

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

Date of decision: 20-01.2004

OA No.454/2003

Pyare Lal Sharma s/o Shri Ramsaroop Sharma r/o 5 Gha 3,
Housing Board, Shastri Nagar, Jaipur.

.. Applicant

VERSUS

1. Union of India through the Secretary, Ministry of Mines and Coal, Deptt. of Mines, Shastri Bhawan, New Delhi.
2. Director General, Geological Survey of India, 27, Jawahar Lal Nehru Road, Kolkata.
3. Dy. Director General, Geological Survey of India, Western Region, 15-16, Jhalana Doongaari, Jaipur.
4. Director (SG) and Head of the Office, Geological Survey of India, Western Region, 15-16 Jhalana Doongari, Jaipur.
5. Director (Drilling SG, D/Division, Geological Survey of India, Western Region, 15-16, Jhalana Doongari, Jaipur.

.. Respondents

Mr Mahendra Shah - counsel for the applicant

Mr. N.C.Goyal, counsel for the respondents.

CORAM:

Hon'ble Mr. M.L.Chauhan, Member (Judicial)

ORDER

Per Hon'ble Mr. M.L.Chauhan.

The applicant while working as Assistant in Drilling Division of Director (Drilling), Geological Survey of India, Western Region, Jaipur submitted an application through proper channel for voluntary retirement vide letter dated 30th June, 2003 (Ann.A1). The

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said letter which was addressed to the Deputy Director General, Geological Survey of India, Western Region, Jaipur, inter alia, provide as follows:-

"Due to ill-health of my wife and family problems, I am not in a position to continue in my service. I would request you kindly to accept my voluntary retirement w.e.f. October, 2003 (Forenoon) and oblige."

1.1 The said application was forwarded on the same day by the Director (Drilling) SG to the Deputy Director General, Jaipur thereby stating that the applicant had completed 29 years 6 months qualifying service. His service for the period from 10.1.74 to 31.3.2000 has already been verified and his notice for voluntary retirement may please be accepted under Rule 48 A of CCS (Pension) Rules. The said request of the applicant was accepted vide letter dated 15.7.2003 (Ann.A3) wherein it has been stated that notice of voluntary retirement in respect of the applicant has been accepted by the Dy. Director General, G.S.I., W.R., Jaipur in terms of rule 48 (A) of CCS (Pension) Rules w.e.f. 01.10.2003 (FN).

1.2 Thereafter the applicant remained silent for considerable period and subsequently vide letter dated 8.9.2003 making reference to his earlier application dated 30.6.2003 and also letter dated 15.7.2003 whereby his request for voluntary retirement was accepted, requested that his application for voluntary retirement may be cancelled. The said letter, inter alia, provides as follows:-

"This is to request you that I submitted an application for voluntary retirement on 30.6.2003. As per your letter cited above my

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voluntary retirement is to be effected from 1.10.2003 (FN).

At present the circumstances have changed i.e. health of my wife have improved and family problems have normalised, therefore, I am not interested to take the voluntary retirement and seek the permission to withdraw my notice for voluntary retirement.

Therefore, I request you kindly treat my application for voluntary retirement as cancelled."

1.3 The grievance of the applicant as can be seen from para 4.6 of the OA is that the applicant withdrew his application seeking voluntary retirement well before the actual date of voluntary retirement i.e. 1.10.2003, under his legal right, but instead of accepting his application dated 8.9.2003 seeking cancellation of his earlier application dated 30.6.2003 through which he sought voluntary retirement w.e.f. 1.10.2003, the respondents have acted illegally in not accepting his application dated 8.9.2003 in arbitrary manner which is violative of article 14 and 16 of the Constitution of India. It may be added here that though the applicant has stated that his request for cancellation of his earlier application for voluntary retirement has not been accepted but the applicant is silent about the order passed by the respondents on his application dated 8.9.2003 for withdrawal of his earlier application for voluntary retirement and has not challenged the same. The applicant filed the present OA only one day earlier to the last date of retirement which was to become effective w.e.f.

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time the administration had made arrangements to fill the post of Assistant including the vacancy which was to fall vacant on account of retirement of the applicant. It is not a case where the respondents have acted swiftly in declining the request for extreneous consideration without any adequate reasons. The application for withdrawal of notice for voluntary retirement was submitted subsequently when the respondents have already made arrangements for filling up the post and promotion was made and some of the candidates have also joined. At that point of time, the respondents were justified in proceedings with the matter on the basis of acceptance of the notice for voluntary retirement vide order dated 15.7.2003 and also submission of pension papers by the applicant duly signed as far back as 6.8.2003/14.8.2003.

3.4 On the basis of the facts as stated above, the question which requires my consideration in this case is whether in the circumstances of the case the respondents were justified in withholding permission for withdrawal of notice for voluntary retirement in terms of sub-rule (4) of Rule 48-A of Pension Rules and in declining such permission, the respondents have properly exercised the power reasonably and rationally and, approval is not ipse-dixit of the approving authoirity. Further question which may require consideration is whether the applicant can withdraw his resignation after its acceptance though before the effective date. In order to decide this issue, it is relevant to quote the relevant provision. The case of the applicant for voluntary retirement was considered under Rule 48-A of the Pension Rules and this fact is not in dispute. The Rule 48-A provides as follows:-

48-A. Retirement on completion of 20 years'

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voluntary retirement is to be effected from 1.10.2003 (FN).

At present the circumstances have changed i.e. health of my wife have improved and family problems have normalised, therefore, I am not interested to take the voluntary retirement and seek the permission to withdraw my notice for voluntary retirement.

Therefore, I request you kindly treat my application for voluntary retirement as cancelled."

1.3 The grievance of the applicant as can be seen from para 4.6 of the OA is that the applicant withdrew his application seeking voluntary retirement well before the actual date of voluntary retirement i.e. 1.10.2003, under his legal right, but instead of accepting his application dated 8.9.2003 seeking cancellation of his earlier application dated 30.6.2003 through which he sought voluntary retirement w.e.f. 1.10.2003, the respondents have acted illegally in not accepting his application dated 8.9.2003 in arbitrary manner which is violative of article 14 and 16 of the Constitution of India. It may be added here that though the applicant has stated that his request for cancellation of his earlier application for voluntary retirement has not been accepted but the applicant is silent about the order passed by the respondents on his application dated 8.9.2003 for withdrawal of his earlier application for voluntary retirement and has not challenged the same. The applicant filed the present OA only one day earlier to the last date of retirement which was to become effective w.e.f.

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1.10.2002 and when the matter was listed before this Tribunal, ex-parte stay was granted to the applicant on the basis of the decision of the Apex Court in the case of Shambhu Murari Sinha vs. Project and Development of India Ltd. and Anr., 2002 (2) Supreme Today 391, which stay is still continuing.

2. Notice of this application was given to the respondents. The respondents have filed reply. The respondents have also filed application for vacation of stay order. In the reply, the respondents have stated that the application for voluntary retirement dated 30.6.2002 under Rule 48-A of CCS (Pension) Rules, 1972 (Pension Rules, for short) was accepted by the order dated 15.7.2003 by the competent authority. Once the application for voluntary retirement is accepted by the competent authority that cannot be withdrawn without the specific approval of such authority as provided under Rule 48-A of Pension Rules. It is further stated that the applicant being an employee under the Govt. of India is governed by the CCS (Pension) Rules and these rule provide as to how the once application for voluntary retirement is given, cannot be withdrawn without the specific approval of the competent authority. As such, action of the respondents is within rules.

2.1 The respondents have also filed MA No.47/2003 thereby annexing copy of pension papers (Ann.MAR/1) and copy of the DPC proceedings held on 3.9.2003 alongwith letter of offer and joining report. In this application, it has been stated that after accepting the notice for voluntary retirement dated 15.7.2003, the applicant had submitted the pension papers on 14.8.2003 (Ann.MAR/1). It

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is further stated that the department/replying respondents considering the vacancies of Assistant including the vacancy which the applicant was occupying, as vacant w.e.f. 1.10.2003 proceeded to hold the DPC to fill up the vacancies alongwith other vacancies. The DPC was held on 3.9.2003 for considering promotion on the post of Assistant. There were 5 vacancies including the vacancy to be vacated by the applicant. Six names were under consideration before the DPC for considering promotion on the post of Assistant for 5 vacancies. Out of these six vacancies, one candidate was regarded as unfit by the DPC for the post of Assistant. Shri Ram Chandra Meena has been regarded as unfit by the DPC and Shri Ram Swaroop (SC), Shri George Thomas and Shri Ram Gopal Raigar (SC) have been offered promotion on 4.9.03 and they have joined as Assistant on 4.9.03. The next candidate in the select list was Shri Prahlad Rai Tekchandani and the next candidate in the select list was to be offered promotion against the vacancy caused by voluntary retirement of the applicant w.e.f. 1.10.2003. He has not been given promotion due to the stay granted by the Hon'ble Tribunal staying the order dated 15.7.2003. The next candidate in the select list Smt. Hardevi Tahiliani was to be offered promotion on 1.11.2003, which is to be vacated by Shri N.K.Chabra, who was due to retire on superannuation on 31.10.2003. Now Shri Prahlad Rai Tekchandani has been offered promotion on the post of Assistant w.e.f. 3.11.2003 (as 1st and 2nd Nov.2003 were holidays). He has joined on 3.11.2003. The next candidate Smt. Hardevi Tahiliani is remaining for giving promotion on the post of Assistant. Copy of the DPC proceedings held on 3.9.2003 and offering letter has been annexed as Ann.MAR/2.

2.2 According to the respondents, the department has initiated action to fill up the vacancies on 3.9.2003, much prior to the date on which withdrawal of notice was sought, which in the instant case is 8.9.2003, therefore, the relationship between an employer and an employee has been ceased on 15.7.2003 itself. The applicant has also shown his clear intention for ceasing the relationship between an employer and an employee by submitting the pension papers and the department by accepting the notice on 15.7.2003 and initiating process for filling up the vacancies.

2.3 The applicant has also filed reply to this MA. In this reply, additional plea has been taken that similarly situated person Shri G.R.Murjhani was allowed, who has also sought voluntary retirement even on the same date of retirement, to continue in service whereas the applicant was not granted such permission. As such double yardsticks are not permissible in the eyes of law which has been adopted by the respondents.

3. I have heard the learned counsel for the parties and gone through the material placed on record.

3.1 The main contention of the learned counsel for the applicant is that the notice of voluntary retirement can be withdrawn before the effective date which in the instant case is 1.10.2003 and such withdrawal is valid in law in view of the law laid down by the Apex Court in the case of Shambhu Murari Sinha vs. Project and Development of India Ltd. and Anrs., 2002 (2) Supreme Today 391.

3.2 On the other hand, the learned counsel for the respondents argued that in view of the provisions contained in Sub-rule (4) of Rule 48 (A) of Pension Rules,

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once the option to voluntary retirement is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw the notice of voluntary retirement except with the approval of the authority. In the instant case, the authority has refused withdrawal of notice for voluntary retirement dated 8.9.2003 vide letter dated 25.9.2003, which has been produced by the learned counsel for the respondents during the course of arguments and the same has been taken on record in order to decide the matter in controversy.

3.3 It is not disputed that the notice for voluntary retirement was given by the applicant on 30.6.2003 to be effective from October, 2003 (Ann.A1) and the same was accepted by the competent authority vide letter dated 15.7.2003 effective w.e.f. 1.10.2003 under Rule 48-A of the Pension Rules. It has also come on record that the applicant also submitted his pension papers vide letter dated 14.8.2003 (Ann. MAR/1) thereby furnishing necessary particulars in the prescribed form which has been signed on 6.8.2003. It has also come on record that the department also held DPC for filling up 5 posts of Assistant including the vacancy which may fell vacant on account of acceptance of notice of voluntary retirement of the applicant vide letter dated 15.7.2003 on 1.10.2003 and the DPC has considered the name of six persons and made recommendation against 5 vacancies which can be seen from the proceedings of the DPC held on 3.9.2003 (Ann.MAR/2). Even till this date, the applicant has not submitted any application for withdrawal of his earlier notice for voluntary retirement dated 30.6.2003. Admittedly, the application for withdrawal of his request for voluntary retirement was given vide letter dated 8.9.2003, by that

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time the administration had made arrangements to fill the post of Assistant including the vacancy which was to fall vacant on account of retirement of the applicant. It is not a case where the respondents have acted swiftly in declining the request for extreneous consideration without any adequate reasons. The application for withdrawal of notice for voluntary retirement was submitted subsequently when the respondents have already made arrangements for filling up the post and promotion was made and some of the candidates have also joined. At that point of time, the respondents were justified in proceedings with the matter on the basis of acceptance of the notice for voluntary retirement vide order dated 15.7.2003 and also submission of pension papers by the applicant duly signed as far back as 6.8.2003/14.8.2003.

3.4 On the basis of the facts as stated above, the question which requires my consideration in this case is whether in the circumstances of the case the respondents were justified in withholding permission for withdrawal of notice for voluntary retirement in terms of sub-rule (4) of Rule 48-A of Pension Rules and in declining such permission, the respondents have properly exercised the power reasonably and rationally and, approval is not ipse-dixit of the approving authoirity. Further question which may require consideration is whether the applicant can withdraw his resignation after its acceptance though before the effective date. In order to decide this issue, it is relevant to quote the relevant provision. The case of the applicant for voluntary retirement was considered under Rule 48-A of the Pension Rules and this fact is not in dispute. The Rule 48-A provides as follows:-

48-A. Retirement on completion of 20 years'

qualifying service.- (1) At any time after a Government servant has completed twenty years' qualifying service, he may, by giving notice of not less than three months in writing to the appointing authority, retire from service.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority.

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period."

Sub-Rule (4) of Rule 48-A prevents withdrawal of resignation letter except with the approval of the authority. The said sub-rule provides 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."

3.5 Acting on the basis of the letter dated 30.6.2003 (Ann.A1) the applicant was allowed to retire voluntarily from service prospectively w.e.f. the forenoon of 1.10.2003 vide letter dated 15.7.2003 (Ann.A3). In the meanwhile the applicant vide letter dated 8.9.2003 changed his mind and withdrew his notice for voluntary retirement and requested the authorities that his request for voluntary retirement may be treated as cancelled. The applicant was, however, not allowed to do so vide letter

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dated 25.9.2003. It was stated in that letter that the request made by him for withdrawal of his application for voluntary retirement has been carefully examined and the same is not acceptable. Not only this, the respondents also took effective steps for filling up the post of Assistant by holding DPC as by that time there was no request from the applicant for withdrawal of notice for voluntary retirement. According to me, the respondents were within their right to decline such request as the administration had already made arrangement acting on the notice for voluntary retirement of the applicant by holding DPC on 3.9.2003 and thereby promoting 5 persons against the vacancies of Assistant including the vacancy which was to be fall vacant on retirement of the applicant. These persons have already joined against the post except one person who could not join against the vacancy of the applicant as the interim stay was continuing. Sub-rule (4) of Rule 48-A mandates that Govt. servant shall be precluded for withdrawing notice for voluntary retirement except with the specific approval of such authority. Salutory retirement of this sub-rule may be that a Govt. servant cannot withdraw a letter of resignation or notice for voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without any rhyme or reason. Of course, the approving authority which has the statutory authority must act reasonably and rationally while arriving at such decision. It has also been judicially settled that Govt. servant who has given to the appropriate authority notice of retirement has also right subsequently, but during the currency of the notice, to

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withdraw the same. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he 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. At this stage, it would be relevant to quote paras 8, 11 and 12 of the judgment in the case of Balram Gupta vs. Union of India, AIR 1987 Supreme Court 2354, which clinches the matter in issue:-

"8. The facts, therefore, are that the appellant offered to resign from his service by the letter dated 24th December, 1980 with effect from 31st March, 1981 and according to the appellant his resignation would have been effective, if accepted, only from 31st March, 1981. Before the resignation could have become effective the appellant withdrew the application by the letter dated 31st of January, 1981, long before, according to the appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the 20th January, 1981 the respondent has purported to accept the resignation with effect from 31st March, 1981. The appropriate rule sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the

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request for withdrawal shall be made before the intended date of his retirement. That had been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevail in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority."

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11. In Air India etc. etc. vs. Nergesh Meerza etc. etc. (1982) 1 SCR 438: (AIR 1981 SC 1829), there the Court struck down certain provisions of Air India Employees Service Regulations. We are not concerned with the actual controversy, But the Court reiterated that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent it was submitted that Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Raj Kumar vs. Union of India (1968) 3 SCR 857: (AIR 1969 SC 180). 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

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concerned the action taken on the letter of resignation may justify an interference that resignation had not been accepted. But in facts of the instant case the resignation from Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus. As mentioned hereinbefore the main question was whether the sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our opinion, to decide whether sub-rule (4) of Rule 48-A was valid or not. It may be salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally. The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was


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sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows:

"(2) A question has been raised whether a Government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such right. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he is in a position to show that there has been a material change in the circumstances in considering of which the notice was originally given.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn if so desired for adequate reasons, provided the Government servant concerned is agreeable."

12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned 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. In the facts of the



instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom. If however the administration had made arrangements acting on his resignation or letter of retirement to make 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. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant."

Thus from the paras as quoted above, it is clear that under Sub-rule (4) of Rule 48-A of pension rules, the competent authority is within its right to decline permission for withdrawal of notice for voluntary retirement even during the currency of the notice. The normal rule which prevail in certain cases that a person can withdraw his resignation before its effective date would not apply with full force to a case of this nature because here the Govt. servant cannot withdraw except with the approval of the appropriate authority in terms of Sub-

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rule (4) of Rule 48-A of the pension rules. Where the approving authority has acted reasonably and rationally while declining permission for cancellation of permission of earlier notice of voluntary retirement, such an order cannot be interfered with. In view of what has been stated above I am of the view that the applicant has not made out any case for interference and as such the action of the respondents in declining his request for withdrawal of notice for voluntary retirement as made vide letter dated 8.9.2003 (Ann.A4) cannot be faulted.

3.6 At this stage, it may also be submitted that the applicant has not challenged the validity of the order dated 25th September, 2003 whereby his request for withdrawal of notice for voluntary retirement has been rejected in this OA, as such no finding can be given and validity of this order cannot be examined. That apart, in the earlier part of the order, it has been specifically held that the process of filling up the post of Assistant including the vacancy which was to be fell vacant on account of voluntary retirement of the applicant was started and completed well before when the application for withdrawal of voluntary retirement was made on 8.9.2003 and the respondents were justified in making arrangements for filling up the post as the respondents had already accepted the notice for voluntary retirement on 15.7.2003 and further the applicant has also signed the pension papers on requisite performa on 6.8.2003 and submitted the same to the authorities on 14.8.2003. In case the approving authority has not accepted the request of the applicant for withdrawal of notice for voluntary retirement at the fag end when the retirement was to become effective it cannot be said that the approving



authority has not acted reasonably and rationally.

3.7 Much emphasis has been laid by the learned counsel for the applicant on the judgment of Shimbhu Murari Sinha (supra). This judgment is not applicable in the facts and circumstances of this case. In that case the acceptance issued by the company was conditional and dependant upon release memo. The appellant withdrew his option before receipt of such memo and detailed particulars. The appellant not receiving any response from the company again sent another letter for withdrawing option of retirement. before receipt of a memorandum releasing the appellant from service, the appellant withdrew his option. It was under these circumstances that the Apex Court held that the appellant had locus poenitentiae to withdraw the proposal for voluntary retirement before the relationship of employer and employee came to an end. The respondent company was, therefore, wrong in refusing the option for voluntary retirement. Further, the Apex Court in para 5 of the judgment has held in following terms:-

"5. We have perused the whole scheme and we do not find any condition that once an option to voluntary retirement is exercised by an employee and the same is accepted by the employer, the employee is not entitled to withdraw from voluntary retirement. This position is accepted at the bar."

On the contrary, as already stated above, in the instant case, ^{there is} a specific provision under Sub Rule (4) of Rule 48-A which prohibits withdrawal of notice of voluntary retirement except with the specific approval of the appointing authority. As such, the decision cited by

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the learned counsel for the applicant is not applicable in the facts and circumstances of this case.

3.8 At this stage, it would also be relevant to refer the judgment in the case of Vice Chairman and Managing Director, APSIDC Ltd. and Anr. vs. R.Varaprasad and Ors., 2003 (3) SLJ 114. It was a case where the respondents therein submitted application for voluntary retirement in terms of Voluntary Retirement Scheme (VRS, for short) Phase-III on 31.10.98 and 10.10.98 respectively. The Corporation accepted their option on 24.11.98 and 27.10.98 which were acknowledged by the respondents on 26.11.1998 and 2.11.98 respectively. These respondents could not be relieved from service along with large number of other employees who were relieved on 31.7.99 under VRS Phase-III because of the interim directed granted by the High Court in writ petitions filed by them. The Division Bench of the High Court allowed the writ petition and directed the Corporation to continue their service till their attaining the age of superannuation. In doing so, the High Court followed the decision of the Apex Court in the case of Balram Gupta vs. Union of India and ors., AIR 1987 SC 2354, J.N.Erivastava vs. Union of India and Anr., AIR 1999 SC 1571 and Shambu Murari Sinha vs. Project and Development India and Anr. (supra). The High Court was of the view that the respondents had filed their withdrawal applications on 8.1.99 and 26.2.99 and had the benefit of interim directions to continue in service granted by the High Court on 30.7.99 while they were to be relieved on 31.7.99 and the result was that they were still in service on that date. The High Court further observed that these respondents had made the applications for withdrawal before the effective dated i.e. 31.7.99 and they having

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not accepted the monetary benefits under the VRS scheme, could withdraw their applications opting for VRS. In this view, the writ petitions of these respondents were allowed. The Supreme Court in para 18 observed as under:-


.....the decision cited on behalf of the respondents do not help them. Unlike in those decisions these respondents filed applications offering to take voluntary retirement under the scheme; their applications were accepted by the Corporation which were acknowledge by these respondents; they made representation for withdrawal from the VRS Scheme several days after the Corporation accepted their applications made seeking voluntary retirement; merely because they could not be relieved in view of interim order passed by the High Court in the writ petitions and that they could not be relieved immediately after the cut off date for want of funds to be received from the Government by the Corporation, they could not take away the result of escape consequence of the acceptance of their voluntary retirement by the Corporation. In other words, question of withdrawal of their applications made for seeking voluntary retirement after their acceptance did not arise and they could not be permitted to do so in law. It is fairly settled now that the voluntary retirement once accepted in terms of the scheme or rules, as the case may be, cannot be withdrawn. In these appeals from the facts it is clear that the applications of the respondents opting for voluntary retirement under the scheme were accepted and even the acceptance was communicated to them. Thereafter,

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they filed the writ petitions. Hence, the High Court was not right in allowing the writ petitions holding that they applied for withdrawal before the effective date considering the date of relieving the employees as the effective date."

The ratio laid down in the aforesaid judgment is also applicable in the instant case.

3.9 Thus, I am of the view that in the facts and circumstances of this case especially when the notice for voluntary retirement was already accepted, subsequently the notice for voluntary retirement could be withdrawn only with the approval of the competent authority before the intended date of the retirement in terms of sub-rule (4) of Rule 48-A as interpreted by the Apex Court in the case of Balram Gupta (supra) whereof in addition to what has been stated above, it has also been held that normal rule which prevail in such cases that a person can withdraw his resignation/notice for voluntary retirement before it is effective, would not apply to a case of this nature. That apart, the Apex Court in the case of Vice Chairman and Managing Director, APSIDC Ltd. vs. R.Varaprasad (supra) in categorical terms held that there is no question of withdrawal of application made for seeking voluntary retirement after its acceptance and such a course is not permissible in law (though the Apex Court was not concerned with the interpretation of Rule 48-A (4) of the Pension Rules). In earlier paras it has been held that the administration has made arrangements to fill the post of Assistant acting on the notice for voluntary retirement of the applicant and such steps were not taken in haste but after acceptance of the notice of voluntary



retirement and also acting on the pension papers submitted by the applicant himself thereby making his intention clear that he is going to ~~sever~~^{severe} the relationship of employer and employee. It is only thereafter that the administration took steps for filling the post of Assistant including the vacancy which was to fall vacant on account of retirement of the applicant and convening the DFC. Also, it is only after the selections made by the DFC and some of persons have also joined the post of Assistant that the applicant has submitted application for withdrawal of notice for voluntary retirement. For all these, it is the applicant who is to be blamed. In case he was serious regarding withdrawal of notice for voluntary retirement, he could have acted immediately and he cannot be permitted to withdraw the notice for voluntary retirement at his sweet will and put the Government into difficulties. From the facts as already stated above, I am of the firm view that in this case the administration has acted reasonably and rationally while exercising the powers under sub-rule (4) of Rule 48-A of Pension Rules.

4. In view of what has been stated above, the present OA is dismissed with no order as to costs. The interim direction granted on 30.9.2003 is hereby vacated.

5. The Misc. Application No.430/2003 for vacation of interim direction also disposed of accordingly.


(M.L. CHAUHAN)

Member (J)