of India, New Delhi, and copy received in this office from Comptroller and Auditor General of India's office on the subject cited above, I am directed to inform you that you had been writing to this office for permission to retire voluntarily from Government service stipulating therein some conditions. It will be clear from the office memos dt. 18.8.1984 and 19.4.1985 issued by the Accountant General(A&E), Bombay and memo dt. 21.5.1985 issued by this office that both the offices were not willing to accept your conditional notice of voluntary retirement from Government service. In fact, you had been given ample opportunity to plead your cause sans voluntary retirement on any grounds. You had also mentioned in your letter dated 25.4.1986 that during the interview for the post of Welfare Assistant, you had told the Accountant General that you were more anxious to retire from Government service than to accept the post of Welfare Assistant, if selected. All these facts conclude that decision to retire voluntarily was taken by you on your own volition."

The applicant had also requested for inquiring into the circumstances which had led to his voluntary retirement but that request was also rejected by the Administrative Officer (N) in the office of the Comptroller and Auditor General of India by his letter dt. 22.2.1988.

3. On 18.8.1988 the applicant has filed this application under section 19 of the Administrative Tribunals Act praying that "I may be reinstated in service by considering my request seeking permission to withdraw the notice of retirement." The respondents have resisted the application by filing their exhaustive written statement.

4. We have just now heard the applicant in person and Mr.S.R.Atre (for Mr.P.M.Pradhan) for the respondents.

5. It may be noted that the applicant has already retired from Govt. Service w.e.f. 1.7.1986 (F.N.) after completing more than 33 years service. Hence he is getting full pension. He has also received other retirement benefits. As his birth date is 16.11.1931 even in ordinary course he would be retiring on superannuation

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shortly, i.e. on 30.11.1989. Hence it is clear that the applicant has filed this application for some monetary benefits only.

6. As already pointed out, the applicant's 3 letters for permission to retire voluntarily were rejected by the concerned authorities. It was the request in his fourth letter that was accepted by the authorities. In the first three letters he had laid down some conditions, but the fourth letter was unconditional. Mr. Atre showed us a letter of the applicant dt. 25.4.1986. It shows that he was called for interview for the higher post of Welfare Assistant. At the time of interview on 11.4.1986 he was specifically asked as to what was his priority - retirement or the post of Welfare Assistant and the applicant had replied that he was more anxious to retire. This position is also clarified in the letter of Audit Officer (Administration) dt. 16.1.1987. All these circumstances show that the decision of the applicant to retire voluntarily was taken by him voluntarily. The covering letters do show that he was perturbed by some problems in the office. But, in our opinion, these problems would have been taken care of by the higher authorities. The applicant had done his job by pointing out these problems to the higher authorities. In fact some decision was taken by authorities as can be seen from the Circular dt. 18.3.1988 dealing with proper accounting of pension expenditure was issued by the office of the Accountant General (A&E), Maharashtra.

7. The more important question that we are required

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to decide is whether the respondents were justified in rejecting the request of the applicant dt. 2.6.1986 withdrawing his request for voluntary retirement. Rule 48 of the Central Civil Service (Pension) Rules is about retirement of a Government servant on completion of 30 years qualifying service, while the next rule 48A is regarding retirement after completion of 20 years qualifying service. Though in one of his letters the applicant had erroneously mentioned rule 48A, his request for voluntary retirement was under rule 48. Sub-rule 2 of that rule is important in this case and that rule reads as follows:

"A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority.


Provided that the request for withdrawal shall be within the intended date of his retirement."

The above provision makes it clear that a Government servant who has given a notice of voluntary retirement under rule 48(1) cannot withdraw that notice subsequently except with the specific approval of the appointing authority. In this case the appointing authority has rejected the applicant's request for withdrawing his notice of voluntary retirement and we have to consider whether that rejection is proper and legal.

8. After considering all the circumstances, we are satisfied that the decision of the authorities rejecting the applicant's request for withdrawing his request for voluntary retirement was perfectly proper and legal.

9. As already pointed out, the applicant's 3 letters requesting for permission to retire voluntarily were rejected by the authorities. When the applicant still

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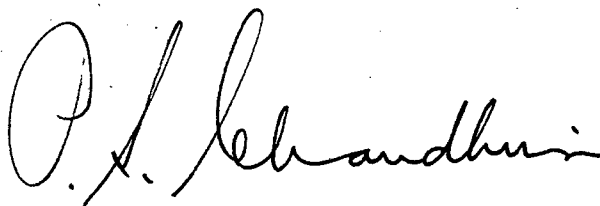


persisted in his request for voluntary retirement the authorities were left with no alternative but to accept it. However, once it was accepted the applicant tried to withdraw it by his letter dt. 2.6.1986. But there was no change in circumstance whatsoever between the previous letters of the applicant for voluntary retirement and the letter dt. 2.6.1986. The problems in the office were still there. As already pointed out the problems were not ~~dx~~ the concern of the applicant alone. He should have left the matter to the higher authorities who were more competent than him to deal with them.

10. In this connection the applicant has relied on a judgment of the Supreme Court in Balram Gupta v. Union of India, 1987 S.C. 2354. In that case a government employee had given notice of 3 months for voluntary retirement under Rule 48(A) of the Central Civil Services (Pension) Rules, 1972. However, he had withdrawn that notice well within time prior to the expiry of the notice period. However, the authorities did not accept the withdrawal notice. The Supreme Court has held that there was no valid reason for withholding the permission by the Government. A perusal of this judgment will show that that case was decided on the facts and circumstances of that case. The Government servant in that case had sent a letter dt. 24.12.1980 to the appropriate authority seeking voluntary retirement on 31.3.1981. By order dt. 20.1.1981 he was allowed to retire from service from 31.3.1981 (A.N.). Two months before he withdrew his notice on the ground that he had changed his mind on account of persistent and personal request of the staff members. As already pointed out the facts of the present case are different. The applicant was all the while insisting for voluntary retirement. It was his fourth notice that

was accepted by the concerned authorities. The correspondence does not show that there was any change in the circumstances between this fourth notice and his application seeking permission to withdraw his resignation. This view finds support in the judgment of the Chandigarh Bench of this Tribunal in Y.P.Chib v. Union of India, 1989(2) S.L.J. CAT 286. In that case, after considering the Supreme Court judgment and the relevant rules and circulars the Tribunal has held that as the applicant had not given any reason to justify withdrawal of a notice for voluntary retirement, the respondents action is not permitting him to withdraw his request was in order. In the present case we are unable to find any reason justifying the applicant's withdrawal of his repeated request for voluntary retirement.

11. In result we find that the ^{application} ~~applicati~~ is without any substance. Hence we dismiss the same with no order as to costs.



(P.S. CHAUDHURI)
MEMBER (A)



(M.B. MUJUMDAR)
MEMBER (J).