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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

OA No.160/96

Date of Decision: 25.4.1997

BETWEEN:

M. RATNAGIRI RAO

.. APPLICANT

AND

1. Director General,  
Council of Scientific and  
Industrial Research,  
Rafi Marg,  
New Delhi.
2. Regional Director,  
National Geophysical Research  
Institute,  
Uppal,  
Hyderabad

.. Respondents

Counsel for the Applicant: Mr. Vilas V. Afzulpurkar

Counsel for the Respondents: Mr. C.B. Desai

CORAM:

THE HON'BLE SRI R. RANGARAJAN: MEMBER (ADMN.)

THE HON'BLE SRI B.S. JAI PARAMESHWAR: MEMBER (JUDL.)

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JUDGEMENT

(Per Hon'ble Sri B.S. Jai Parameshwar: Member(Judl.))

Heard Sri V. Afzalpurkar the learned counsel for the applicant and Sri C.B. Desai for the respondents.

The case of the applicant in brief is as under:-

The applicant was appointed as Sr. Technical Assistant during 1975 at National Aero Space Laboratory, Bangalore.

Later he was promoted as Scientist 'B' during 1982. Presently he <sup>is</sup> was holding the post of Scientist 'C' in the pay scale of Rs.2000/- - Rs.4,500/-. While working as Scientist 'C' under the respondents the applicant submitted an application Dt.10th October, 1995 seeking permission to retire from service voluntarily effective from 10.1.1996. As on the day of his voluntary retirement he was attaining the age of 52 years and 9 days and was completing 20 years 2 months and 12 days of service in the CSIR. The Director, NGRI, through his Office Memo No.NGRI-10/1292/89-Estt. Dt.20th November, 1995 granted permission to the applicant to retire from service voluntarily effective from 10.1.1996.

However, on 14.12.1995 the applicant sought permission to withdraw his request for voluntary retirement and further requested the authorities to continue him in service beyond 10.1.1996.

The Administrative Officer of the NGRI through official memorandum No.SGRI-10/1292/89-Estt. Dt.9.1.1996 (Annexure-5) declined the request of the applicant to withdraw his application for voluntary retirement. The reasons stated therein was that "his services were no longer required and his services are found to be surplus in the institute".

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The applicant has filed this OA challenging the propriety of the impugned order (Annexure-5) Dt. 9.1.1996 as illegal, arbitrary and bad in law and for consequential direction to respondents to continue him in service of the institute beyond 10.1.1996 with all consequential benefits.

In the OA it is stated that confirmation of punishment as a result of the disciplinary proceedings held against the applicant and due to domestic difficulties he was constrained to submit the application Dt.10.10.95 seeking permission to retire from service voluntarily. It is also stated that on a subsequent consideration and deliberations with <sup>ultimate</sup> ~~with~~ <sup>re-</sup> ~~deliberations~~ of the members of the family he felt it justified to request the authorities to permit him to withdraw the letter dated 10.10.1995 seeking voluntary retirement. It is stated that he exercised his option <sup>to</sup> withdraw the letter of voluntary retirement before the date of actual retirement i.e. before 10.1.1996.

A counter has been filed by the respondents stating that the Director, NGRI considered the application Dt.14.12.95 submitted by the applicant seeking permission for withdrawal of letter for voluntary retirement that since his services were no longer required and were found to be surplus his request was rejected that it was notified that the applicant be relieved of his duties effective from 10.1.96 that on 21.9.1996 the applicant applied for settlement of benefits that at page-5 of the counter the details of the amount due and payable, amount due and recoverable from the applicant and amount paid to the applicant have been clearly stated. It is stated that a sum of Rs.2,28,148/- was the amount due and payable to the applicant that a sum of Rs.1,41,935/- was due from the applicant and therefore a sum of Rs.1,05,805/- has been paid to the applicant. Further the chronological events which led to the retirement of the

applicant voluntarily have been indicated. It is submitted that under the rules notice for voluntary retirement can be withdrawn with the permission and specific approval of the appointing authority in case the request is made within the intended date of retirement that in this case the applicant seeking permission though submitted an application to withdraw his application dated 10.10.95 within 10.1.95-the intended date of voluntary retirement, the appointing authority for reasons stated in the impugned order declined the request of the applicant that services of the applicant were not above board that Rule 48 (A) of the CCS (Pension) Rules is applicable to the employees of the institute that since the Director found the services of the applicant unnecessary and found the same to be surplus he was justified in declining the request.

During the course of arguments the learned counsel for the applicant mainly relied upon the decision of the Hon'ble Supreme Court of India in the case of Balaram Gupta Vs Union of India (AIR 1987) Supreme Court Co. 2354; M/s J.K. Cotton Spinning & Cotton Mills/Ltd. Vs. State of Uttar Pradesh and others (Air 1990 Supreme Court and page 1908);/Punjab National Bank Vs. P.K. Mudali (AIR Supreme Court 1993; Mr. M. Mathai Vs. Secretary, Ministry of Defence, New Delhi and others (1989) 11 ACT 349.

In the case of Balaram Gupta Vs. Union of India and another the observations made by the Honourable Supreme Court at paras 8, 11 & 12 are relevant to the facts of this case. They are reproduced hereunder:



" Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to case of this nature because here the Government servant cannot withdraw except with the approval of such authority.

" There the court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has *locus poenitentiae* but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the applicant, in our opinion, had *locus*.

" If, however, the administration had made arrangements acting on his resignation or letter of retirement to make the other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected.

In the case of Mathai Vs. Secretary, Ministry of Defence, New Delhi, the Madras Bench of this Tribunal has explained the powers of the appointing authority in refusing or accepting the letter for withdrawal of voluntary retirement. In para-7 the Tribunal has observed as follows:-

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" In case of accord of sanction or refusal of sanction for the withdrawal, whether it be under sub-rule (2) of Rule 48 or under sub-rule rule (4) of Rule 48-A, the appointing authority is bound to act reasonably and rationally. The paramount consideration in such a case shall be the reasons which prompted the Government servant for exercising the election to retire and those for withdrawal of the same. We had occasion to point out in the decision in <sup>43</sup> Mrs. Baby V. Air Officer Commanding-in-Chief that a decision has to be arrived at by the appointing authority based on such reasons, and not on irrelevant and extraneous considerations. In the said decision we had referred to the decision of the Supreme Court in Balaram Gupta V. Union of India where it was pointed out that in such matters certain amount of flexibility is required, and if such flexibility does not jeopardize government, it should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow a government servant to withdraw his letter of retirement. We had held in the aforesaid decision that the power, that is conferred on the appointing authority in the matter of accord of approval for withdrawing the election cannot be made use of to dispense with the services of a government servant, who may be a troublesome element, a stormy petrel. "

It is in accordance with the principles quoted from the above cited decision we have/consider whether the Director, NGRI, had properly considered the letter Dt.14.12.1995 submitted by the applicant seeking continuance of service beyond 10.1.1996 and to withdraw his earlier letter Dt.10.10.95 seeking voluntary retirement.

We have already extracted above the reasons indicated by the Director to reject the request of the applicant to withdraw his letter Dt.10.10.95. We are constrained to observe that the Director has not applied his mind to the facts and circumstances stated by the applicant in his application. Even the Director has not disclosed any cogent reasons for declining the request of the applicant. The power exercised by the Director can neither be termed as reasonable nor rational. Therefore, in our view the impugned order cannot be sustained.

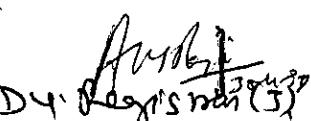
Hence we have no other alternative but to direct the respondents to take the applicant back to service. Applicant shall before entering into service refund all the pensionary benefits received by him forthwith. ~~The period from the date of entry of the applicant till the date of his reinstated shall be deducted as per rules~~ With the above directions the OA is allowed but no order as to costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)

25-4-97

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

Date: 25-4-97

  
D.Y. Regis (S)

Copy to:-

1. The Director General, Council of Scientific and Industrial Research, Rafi Marg, New Delhi.
2. Regional Director, National Geophysical Research Institute, Uppal, Hyd.
3. One copy to Sri. Vilas V. Afzalpurkar, advocate, CAT, Hyd.
4. One copy to Sri. C.B. Desai, SC for ICAR, CAT, Hyd.
5. One copy to Deputy Registrar(A), CAT, Hyd.
6. One spare copy.

Rsm/-

CC/TS/97  
C.C. Today  
30/4/97.

TYPED BY

COMPARED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R.R. GURJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:

M(J)

DATED:

25/4/97

ORDER/JUDGEMENT

R.A/C.P/M.A. NO.

D.A. NO.

16696

ADMITTED INTERIM DIRECTIONS ISSUED  
ALLOWED  
DISPOSED OF WITH DIRECTIONS  
DISMISSED  
DISMISSED AS WITHDRAWN  
ORDERED/REJECTED  
NO ORDER AS TO COSTS

YLR

II COURT

