

(52)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 217/90.

Date of Decision : 3.12.1991

T.A.No.

N.S.Natarajan

Petitioner.

Shri N.Raghavan

Advocate for the
petitioner (s)

Versus

The Comptroller & Auditor General of India, Respondent.
New Delhi & another

Shri G.Parmeswara Rao, Advocate for the
Standing Counsel for I.A. & A.D. Respondent (s)

CORAM :

THE HON'BLE MR. R.Balasubramanian : Member(A)

THE HON'BLE MR. T.Chandra Sekhar Reddy : Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

2.3
HRBS
M(A).

HTCSR
M(J).

(53)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.217/90.

Date of Judgment 3.12.1991.

N.S.Natarajan

.. Applicant

Vs.

1. The Comptroller &
Auditor General of India,
New Delhi.

2. The Director of Audit, O/o ~~the Director of Audit~~
South Central Railway,
Secunderabad. .. Respondents

Counsel for the Applicant : Shri N.Raghavan

Counsel for the Respondents : Shri G.Parmeswara Rao,
Standing Counsel for IA & AD.

CORAM:

Hon'ble Shri R.Balasubramanian : Member(A)

Hon'ble Shri T.Chandra Sekhar Reddy : Member(J)

I Judgment as per Hon'ble Shri R.Balasubramanian,
Member(A) I.

This application has been filed by Shri N.S.Natarajan under section 19 of the Administrative Tribunals Act 1985 against the Comptroller & Auditor General of India, New Delhi and another. The prayer in this application is to declare the order dated 11.7.89 of the respondents retiring him from service in acceptance of the voluntary retirement notice submitted by him ~~and~~ ignoring his subsequent withdrawal of the same, as illegal. The applicant wants that he should be treated as continuing in service beyond 11.7.89 also with all consequential benefits thereof.

2. The applicant joined the Railway Audit service in May, 1959 and at the relevant time was working as Audit Officer at Secunderabad. Shri P.Satheendranathan, his colleague at Guntakal and a close friend of his,

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suddenly expired and the applicant was orally told to look after his duties also. Subsequently, on 10.4.89 he was transferred to Guntakal as a regular measure. The applicant had domestic problems such as an ailing wife and school going children. He met the Director and represented his difficulties but with no luck. He was not in a position to move out of Secunderabad. He was also told that he had been chosen for this transfer because he was the one with the longest stay at Secunderabad. Having no other go the applicant sought for voluntary retirement through his letter dated 11.4.89. He also covered the notice period of 90 days with an application for leave. His voluntary retirement was accepted by the respondents vide their letter dated 5.5.89. Subsequently, the respondents, instead of picking out the officer with the next longest stay at Secunderabad chose to promote someone else and issued orders to fill up the vacancy at Guntakal against which the applicant was originally transferred. The applicant realised that this was a change in policy and that this was a departure from their policy to transfer out the personnel with the longest stay. He, therefore, wanted to withdraw his voluntary retirement letter and vide his letter dated 6.7.89 he withdrew the notice he had served on 11.4.89. This was not agreed to by the respondents who issued the impugned order dated 11.7.89 retiring him from service. He, therefore, prays that the orders retiring him be quashed and that he be treated as continuing in service beyond 11.7.89 with all the consequential benefits.

3. The respondents have filed a counter affidavit and oppose the prayer. It is contended that the applicant had been at Secunderabad for almost 30 years from 20.6.60 to 10.4.89 and when the need to post someone at Guntakal arose the choice fell on him. It is also their contention

that having opted for voluntary retirement he was precluded from withdrawing it except with their approval. When the applicant chose to withdraw, the reasons given by him were not convincing and hence they decided not to permit the withdrawal. Since they saw no material change in the situation between the time the voluntary retirement notice was served and when it was withdrawn they did not agree to the withdrawal.

4. We have examined the case and heard the learned counsel for the applicant and the respondents. Sub-rule 4 of Rule 48-A of the Central Civil Services (Pension) Rules 1972 precludes withdrawal of notice of voluntary retirement without approval of the competent authority. The question to be decided in the case is, therefore, whether the respondents are right in denying the permission to withdraw the retirement notice. The applicant relies heavily on the decision of the Hon'ble Supreme Court in the case of Balram Gupta Vs. Union of India (AIR 1987 SC 2354). The respondents on the other hand rely on a decision of the Jabalpur Bench of this Tribunal in the light of the Supreme Court decision referred to. The Supreme Court did not interfere with the rule position. On the other hand it was observed that if the power to withdraw permission was properly exercised, the rule would be a salutary one. It was also observed that in appropriate cases where the Government desires to withhold such permission, it is open to the Government to state the reasons for doing so. The Supreme Court also ~~disapprovingly~~ noted that such power to deny withdrawal of the retirement notice might be used by the Government to ease out disgruntled or reluctant or troublesome employees.

The learned Judges reached the conclusion that the Govt. servant has no right as such to withdraw the notice and return to duty, but there should be no objection to Government giving such permission when the Govt. servant 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. Another aspect examined by the Hon'ble Supreme Court was whether in granting such permission arrangements ~~has~~ already made by the Government acting on the retirement notice ~~should~~ ^{would} not be upset.

The Supreme Court observed:

"In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty a certain amount of flexibility is required, and if such flexibility does not jeopardise Government or Administration, Administration should be graceful enough and allow the appellant (Govt. servant) to withdraw his letter of retirement in the facts and circumstances. Much complications which had arisen (in the case before them) could have been thus avoided by such graceful attitude."

In the case before them the Govt. servant withdrew the notice during the notice period after the acceptance of the notice by the Government. The reason given by the Govt. servant was that after serving the notice persistent and personal requests of colleagues made him drop the idea of voluntary retirement. The Supreme Court held that this was a material change. They also concluded that the Administration had not been jeopardised. The Supreme Court therefore quashed the withholding of the permission sought for by the Govt. servant to withdraw the notice of voluntary retirement.

5. In another similar case, where also the applicant withdrew the retirement notice after its acceptance on the plea that he gave the notice in a disturbed state of mind, the Bangalore Bench of this Tribunal allowed the application holding that the facts of the Balram Gupta case decided by the Supreme Court were in all aspects

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parimateria with the facts of the case (M.S.Narasimhamurthi Vs. Customs) [1988] 8 ATC 106.

6. In the case on which the learned counsel for the respondents relied upon (Here also the applicant withdrew the notice of voluntary retirement after its acceptance) the Jabalpur Bench of this Tribunal decided that there was no material change between the submission and withdrawal of the retirement notice and that the Balram Gupta case of the Hon'ble Supreme Court was not applicable. They, therefore, dismissed the application (Dalip Khan Vs. Union of India) 1990, (1) ATJ 318.

7. In the case before us, the applicant submitted the notice of voluntary retirement on 11.4.89 and it was accepted on 5.5.89. Later, on 6.7.89, he withdrew the notice of voluntary retirement but was not allowed to do so vide the impugned order dated 11.7.89 of the respondents. In the case of Balram Gupta Vs. Union of India, the Hon'ble Supreme Court subjected the action of the respondents to two tests.

(a) Whether there had been a material change between the time the Govt. servant submitted his voluntary retirement and the time when he withdrew the same.

(b) Whether the Government interest had been jeopardised.

8. We shall now subject the action of the respondents to the same two tests.

(a) Whether there had been a material change between the time the notice was served and when it was withdrawn.

The applicant was transferred to Guntakal after a long stay (it is stated by the respondents that he had been in Secunderabad for almost 30 years whereas the applicant in his representation dated 13.7.89 points out that for 3½ years between 1975 and 1979 he was posted at Delhi).

N.B.

Nevertheless he does not dispute the fact that he was the one with the longest stay in Secunderabad. The question of transfer is not the issue before us. When the transfer orders were issued, the applicant met his superiors who gave him to understand that he was being shifted to Guntakal because he was the one with the longest stay in Secunderabad. The applicant realised the situation and under compulsion of domestic conditions which forced him to remain in Secunderabad ~~only~~ he had no alternative but to take the drastic step of submitting voluntary retirement. The step that was taken by the respondents later hardly does them any credit. After telling the applicant that he had to be shifted because he was the one with the longest stay, when it came to filling up the vacancy at Guntakal they did not shift the person with the next longest stay from Secunderabad. Instead, they had filled^{it} up with someone else which is a departure from their previous policy. In the action of theirs the applicant saw a change in the transfer policy. By their action the respondents had brought about a material change in the guidelines they were adopting for transfer of officials from one place to another. When he saw this change, the applicant was prompted to drop the idea of voluntary retirement and hence his withdrawal of the notice. We, therefore, clearly see that there has been a material change in the circumstances in consideration of which the notice was originally given.

(b) The other aspect to be seen is whether the alternative arrangement made by the respondents in the light of the voluntary retirement notice would have been ~~upset~~ causing ^{ad} dislocation if the withdrawal of the notice ~~was~~ ~~had not been~~ permitted.

To

1. The Comptroller & Auditor General of India,
New Delhi.
2. The Director of Audit, S.C.Railway, Secunderabad.
3. One copy to Mr.N.Raghavan, Advocate, 113, Jeera Compound,
Secunderabad.
4. One copy to Mr.G.Parameswara Rao, SC for AG, CAT.Hyd.
5. One COPY to Hon'ble Sri R. Balakrishnanian, member (A), C.A.T, Hyd.
6. One Copy to Hon'ble Sri T. Chandra Sekhar Reddy, member (J) CAT, Hyd.
7. Two spare copies.

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In the course of the hearing the learned counsel for the applicant stated that the post held by the applicant remained unfilled for a long time and his rejoining would not have upset any administrative arrangements made. The respondents have filed an additional counter affidavit in which it is stated that they had posted one Shri V.Ramanathan, a Member of the I.A. & A.S. in the vacancy arising due to the retirement of the applicant. It is not averred by them that he joined the post held by the applicant before 11.7.89. It is also not contended that there would be serious dislocation if the applicant was allowed to join. As against this, there is the statement of the applicant that the vacancy arising out of his retirement remained ^{unfilled} even after he was retired on 11.7.89. We have, therefore, to conclude that at the relevant time no serious dislocation would have been caused if the applicant had been permitted to withdraw the retirement notice. The respondents have not made out a case that acceding to the request of the applicant would have jeopardised Government or Administration

9. Summing up, we cannot help remarking that the respondents had seized the opportunity to ease out an uncomfortable employee who ~~defied~~ ^{awarded} their transfer order. In this context it is relevant to refer to the remarks of the Hon'ble Supreme Court "The court cannot but condemn circuitous ways to ease out uncomfortable employees". In the result, we hold that the impugned orders No.AU/Admn/4/A and G.O.O.No.26, both dated 11.7.89, are liable to be quashed and we quash them accordingly. We direct the respondents to treat the applicant as continuing in service beyond ~~1~~ ^{also} with all consequential benefits. The direction given in the O.A. should be implemented by the respondents within a period of two months from the date of receipt of this order. There is no order as to costs.

R.Balasubramanian
(R.Balasubramanian)
Member(A).

Dated 3rd December 91

(T.Chandra Sekhar Re
Member(J).)

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Deputy Registrar (29/12/91).

(8)
TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

:V.C

AND

THE HON'BLE MR.

M(J)

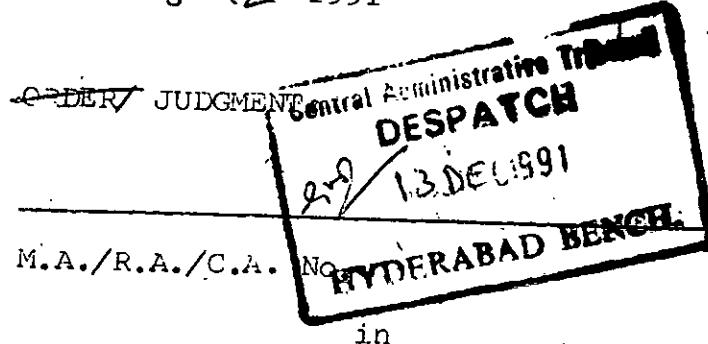
AND

THE HON'BLE MR. R. BALASUBRAMANIAN :M(A)

AND

THE HON'BLE MR. T. Chandrasekhar Rao :M(J)

DATED: 3 - 12 - 1991



O.A. No. 217/90

T.A. No.

(W.P. No.)

Admitted and Interim directions
Issued.

Allowd.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default.

M.A. Ordered/Rejected

1.0 order as to costs...

pvm

Deeplakshmi
12/12/91