

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION NO. : 1090/99

Date of Decision : 1st November 2002

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri R.R.Shetty for Advocate for the
Shri R.K.Shetty Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt. Shanta Shastri, Member (A)

(i) To be referred to the reporter or not ? yes

(ii) Whether it needs to be circulated to other Benches of the Tribunal ? no

(iii) Library yes

(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.1090/99

Dated this the 1st day of November 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

Muralidhar R. Hinge,
Office Suptd. Gde.II,
Chief Engineer,
Southern Command,
Pune.

...Applicant

By Advocate Shri S.P.Saxena

vs.

1. The Secretary,
Ministry of Defence,
D.H.Q. P.O. New Delhi.

2. Engineer-in-Chief,
E-in-C's Branch,
AHQ Kashmir House,
New Delhi.

3. The Chief Engineer,
Southern Command,
Pune.

...Respondents

By Advocate Shri R.R.Shetty
for Shri R.K.Shetty

PVN

.2/-

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the declaration that the applicant was entitled for withdrawal of notice of retirement dated 1.9.1998 vide his letter dated 20.11.1998, extension of medical leave vide his letter dated 20.11.1998- the denial of the same entitled the applicant to Rs.60,000/-, entitled to remain in service till 30.9.2001 with all consequential benefits, i.e. reinstatement, arrears of pay and allowances w.e.f.1.12.1998.

2. The applicant joined as L.D.C., rendered 35 years service, applied for voluntary retirement vide application dated 28.4.1998 seeking the retirement w.e.f.31.7.1998 (Ex-D). Vide his letter dated 13.5.1998 requested for withholding of his retirement till the detailed Government letter concerning the enhancement of the date of retirement from 58 years to 60 years was received by the Respondents (Ex-E).

3. The applicant vide his letter dated 1.9.1998 requested for voluntary retirement w.e.f.28.2.1999, which was returned by the Administration vide their letter dated 15.9.1998 (Ex-F).

4. The applicant further submitted the application for voluntary retirement dated 1.9.1998 (Ex-G) which was accepted by the Respondent No.3 vide letter dated 21.9.1998 declaring thereby that the applicant was to stand retired w.e.f.30.11.1998

1/1/-

(Ex-H). The applicant was suffering from Lumber spondilitis, proceeded on medical leave w.e.f.31.10.1998 and was under the treatment of C.G.H.S. which in turn referred the applicant to Sharda Clinic Orthopedic Hospital duly recognised by them. The applicant brought these facts and his inability to join duty to the notice of the Respondent No.3 vide his letter dated 20.11.1998 (Ex-I). The Respondent No.3 by his letter dated 27.11.1998 rejected his request (Ex-J). The applicant submitted departmental appeal/representation dated 15.7.1999 regarding his grievance (Ex-L) which is rejected vide letter dated 3.8.1999 (Ex-M).

5. Vide letter dated 20.11.1998, (Para 2 and 3) the applicant requested the Respondent No.3 for differment of date of retirement until his resumption of duty which is extracted below :-

"However, I am afflicted with "Lumber Spondilitis" with effect from 2nd November, 1998 and have been granted medical leave. As per the medical advice, I may have to be on treatment for at least 2 months. Since I cannot resume duty in such circumstances, I request you to kindly approve Differment of date of retirement until my resumption of duty and oblige.

I shall remain grateful to you for this. I shall intimate you the date of retirement as soon as I join duty. M.C. is enclosed herewith."

6. It is worth mentioning that the applicant was to retire voluntarily w.e.f.30.11.1998 and before the said date of retirement, he submitted application dated 20.11.1998 (Ex-I) which is rejected vide para 2 & 3 of letter dated 27.11.1998, the same is extracted below :-

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"2. The case was put up to the appropriate authority and it has been directed that you will Voluntarily retire from service on 30 Nov.98 (AN) and will be placed on pension list w.e.f.01 Dec. 1998 (FN) as per the acceptance of Voluntary Retirement by the competent authority.

3. You are also hereby directed to report for duty forthwith for clearance before your retirement since your request for Medical Leave has not been granted."

7. The learned counsel for the respondents in reply to the query by the Bench has stated that there is no provision that a person seeking voluntary retirement should be on duty on the last day of working, i.e. the date immediately preceding on which the voluntary retirement takes place. Suffice to state that both the parties were sailing under the wrong impression about the legal position in this respect.

8. The learned counsel for the respondents brought to the notice of the Tribunal the conduct of the applicant regarding his wavering mind about seeking voluntary retirement and argued that there is no provision for ^{Determination} of voluntary retirement. As such, the actions of the respondents are in accordance with law.

9. The learned counsel for the applicant argued that the decision dated 27.11.1998 arrived by Respondent No.3 Adm-officer-I (Adm) for Chief Engineer, who is not a competent authority, as such, the decision deserves to be quashed and set aside. In fact, according to him, the competent authority is Adm-officer-I (Adm) Chief Engineer. The learned counsel for the

PLM ✓

.5/-

respondents placed on record the order dated 1.10.1997 by which the powers were delegated to N.Brig.Satish Kapur which continued upto 17th February,1999. On a careful scrutiny of the orders, we find that N. Brig. Satish Kapur has not passed the impugned order dated 27.11.1998 but the order is passed by K.P.Gangurde, Adm-Officer (Adm) for Chief Engineer.

10. The learned counsel for the applicant relied on (2002) 5 SCC 278 – K.L.E.Society vs. Dr.R.R.Patil & Anr.

"10.(i) A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appointing authority and the approval of the authority competent to approve the appointment provided that the request for such withdrawal is made within the intended date of retirement and the employee is in a position to establish that there has been a material change in the circumstances in consideration of which the notice was originally given.

16. During this period, Respondent 1 sent the letter dated 19.7.1995 requesting that the notice of voluntary retirement dated 5.7.1995 be kept in abeyance. This was not a letter for withdrawing the notice. It was a request that the notice may be kept in abeyance in the sense not considered immediately thus postponing the intended date of retirement. Assuming that the letter dated 19.7.1995 was a notice of withdrawal and that the appellant was right in discarding it, nevertheless the appellant was bound to allow the notice period of three months calculated from 5.7.1995 to expire before issuing an order accepting the notice. Admittedly the appellant did not do that. It issued the impugned order within 15 days.

17. The appellant not having waited for three months from 5.7.1995, the order accepting Respondent 1's request for voluntary retirement was premature and amounted to unilateral curtailment of the notice period by the appellant contrary to the Scheme and more particularly Rule 50(5)(c) thereof. The impugned order cannot but be held to be bad."

On the basis of the said finding, the learned counsel for the applicant argued that when the applicant asked for differment vide his letter dated 20.11.1998 (Ex-I) referred above in para 5 of this order, the decision of the Respondent No.3 to retire the applicant w.e.f. 30.11.1998 cannot be held in accordance with law.

11. The learned counsel for the applicant relied on 1988 (1) A.I.SLJ 79 - Balram Gupta vs. Union of India & Anr. which lays down the proposition that dissolution of relationship of Master and Servant will be complete only when notice period was over and there could be no unilateral dissolution of contract earlier to it.

12. Rule 48-A (4) C.C.S.(Pension) Rules,1972 is extracted below which is applicable in the present case :-

"(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."

13. The persual of the same makes it clear that the criteria for withdrawal is that specific approval of the Appointing Authority is necessary. Normally, when such a request is made by an employee, the Appointing Authority has to take a decision in this respect, which in the present case is not taken by an

J.V.B.I. —

Authority competent to take the same. The criteria to refuse the withdrawal can be only the change of circumstance as - filling up of the post - which falls due on account of voluntary retirement by transfer, promotion of officers from the ^(e) feeder cadre to the post which falls vacant on account of voluntary retirement, abolition of post, transfer of post from one place to another etc. None of the situations existed. As such, the decision arrived by the incompetent authority cannot also ^{be} upheld in the present case.

14. Regarding extention of medical leave - suffice to state that the applicant has himself submitted the fitness certificate on 30.11.1998 hence now he is estopped to plead against the same.

15. In the result, OA. is allowed and it is hereby declared that the applicant is entitled to remain in service till 30.9.2001 with consequential benefits accruing w.e.f.26.11.1999 - the date on which OA. is filed along with costs amounting to Rs.1,000/-. Needful be done within 3 months from the date of receipt of copy of order.

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

S.L.Jain
(S.L.JAIN)
MEMBER (J)

mrj.

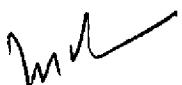
25.1.2006

Applicant by Shri S.P.Saxena.

Respondents by Shri R.K.Shetty.

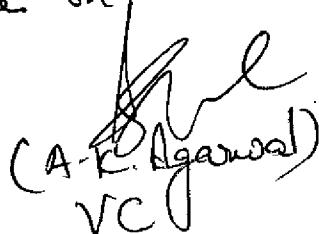
It was mentioned by the learned counsel that Writ Petition filed in the High Court ~~will~~ come up for consideration on 3.2.06.

list this case on 2.3.06.



(S.G.Deshmukh)

M(J)


(A.K. Agarwal)
VC

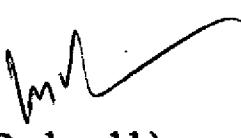
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in OA 1090/99

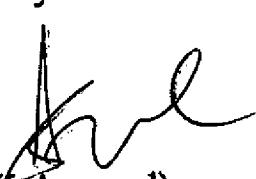
Dt. 2.3.2006

Applicant by Shri S.P.Saxena.

Respondents by Shri R.K.Shetty.

2. It was mentioned by the learned counsel that Hon'ble High Court has admitted the Writ Petition and has also granted stay. The learned counsel for the petitioner submitted that in view of the fact that the case is still pending in the High Court, the CP should be adjourned or kept in the sine die list. However since the High Court has given stay we feel that there is no contempt as at present. In view of this Contempt Petition is dismissed with liberty to file separate petition, if considered necessary.


(S.G.Deshmukh)
Member(J)


(A.K. Agarwal)
Vice Chairman

7/3/06