

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

OPEN COURT / PRE DELIVERY JUDGMENT IN OA 179/92

Hon'ble Vice Chairman / Member (J) / Member (A)

may kindly see the above Judgment for
approval / signature.

B. K. Nagde
V.C. / Member (J) / Member (A) (K/S)

Hon'ble Vice Chairman

Hon'ble Member (J)

Hon'ble Member (A) (K/S)

H. R. Zolhatkar

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

(16)

ORIGINAL APPLICATION NO. 179/1992.

22nd, this the Wednesday day of April 1997.

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

R.S.Sawdekar,
Ajanta Building,
Carter Road,
Khar,
Bombay - 400 052.

... Applicant.

(By Advocate Shri A.I.Bhatkar)

V/s.

1. Union of India,
through the Secretary,
Ministry of Information &
Broadcasting, Shastri Bhavan,
New Delhi - 110 001.
2. The Joint Secretary
(Broadcasting), Information
and Broadcasting Ministry,
Shastri Bhavan,
New Delhi - 110 001.
3. The Deputy Secretary,
Information & Broadcasting
Ministry, Shastri Bhavan,
New Delhi - 110 001.
4. The Director General,
Doordarshan Directorate,
Mandi House,
New Delhi - 110 001.
5. The Additional Director
General (Administration),
Doordarshan Directorate,
Mandi House,
New Delhi - 110 001.

... Respondents.

(By Advocate Shri V.S.Masurkar)

O R D E R

(Per Shri B.S.Hegde, Member(J)).

Heard Shri A.I.Bhatkar, counsel for the
applicant and Shri V.S.Masurkar, counsel for the
respondents. In this O.A. the applicant is challenging
the impugned orders dt. 5.10.1989, 2.11.1989 and
23.3.1991 respectively.

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2. The brief facts of the case are that the applicant joined A.I.R. in 1965. While working as Deputy Director General, Doordarshan Directorate he submitted his application dt. 16/17.8.1989 for voluntary retirement from service with three months notice effecting from 20.8.1989. He further states that he sent his voluntary retirement letter with a view in mind to contest Lok Sabha election from Buldhana District Constituency reserved for SC in Maharashtra. He made another request to postpone his date of voluntary retirement to enable him to file his nomination before 31.10.1989. The Competent Authority (President of India accepted the voluntary retirement of the applicant stating that they accept the resignation of the applicant by their letter dt. 13.9.1989 w.e.f. 20.11.1989 (Ex.4). On receipt of the same, the applicant sent a Telex message stating that he has not resigned from service but sought voluntary retirement vide his letter dt. 26.9.1989, consequent thereupon the Competent Authority rectified its mistake by issuing a corrigendum dt. 5.10.1989 stating that his voluntary retirement is accepted in terms of the provisions of F.R.56(K)(1) w.e.f. 20.11.1989. The applicant on receipt of the same sent a Telex message dt. 18.10.1989 stating that he intends to file nomination for Lok Sabha Election and his notice period be pre-poned from 20.11.1989 to 20.10.1989. He further states that he made his communication very clear in that letter, however, due to inordinate delay on the part of the respondents in postponing the date of his voluntary retirement he could not file his nomination ~~paper~~ by 31.10.1989. The applicant has rendered more than 20 years service and pursuant thereto he made a request to withdraw his

application for voluntary retirement as the purpose for which he was seeking voluntary retirement was defeated, for which he received no reply. The said request was finally turned down by the Respondents vide their letter dt. 26.3.1991 which is being impugned in this O.A. In the reply the learned counsel for the respondents urged that there is no irregularity on the part of the Respondents in accepting the voluntary retirement of the applicant. As a matter of fact the respondents only accepted the terms of voluntary retirement application submitted by the applicant and no change is made. Further in his application there was no mention, whatsoever, about the applicant's intention regarding contesting in Lok Sabha Election. His application was considered by the Government and the order was issued on 13.9.1989 accepting resignation of the applicant w.e.f. 20.11.1989. Since there was a mistake in that order, a corrigendum was issued rectifying the mistake. Therefore, his request for voluntary retirement was accepted within the period of three 2 months notice period. It is conceded that the applicant had sent Telex message requesting the Government respondents to curtail notice period by one month i.e. from 20.11.1989 to 20.10.1989 in order to enable him to file nomination paper before 30.10.1989. He has been asked to submit written communication vide letter dt. 24.10.1989 and the written communication was received on 26.10.1989 and thereafter the Respondents vide Telex message on 2.11.1989 informed the applicant stating that his request for postponing the date of his voluntary retirement had been accepted with immediate effect. It is further urged that the applicant had not sent any communication prior to 2.11.1989 for his reinstatement, even his Telegram dt. 12.7.1990

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also did not mention about his reinstatement. Therefore, it is clear that during the notice period he did not withdraw the voluntary retirement and sought for reinstatement. Thereafter, vide his letter dt. 13.10.1990 addressed to the then Information & Broadcasting Minister, he made a request for reinstatement, this request was considered by the Government and he was informed vide letter dt. 26.3.1991 stating that it had not been found possible to accede to his request for reinstatement/re-employment as it was not permissible under CCS(Pension) Rules, 1972. Since the applicant had sought voluntary retirement on his own volition without any pressure from the Government and the same was duly considered and agreed to, therefore, reconsideration of his request for reinstatement does not arise. Further, since he did not make any request for reinstatement before 2.11.1989 or 20.11.1989 (the notice period) the question of reinstatement does not arise. He made this request after a lapse of 10 months of the expiry of the notice period.

3. In the Rejoinder, the learned counsel for the applicant has refuted the contention of the respondents and stated that he made his intention very clear in submitting his voluntary retirement in order to enable him to contest in the ensuing Lok Sabha Election, since the Lok Sabha Election had been postponed, he had to ask the authority to postpone his acceptance of voluntary retirement before 20.10.1989 so as to enable him to file his nomination by 31.10.1989 being the last date for filing nomination. Further, it is submitted that it is not necessary to mention the purpose for which the employee is seeking voluntary retirement. In the instant

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case since the Elections were declared by the Government on 17.10.1989, immediately thereafter the applicant on 18.10.1989 made an application for preponing the date of retirement.

4. In the light of the above, the short question for consideration is whether the applicant did withdraw the voluntary retirement letter before the expiry of the notice period. During the course of the hearing the learned counsel for the applicant draws our attention to the letter sent by the applicant vide letter dt. 1.11.1989 addressed to the Secretary, Information and Broadcasting Ministry stating that "since the very purpose has been defeated I request the Ministry to consider my voluntary retirement application withdrawn and hence the Ministry's order dt. 5.10.1989 is not acceptable to me". The reply of the department has been filed by the Director General, Doordarshan, who has clearly stated that the written communication sent by the applicant have been received only on 26.10.1989, thereafter the approval taken and of the competent authority was informed to the applicant by Telex on 2.11.1989 that the request for preponing of his voluntary retirement had been accepted with immediate effect. This was followed by Ministry's order dt. 2.11.89. The applicant sent a telegram on 12.7.1990 to the Secretary, Ministry of I & B requesting the authority to prepon it on 20.10.1989 to enable him to file nomination for Lok Sabha before 31.10.1989 and on 2.11.1989 it was decided by the Ministry of its own, this has affected his future life permanently and also appears to affect his pension benefits / Further it is submitted, that the applicant had not sent any

communication prior to that date for his reinstatement i.e. 12.7.1990. Even in earlier communication there was no mention about his reinstatement. He made request for the first time for reinstatement or offering him re-employment only on 13.10.1990 and not before that date. It is further reiterated by the respondents by filing a sur-rejoinder that the Government has not received any request specifically for withdrawal of the notice of voluntary retirement within the prescribed period of three months i.e. before the intended date of voluntary retirement and denied the receipt of his letters dt. 1.11.1989 and 8.11.1989 respectively and the counsel for the applicant has not submitted any proof of despatching the aforesaid two letters allegedly sent by the applicant.

5. The learned counsel for the applicant Shri A.I.Bhatkar draws our attention to the decision of the Supreme Court in the case of Balram Gupta V/s. Union of India & Another (A.I.R. 1987 SC 2354) in support of his contention where a similar issue has been considered by the Apex Court and granted relief to the applicant. In that case the applicant wrote a letter to the Competent Authority dt. 24.12.1980 seeking voluntary retirement on 31.3.1981. He wrote that the notice period of three months be treated from 1.1.1981. By an order dt. 20.1.1981 he was allowed to retire from service prospectively from afternoon of 31.3.1981. In the meantime, on 31.1.1981 the applicant withdrew his notice on ground that on account of persistent and personal request from the staff members he had changed his mind. The applicant was relieved by order dt. 31.3.1981 in which it was also mentioned that his withdrawal application was considered and was found not acceptable. The Apex Court held that it could not be submitted that once notice was given it became

operative immediately, if it was received by the Government and automatically brought about the dissolution of contract after the expiry of the notice period. The dissolution would be brought about only on the date indicated, i.e. 31st of March, 1981, up to that the appellant was and is a Government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule(4) of Rule 48A of the Pension Rules, as a Government servant, to withdraw his notice of voluntary retirement. The facts of the present case is not similar to the facts decided by the Apex Court. In the case before the Apex Court, the applicant has withdrawn the notice for voluntary retirement before the expiry of the notice period, whereas, in the instant case, the respondents have denied that they have received any letters of the applicant for reinstatement before the expiry of the notice period. Further, it is reiterated that before the expiry of the notice period they did not receive any communication from the applicant regarding reinstatement/re-employment. Therefore, the applicant cannot take advantage of the ratio laid down in the case of Balram Gupta which would apply to the facts of that case only. Since there is nothing to show on record that the applicant had sought cancellation of voluntary retirement and seeking reinstatement before the expiry of the notice period, we are afraid, that we are not in a position to give any relief to the applicant at this stage.

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6. In the light of the above, the question to be seen here is whether the ratio laid down in the aforesaid decision would apply to the facts of this case. The learned counsel for the applicant heavily relied upon the aforesaid Judgment in getting the relief in this case. Apart from the letters allegedly sent by the applicant on 1.11.1989 and 8.11.1989 to which the respondents clearly reiterated that they have not received those two letters seeking any reinstatement/re-employment. The Director General, Doordarshan has filed an affidavit in this behalf and in the sur-rejoinder also he has reiterated the same view. In that event of the matter the stand taken by the respondents that the applicant did not withdraw his voluntary retirement within the notice period and regarding reinstatement he made correspondence after a lapse of 10 months firstly by sending a Telegram on 12.7.1990, thereafter he wrote a letter to the Competent Authority vide letter dt. dt. 13.10.1990 seeking for reinstatement. That being the factual position, the aforesaid Supreme Court decision would not apply to the facts of the present case. The contention of the respondents is that they accepted the voluntary retirement as per the request made by the applicant, even the preponement could not be considered before 31.10.1989 as the written request was sent by the applicant on 26.10.1989, thereafter the Competent Authority took a decision which was communicated on 2.11.1989. In that letter it was open to the applicant to put a condition that in case his preponement application is not accepted prior to

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31.10.1989 he should be reinstated in service forthwith which he did not do so in this case. Further, simply relying upon the earlier Judgment of the Supreme Court does not help the applicant because in view of the Apex Court Judgment in Bhupinder Singh V/s. Union of India [1992] THE Apex Court has held that the Judgment of the Court in other cases do not give cause of action, the cause of action has to be reckoned from the actual date i.e. 1989.

7. For the reasons stated above, that since the applicant did not withdraw his voluntary retirement within the specified time of notice period, we do not see any merit in the O.A. and the same is dismissed with no order as to costs.

M.R.Kolhatkar

(M.R.KOLHATKAR)
MEMBER (A)



(B.S. HEGDE)
MEMBER (J).

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