

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

O.A.No.271/2001

Date of order: 5/10/2007

Krishna Avtar, S/o Sh.Paras Ramji, R/o 30/1810,  
Prakash Road, Nagara, Ajmer.

...Applicant.

Vs.

1. Union of India through the General Manager, W.Rly,  
Churchgate, Mumbai.
2. The Dy.Controller of Stores (Estt) W.Rly. Ajmer.

...Respondents.

Mr.Anupam Agarwal : Counsel for applicant

Mr.U.D. Sharma : for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member.

PER HON'BLE MR S.K.AGARWAL, JUDICIAL MEMBER.

In this O.A filed under Sec.19 of the ATs Act, 1985, the applicant makes a prayer to quash the order dated 11.5.2001 (Annx.A1) and to direct the respondents to continue the applicant in service as if he has not made any application for seeking voluntary retirement.

2. Facts of the case as stated by the applicant are that the applicant moved an application on 21.3.01 for seeking voluntary retirement w.e.f. 30.6.01. Thereafter on 10.5.01 the applicant moved another application to make the effective date of his voluntary retirement as on 31.7.01. It is stated that the applicant moved an application on 28.5.01 for withdrawal of his voluntary retirement. However, the respondents had passed order dated 11.5.01 accepting the voluntary retirement of the applicant w.e.f. 30.6.01. It is also stated that the applicant also moved another application on 18.6.01 but on 23.6.01, the respondents'

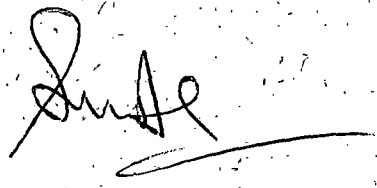


department issued an order rejecting the prayer of the applicant for withdrawal of his voluntary retirement. It is stated that denial of withdrawal of voluntary retirement made by the applicant is arbitrary, capricious and illegal therefore, liable to be quashed, Therefore, the applicant filed this O.A for the relief as above.

3. Reply was filed. It is stated in the reply that the application dated 28.5.01 praying for according permission to withdraw the request of voluntary retirement w.e.f. 30.6.01 was considered by the competent authority and was rejected on the ground that voluntary retirement w.e.f. 30.6.01 has already been accepted vide order dated 11.5.01 as such the order already passed on 11.5.01 cannot be cancelled. It is stated that the subsequent request seeking voluntary retirement w.e.f. 31.7.01 was in supercession of his earlier application, hence request for voluntary retirement w.e.f. 30.6.01 was no longer in existence. It is also stated that since the applicant has not withdrawn his subsequent request for voluntary retirement w.e.f. 31.7.01, he stands automatically retired w.e.f. 31.7.01 in terms of Rule 66 of Railway Pension Rules and the applicant was precluded from withdrawing his request for voluntary retirement except with the specific approval of the competent authority. It is stated that the competent authority has declined the request of the applicant to withdraw his voluntary retirement w.e.f. 30.6.01. Therefore, the applicant has no case.

4. Heard the learned counsel for the parties and also perused the whole record.

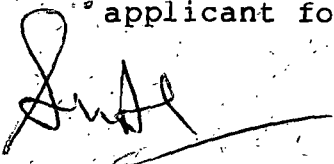
5. The learned counsel for the respondents has



vehemently argued and emphasised that in view of subsequent application seeking voluntary retirement w.e.f. 31.7.01 the applicant's earlier request for voluntary retirement w.e.f. 30.6.01 was no longer in existence and the applicant had not withdrawn his request for voluntary retirement w.e.f. 31.7.01, hence the order dated 23.6.01 was perfectly legal and valid and the applicant has no case. In support of his contentions he has referred Tirath Singh Vs. UOI & Ors, 1990(6) SLR 516.

6. I have given anxious consideration to the contentions of the learned counsel for the respondents and also perused the whole record. In my opinion the contentions of the learned counsel for the respondents has no force in view of the facts and circumstances of this case.

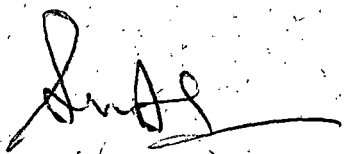
7. The term voluntary retirement denotes in itself that this kind of retirement is at the desire of the person concerned and if it is thrust upon the employee, its very purpose would be frustrated. On a perusal of order dated 23.6.01, it appears that the respondents' department rejected the application dated 28.5.01 on the ground that the applicant took the decision of seeking voluntary retirement after due care and caution and the same was also accepted, therefore, in view of the facts and circumstances the prayer for withdrawal of seeking voluntary retirement by the applicant cannot be allowed. In my considered opinion the decision of the respondents' department in not allowing the prayer of the applicant for withdrawal of his voluntary retirement is not only arbitrary and capricious but against the settled principles of law and there cannot be a better example of arbitrariness than this on the part of the respondents' department in rejecting the prayer of the applicant for withdrawal of his voluntary retirement.



8. The controversy in question is not res-integra as the Hon'ble Supreme Court has settled the same.

9. In Balram Gupta Vs. UOI, 1987 (Supp) 1 SCC 228, it has been held by the Apex Court that notice of the voluntary retirement, has to be ranked in parity with a letter of resignation and it can be withdrawn at any time before retirement takes effect notwithstanding any rule providing for obtaining specific approval of the concerned authority as a condition precedent for withdrawal of notice. The Apex Court has held that a certain amount of flexibility is required and if such flexibility does not jeopardise government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow withdrawal of the letter seeking voluntary retirement in the facts and circumstances of the case.

10. In J.N.Srivastava Vs. UOI & Anr, 1998 SCC (L&S) 1251, it was held by Hon'ble Supreme Court that it was submitted by learned Senior Counsel for the respondent authorities that no back salary should be allowed to the appellant as the appellant did not work and therefore, on the principle of no work no pay, this amount should not be given to the appellant. This submission of learned Senior Counsel does not bear scrutiny as the appellant was always ready and willing to work but the respondents did not allow him to work after 31.1.90. The respondents are directed to make available all the requisite monetary benefits to the appellant as per the present order within a period of 8 weeks on the receipt of copy of this order at their end. Office shall send the same to the respondents at the



earliest.

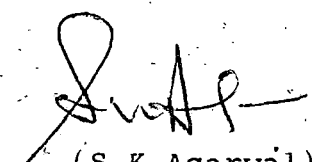
11. In Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatt, 1997(4) JT SC 300, the decision given in Balram Gupta (supra) was followed.

12. In Shambhu Murari Sinha Vs. Project and Development India, 2000(6) JT 359, it was held by the Apex Court that the application for voluntary retirement and resignation can be withdrawn before it was made effective.

13. On the basis of the above settled legal position, it can be said that application for voluntary retirement can be withdrawn at any date before it is made effective.

14. I, therefore, allow this O.A and quash the impugned order dated 11.5.2001 by which the application for seeking voluntary retirement of the applicant was accepted. As the order dated 11.5.2001 has been quash, the order dated 23.6.2001 has become <sup>automatically</sup> redundant.

15. No order as to costs.

  
(S.K. Agarwal)

Member (J).