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CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 14 of 1999

Jabalpur, this the 9th day of May 2003

Hon'ble Shri R.K. Upadhyaya - Administrative Member.
Hon'ble Shri J.K. Kaushik - Judicial Member.

Prabhu Dayal, aged 53 years, son of
Shri G.R. Banga, by occupation Store
Holder, Ordnance Factory, Dehu Road,
Pune 412 113 (wrongly retired)
resident of House No. J. 128, P.O.
Anand Nagar, Adhartal, Jabalpur,
M.P. 482 002.

... Applicant

(By Advocate - Shri V.K. Dubey)

V e r s u s

1. Union of India, through the
Secretary, Govt. of India,
Ministry of Defence, New Delhi.
2. Chairman, Ordnance Factories
Board, 10-A Auckland Road,
Calcutta.
3. General Manager, Ordnance
Factory, Dehu Road,
Pune (MS).

... Respondents

(By Advocate - Shri B. Dasilva)

O R D E R

By J.K. Kaushik, Judicial Member :-

Shri Prabhu Dayal has filed this original application assailing the impugned orders dated 13/07/1998 (Annexure A/8) 14/07/1998 (Annexure A/9) and 14/07/1998 (Annexure A/10) and has further sought a declaration that the applicant is entitled to continue in service as he has withdrawn the notice of retirement legally and properly amongst other reliefs.

2. Shorn of superfluities, the brief fact of the case of the applicant for adjudication of the controversy involved in this case are that the applicant while working on the post of Stores Holder, Ordnance Factory Dehu Road, Pune,

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submitted a notice for voluntary retirement on dated 02/03/98 and requested the competent authority to accept the notice from 31/05/1998 under Rule 48-A of CCS (Pension) Rules, 1972. The same was processed but vide letter dated 05/06/1998 the applicant was asked to report for duties since he had no leave in his credit. Before this letter the applicant had submitted that he may be retired from 31/07/1998 instead of 30/05/1998.

3. The further case of the applicant is that he submitted another application on 10/07/1998 to the competent authority and requested that his earlier notice for voluntary retirement may be allowed to be withdrawn since there was a change in the circumstances. On the other hand he was compelled to join his duties on 05/06/1998. While on duty he was served with an order dated 13/07/1998 (Annexure A/8) communicating the applicant that he has been permitted to voluntarily retire from service with effect from 31/05/1998. An appeal was made in the matter, but the same was turned down. The application has been filed on number of grounds mentioned in the original application and we shall examine the grounds which are pressed by the learned counsel for the applicant in the later part of this order.

4. The respondents have contested the case and have filed a detailed counter reply. As far as the facts are concerned the same are not in dispute. It has been submitted that the application for voluntary retirement was submitted to the competent authority only when the applicant has confirmed his desire to proceed on voluntary retirement. Letter dated 05/06/1998 was issued only to avoid complications and difficulties in regularisation of the period of absence by Extraordinary Leave. As per the Rule 48-A notice for voluntary retirement once accepted can only be withdrawn

on satisfaction of the competent authority and it has also been provided that the notice becomes effective on expiry of the period of notice. Thus the action of the respondents has been in consonance with the rule and the delay in communication of the order has been purely due to administrative exigencies.

5. A detailed rejoinder has also been filed on behalf of the applicant mostly reiterating the facts and grounds raised in the original application.

6. We have heard the learned counsel for the parties and have bestowed our earnest consideration to the pleadings and records of this case.

7. Both the learned counsels have reiterated the facts and grounds raised in their respective pleadings. The learned counsel for the applicant has submitted that as per the rules in force one can withdraw the notice for voluntary retirement at any time prior to the date the voluntary retirement would come into effect. On the contrary the learned counsel for the respondents have seriously objected to this contention and has submitted that such cannot be the intention of the rules and as a matter of fact the complete matter was made complicated due to the peculiar action of the applicant itself. The authorities have no ill will or malafide intention against the applicant. No fault can be found with the action of the respondents.

8. We have carefully considered the rival contentions and the sole question to be answered by this Tribunal in this case is as to whether the notice for voluntary retirement can be withdrawn before the effect is given and one actually retires in pursuance to the notice of voluntary retirement.

Firstly it is an admitted position of the case that the applicant remained on duty on one pretext or other and the order of acceptance of voluntary retirement has only been passed on 13/07/1998 (Annexure A/8). As a matter of fact the order of retirement cannot be made from a retrospective date. However in case there is severable illegal part from the legal one or legal part from the illegal one the order can be made effective from the date of issue of the order ignoring the retrospective part. But present is not such controversy. The basic issue is whether the retirement of the applicant in view of the notice for which an application was given for withdrawal is justified.

9. It comes to our mind that ^{the} in case of Shri J.N. Shrivastava Versus Union of India and another reported at AIR 1999 SC 1571 decided by the Hon'ble Supreme Court, their lordships adjudicated a similar controversy and held as under :

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta Versus Union of India, reported in 1987 (Supp) SCC 228 : (AIR 1987 SC 2354)."

Thus the controversy has already been set at rest and does not remain *res-integra*. The action of the respondents in accepting of the notice for voluntary retirement and retiring him is *ex-facie* arbitrary, illegal and in-operative. The contentions of the learned counsel for the applicant are well-founded and the Original Application deserves to be allowed.

10. In the result the original application is allowed and the impugned orders dated 13/07/1998 (Annexure A/8),

14/07/1998 (Annexure A/9) and 14/07/1998 (Annexure A/10)

are quashed. The applicant will have to be treated in service. The respondents are directed to reinstate the applicant and the applicant shall be entitled to all consequential benefits including continuity in service and arrears of salary and other emoluments etc. However, this will have to be subject to adjustment of any pension amounts or other retiral benefits already paid to him in the meantime. This order shall be complied with, within a period of three months from the date of receipt of copy of this order. No costs.

R. K. Upadhyaya

KAUSHIK
(J.K. KAUSHIK)
JUDICIAL MEMBER

(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

प्रांगण सं. ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि.....
(1) सदिल, जर.....
(2) आदिल, जर.....
(3) प्रसादी, जर.....
(4) विद्यारत, जर.....
सूचना एवं आवश्यक विवरण.....
जबलपुर
काउंसल V.K. Dubey, Ad
काउंसल B. Danwar, Ad
उप उपराज्यपाल
9.5.03