

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 809/91

Date of Decision: 7-10-1997

D.S. Gallani

Applicant.

Mr. P.A. Prabhakaran

Advocate for
Applicant.

Versus

Commissioner of I.T. & Anor.

Respondent(s)

Mr. S S Karkera for Mr. P M Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G. Vaidyanatha, V.C.

Hon'ble Shri. P.P. Srivastava, M(A)

- (1) To be referred to the Reporter or not? *no*
- (2) Whether it needs to be circulated to *all* other Benches of the Tribunal?

R. Narasimha
V.C.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING No.6
PRESCOT ROAD, MUMBAI 400001

O.A.No. 809/91

DATED : 7TH OCTOBER, 1997

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C>
Hon. Shri P P Srivastava, Member (A)

Dwarka Sanwaladas Gallani
Last employed as UDC
Bk.No. C-Y-1/5 & 6
Lahorshed
Ulhasnagar 3
Dist. Thane
(By Adv. Mr P A Prabhakaran)

..Applicant

V/s.

1. The Commissioner of Income Tax
Range No.2, Mumbai Central-I
Maharashi Karve Road, Mumbai-20

2. Union of India through
Chairman
Central Board of Direct Taxes
New Delhi

(By Adv. Mr. S S Karkera
for Mr. P M Pradhan,
Central Govt. Standing Counsel)

..Respondents

OPEN COURT ORDER

[Per: R G Vaidyanatha, Vice Chairman]

1. This is an application filed under section 19 of the Administrative Tribunals Act 1985. Respondents have filed their reply opposing the application. Heard both the sides. Few facts necessary for disposal of this application are as follows.

2. The applicant was working as Upper Division Clerk (UDC) in the office of the Respondents. After having completed 20 years of service the applicant served a notice of voluntary retirement under Rule 48(j) of the

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Pension Rules vide letter dated 1.8.89 requesting for permission to retire with effect from 31.10.89. The administration accepted the notice and permitted him to retire from 31.10.89 as per order dated 9.10.89. Accordingly the applicant retired from service on 31.10.1989.

3. About one month and two days later the applicant sent a letter dated 5.12.1989 seeking permission to withdraw his notice of voluntary retirement and for permission to join the duty. He sent two to three representations. The administration rejected the request of the applicant for withdrawing the notice of retirement. Hence the applicant has approached this Tribunal for a direction to the respondents to reinstate him and grant all consequential benefits.

4. Respondents case is that once the applicant has voluntarily retired from service he cannot now turn round and say that he should be taken back. ^{That} Apparently the applicant is not entitled for reinstatement. Therefore, the respondents have taken the position that the application is not maintainable and the applicant is not entitled to any relief.

5. The fact that the applicant served a notice of voluntary retirement and it was accepted by the

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Department and he actually retired on 31.01.1989 are admitted facts. The only question is whether after retirement the applicant can seek reinstatement in service after cancelling the order of retirement.

6. The relevant rule is 48(a) of the Pension Rules which clearly provides that after 20 years of service an official can retire by giving three months notice. Sub-section 4 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".

7. It is, therefore, seen that withdrawal of notice can be made before the intended date of retirement. There is no rule enabling an official to seek reinstatement after he has retired from service, but an official is entitled to withdraw his notice during the currency of notice period and before the date of actual retirement. The Rules nowhere provide that after retirement an official can ask for reinstatement. Reliance was placed by the learned counsel for the applicant on para (2) of Government of India's decision at page 371, of Swamy's Pension compilation incorporating CCS Pension Rules, 1991 Ed. The heading itself shows that 'withdrawal of notice

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of retirement not ordinarily permissible'. Though the circular says that normally there is ~~not~~ such right to an official to withdraw the notice of retirement after retirement, it is open to the Government to consider the request of a Government servant on the circumstances of the case and grant leave to withdraw the notice given by the government servant. But there is a rider that no such permission should be granted unless there is material change in the circumstances.

8. Learned counsel for the applicant contended that under this circular the Government is bound to consider the request of the applicant and grant him reinstatement. In the present case the letters of the applicant were considered by the Government and they have rejected his request. The Government has exercised its discretion in refusing the request of the applicant. The Tribunal cannot be expected to substitute its own discretion in the ^{place} ~~case~~ of discretion to be exercised by the competent authority. Whether in ^a ~~the~~ given case permission should be granted or not is ⁱⁿ ~~of~~ the discretion of the competent authority. Hence this Tribunal cannot interfere with that discretion.

9. The other point made out by the learned counsel for the applicant is that similar benefit was granted to some other official after he actually retired and same benefit

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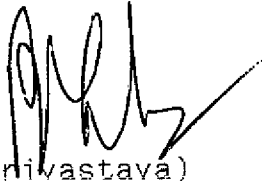
should be extended to the applicant. We are not in a position to say whether that official was granted permission legally. If it is ^{an} question of exercise of discretion then it is open to the administration to exercise discretion depending upon the facts and circumstances and if the administration feels that the applicant has made out a case for withdrawal of resignation they may do so. However, this Tribunal cannot exercise the power of discretion. However, ^{if} the discretion is exercised in favor of some one and illegal orders were passed by permitting some to withdraw the notice of retirement and allowed to join duties, even then we are helpless and cannot interfere. As per the rule laid down by the Apex Court in 1997(2) SC SLJ 257 STATE OF HARYANA Vs. RAM KUMAR MANN that if the Government has taken a wrong decision regarding some other persons, a similar wrong order cannot be extended to some other persons. In our view the applicant after retirement cannot expect this Tribunal to direct the Government to pass similar illegal or wrong order.

above disposition
10. In view of ~~the matter~~ we find that the applicant has retired voluntarily by giving a notice as required by law and was relieved from service and there is no allegation that he had submitted the notice of voluntary retirement under force of anybody. The prayer for reinstatement after setting aside the permission to retire cannot be

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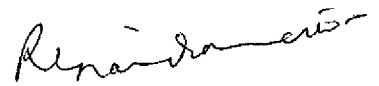
granted and hence the applicant is not entitled to any relief in this case.

11. In the result the application is dismissed. No costs.



(P.P. Shivastava)

Member(A)



(R G Vaidyanatha)

Vice Chairman

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