

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1190/96

Date of Decision: 20.6.97

Shri Khadilkar Yashwant Dattatray .. Applicant

Shri P.A. Prabhakaran .. Advocate for Applicant

-versus-

Union of India and others .. Respondent(s)

Shri K.D. Kelkar .. Advocate for Respondent(s)


CORAM:

The Hon'ble **Shri B.S. Hegde, Member (J)**

The Hon'ble **Shri M.R. Kolhatkar, Member (A)**

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S. Hegde)  
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH 'GULESTAN' BUILDING NO:6  
PRESC OT ROAD, BOMBAY:1

Original Application No. 1190/96

FRIDAY the 20<sup>th</sup> day of June 1997.

C ORAM: Hon'ble Shri B.S. Hegde, Member (J)  
Hon'ble Shri M.R. Kolhatkar, Member (A)

Khadiikar Yashwant Dattatray  
residing at 1325 Sadashiv Peth,  
Pune.  
Deputy Commissioner of Income Tax  
Range -1, Nashik.

... Applicant.

By Advocate Shri P.A. Prabhakaran.

V/s.

Union of India through  
the Secretary to the  
Government of India,  
Ministry of Finance,  
Department of Revenue,  
New Delhi.

The Chief Commissioner of  
Income-Tax, 'Aayakar Bhavan'  
Sadhu Vaswani Chowk, Pune.

... Respondents.

By Advocate S hri K.D. Kelkar.

ORDER

¶ Per Shri B.S. Hegde, Member(J) ¶

In this O.A. the applicant has  
challenged the impugned order dated 27.11.96.  
The applicant has completed more than 34 years  
of service attaining the age of more than 56 years  
and sought voluntary retirement under Rule FR 56(k)  
and Rule 48(2) of C.C.S.(P) Rules 1972 from service  
with effect from 1.12.96.

2. The brief facts are the applicant  
at the time of filing this O.A. was working as  
Dy. Commissioner of Inc-ome Tax and he was due to



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retire within two years. He was transferred at his request to Pune Charge, where his Home Station is Pune. Again he was posted as Deputy Commissioner of Income Tax (Appeals) Nashik, though he was due for retirement by 30.11.1997, short of 2 years period normally a retiring Government Servant should have been accommodated at his Home Station. Since he did not get desired posting at Pune, he has submitted his voluntary retirement notice under Rule 56(k) indicating that he would like to retire on 1.12.96. The letter was addressed to the Chief Commissioner of Income Tax, though the appointing authority is President of India. Before expiry of notice period the applicant withdrawn his notice of voluntary retirement on 22.10.96 stating that the department has not accepted his voluntary retirement and he intends to withdraw the application for voluntary retirement. The respondents department accepted the voluntary retirement on 27.11.96 in which it is stated that the withdrawal of notice of voluntary retirement given by the applicant has not been accepted.

3. The respondents in their reply submitted that the notice of withdrawal of notice of voluntary retirement was a very plain notice without assigning any reasons. In this connection the learned counsel for the respondents has relied upon Rule 56(k) which states that:

" 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 retirement."

The applicant was allowed to retire from service on 1.12.98. Even otherwise the applicant was due to retire on 30.11.97. The applicant submits that despite his repeated request his notice for voluntary retirement was not accepted. Therefore, he perforce to withdraw the notice for voluntary retirement before the notice period expired.

4. Heard Shri P.A. Prabhakaran for Shri M.A. Mahalle counsel for the applicant. Shri K.D. Kelkar, counsel for the respondents.

5. The short question for consideration is whether the acceptance of notice of voluntary retirement is before the expiry of notice period of voluntary retirement i.e. within three months. The answer is in negative. However, it is contended that under Rules, the notice for voluntary retirement should be addressed to the President of India who is the appointing authority. Therefore, the alleged notice of voluntary retirement is not legal and valid, the same is not sustainable.

6. The respondents in their reply stated that the applicant once opted to retire voluntarily, is precluded from withdrawing it subsequently. The notice of retirement cannot be withdrawn without specific approval of the authority, and since there is no changed circumstances, nor there is any reasons which

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could have induced the authorities to consider, whether the applicant should be permitted to withdraw the notice of voluntary retirement. In this connection, the learned counsel for the applicant has relied upon the decision of the Tribunal in O.A. 83/89 decided on 28.2.89 by the Principal Bench in the case of Shri Narendra Pal Singh V/s. Union of India and others. In that the Tribunal held that "in the absence legal, contractual etc. bar a prospective resignation can be withdrawn at any time before it becomes effective when it operates to terminate the service of the resignor. However, it is stated that withdrawal of voluntary retirement should be treated at par with withdrawal of resignation. In Union of India V/s. Syed Muzaffir Mir's case, the Apex Court held where the Government servant seeks premature retirement, the same does not require any acceptance and comes into effect on the completion of the notice period. In the instant case the withdrawal of voluntary retirement was made prior to the expiry of the notice period, and hence the order of the respondents dated 27.11.96 stating that his voluntary retirement has not been accepted is nonest in the eye of law.

7. In the light of the above, and in the facts and circumstances of the instant case, the withdrawal was done prior to the acceptance of the notice of voluntary retirement by the respondents. In our view, the withdrawal of notice of voluntary retirement is proper and in accordance with Rules. In the result, we allow the O.A. The impugned order dated 27.11.96 is quashed and set aside. No order as to costs.

(Per M.R.Kolhatkar, Member(A))

8. I am inclined to agree with my learned brother Member(J) that the applicant is entitled to succeed. However, I wish to give my own reasons.

9. In this case we have to consider the facts in the context of Rule provisions. The applicant sent a notice of voluntary retirement under FR 56(k) dt. 21-8-1996 stating that he wants to retire w.e.f. 1-12-1996. Thereafter the applicant was transferred from the position of DC Special Range-I which was an onerous charge to DC Income Tax R-1 by order dt. 30-8-1996 which was less onerous. The applicant purported to withdraw the notice of voluntary retirement by his letter dt. 22-10-96. Thus this withdrawal was prior to the purported date of retirement viz. 1-12-1996. At that time the respondent had not accepted the notice. Respondents vide their letter dt. 27-11-1996 accepted the notice of voluntary retirement w.e.f. 1-12-1996. In the same order respondents also stated that the request for withdrawal of notice of voluntary retirement given by Shri Khadilkar has not been accepted. Therefore, the point to note in this case is that when the applicant withdrew his notice of voluntary retirement on 22-10-96 the government had not communicated their acceptance of his notice of voluntary retirement.

10. The counsel for the applicant has relied on Supreme Court judgments in <sup>(1)</sup> Raj Kumar v. U.O.I. AIR 1969 SC 180 <sup>(2)</sup> Union of India & Ors. vs. Gopal Chandra Misra and Ors., 1978 SCC(L&S)303, <sup>(3)</sup> Balram Gupta vs. U.O.I. & another, AIR 1987 SC 2354 and the CAT judgments in <sup>(4)</sup> Narendra Pal Singh vs. UOI

1989(3)AISLJ(CAT)593 and M.S.Narasinha Murthy v. Collector of Customs & Ors., 1988(2)ATLT(CAT)109.

11. Raj Kumar's case, which is a three Judge Bench decision, ~~xxxx~~ was a case relating to resignation by an IAS Officer. It was laid down <sup>therein</sup> that "where a public servant has invited by his letter of resignation determination of his employment, his services normally stand terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary, it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority. Till the resignation is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus paenitentiae but not thereafter." From this it is clear that the power to withdraw has to be specifically provided in the Rules. However, the hon'ble Supreme Court in a subsequent case relating to resignation of a Judge of the High Court, in a Five Judge Constitution bench <sup>viz. in G.C. Misra's case</sup> decision by majority held that in the absence of legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office-tenure of the resignor. This general rule is equally applicable to Government servants and constitutional functionaries.

12. In the above quoted Supreme Court judgment the clause "in the absence of legal, contractual or constitutional bar" is material. The Supreme Court in

Gopal Chandra Misra's case was concerned with interpretation of Article 217(1)<sup>(a)</sup> and there was no provision in that Article corresponding to the provision in FR-56(k) which reads as below :

"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 retirement."

Thus Rule 56(k) is required to be considered on its terms. The judgment in G.C. Misra's case would not be entirely applicable and here it is Balram Gupta's case, AIR 1987 SC 2354 which is more important<sup>and</sup> to the point. In that case also the Delhi High Court had dismissed the appellant's writ petition on the ground that the rule enabled the government servant to withdraw his application for voluntary retirement only with the approval of the Government, and the approval had not been given by the Government, and therefore the rule had been complied with. In Balram Gupta's case the Hon'ble Supreme Court considered Govt. of India's guidelines dt. 24-12-1952 which are also quoted in Annexure B-6 to the OA. The same read as below :

"(2) Withdrawal of notice of retirement not ordinarily permissible :

A question has been raised whether a Government servant who has given to the appropriate authority, a notice of retirement has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such rights. There would, however, be no

objection to permission being given to such a Government servant, on consideration of the circumstances of his case, to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn, if so desired for adequate reasons, provided the Government servant concerned is agreeable."

The Hon'ble Supreme Court observed that :

"Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason."

The Hon'ble Supreme Court also observed that:

"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."

13. In the present case it is contended by the respondents that the applicant had not given reasons for withdrawal of the resignation. However, these reasons are clear from the sequence of events. Consequent on transfer of the applicant to DC <sup>Nashik</sup> (Sp. Range I) applicant represented on 8-8-96 for transferring him to <sup>home town viz.</sup> Pune or <sup>lighter charges of</sup>

DC(Appeals)Nashik. Shortly thereafter he sent a notice of voluntary retirement and in the covering letter of the notice for voluntary retirement he had observed that the reasons for taking a decision to take voluntary retirement under Rule 56-K are not unknown to the Hon. Chief Commissioner. Obviously he was referring to his request for transfer to his home town(Pune) or lighter charge of DC(Appeals)Nashik which he apprehended was not being accepted. Thereafter, however, his request was allowed inasmuch as by order dt. 30-8-96 he was transferred from DCIT Spl.R-1,Nashik to DCIT, R-1, Nashik and his withdrawal letter followed shortly thereafter. It cannot therefore be said that the respondents were unaware of the circumstantial reasons for the withdrawal of the resignation. Respondents, however, appeared to have decided that applicant was exhausted and took the easier way out of accepting the notice.

14. In my view therefore the OA succeeds in view of the binding ratio of the judgment of the Supreme Court in Balram Gupta's case. The judgment of the CAT in Narendra Pal Singh's case is not strictly applicable because it relates to the case of resignation. The CAT judgment in the case of M.S.Narasinha Murthy is applicable but the applicant in this case is in a stronger position than in the case of M.S.Narasinha Murthy because in that case the acceptance of voluntary retirement was communicated to the applicant even prior to the letter of withdrawal whereas in the present case the acceptance was not communicated prior to the date of withdrawal. I am therefore of the view that the OA succeeds and the memorandum of the department

dt. 27-11-96 is liable to be quashed and set aside and is hereby quashed and set aside.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)

-: ORDER :-

O.A. is allowed. The memorandum of the department dt. 27-11-96 is hereby quashed and set aside. The applicant would be entitled to the basic relief by way of reinstatement in the position held by him viz. Deputy Commissioner of Income Tax, his date of birth being 5-11-1939. The intervening period should be regularised as duty and the applicant should be given all consequential benefits. Action in this regard should be taken within two months from the date of communication of this order.

There will be no order as to costs.

*M.R. Kolhatkar*

(M.R. KOLHATKAR)  
Member(A)

*B.S. Hegde*

(B.S. HEGDE)  
Member(J)

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