

23-4-09

Mr. S. K. Saxena - Counsel for the applicant
Mr. M. S. Raghav, Proxy counsel for
Mr. Sangay Pareek, counsel for respondents

Heard the learned counsel for
parties.

For the reasons dictated
separately, the OA is allowed.



(M. L. CHAUHAN)

Judl. Member

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

This, the 23rd day of April, 2009

ORIGINAL APPLICATION No.359/2008

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDICIAL)

Hem Chandra Pande,
s/o late Shri D.D.Pande,
aged about 58 years,
Master Gezatted (Chemistry),
Rastriya Military School, Ajmer
r/o Military School Campus,
Ajmer.

.. Applicant

(By Advocate: Mr. S.K.Saksena)

Versus

1. Union of India through
Deputy Chief of Army (IS&T),
Ministry of Defence,
DHQ PO, New Delhi.
2. The Principal,
Rashtriya Military School,
Ajmer.
3. The Administrative Officer to the Principal,
Rashtriya Military School,
Ajmer.

.. Respondents

(By Advocate: Mr. M.S.Raghav proxy counsel for Mr.
Sanjay Pareek)

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O R D E R (ORAL)

The applicant, while working as Master Gazetted (Chemistry), Rastriya Military School, Ajmer, submitted an application for voluntary retirement from service vide his application dated 8th May, 2008 (Ann.A/2). In para 3 of the said letter it was mentioned that this letter may be treated as mandatory three months' prior notice to the premature retirement i.e. w.e.f. 8th May, 2008. However, vide letter dated 4th August, 2008 which was received on 5th August, 2008, the applicant withdrew the notice for voluntary retirement on the ground that some formalities of counting of his previous service have not been completed. Further, from the material placed on record, it is evident that the applicant was allowed to continue in service upto 31st August, 2008 even after three months' mandatory notice for premature retirement which was to be expired on 7th August, 2008. However, vide impugned order dated 1st September, 2008 (Ann.A1), the applicant was retired from service on voluntary retirement from 31st August, 2008 (A/N). It is this order which is under challenge in this OA and the applicant has prayed that this impugned order may be quashed with all consequential benefits.



2. Notice of this application was given to the respondents. The respondents have filed reply. The stand taken by the respondents is that request of voluntary retirement was accepted by the competent authority viz. the Deputy Chief of Army Staff (MT-15), New Delhi and withdrawal of notice for voluntary retirement was not accepted by the competent authority which order was served on the applicant on 1st September, 2008, when his name was struck off from the strength of the School.

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

4. The sole question which requires my consideration is whether it was permissible for the respondents to act upon the notice for voluntary retirement which was admittedly withdrawn before the effective date and even the applicant was allowed to remain in service after the expiry of the effective date ? The law on this point is no longer res-integra. In Union of India v. Gopal Chandra Misra, 1978 SCC (L&S) 303 the Hon'ble Apex Court has held that a complete and effective act of resigning an office is one which severs the link of the resigner with his office and terminates its tenure. In Balram Gupta vs. Union of India, 1988 SCC (L&S) 126, the Apex Court has reiterated the principle in Gopal Chandra Misra

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(supra) and ruled that though that case related to resignation by a Judge of the High Court, the general rule equally applied to government servant. In J.N.Srivastava v. Union of India, 1998 SCC (L&S) 1251, a notice of voluntary retirement was given by an employee on 3.10.1989 which was to come into effect from 31.1.1990. The notice was accepted by the Government on 2.11.1989 but the employee withdrew the notice vide his letter dated 11.12.1989. It was held that withdrawal was permissible though it was accepted by the Government, since it was to be made effective from 31.1.1990 and before that date it was withdrawn. In Shamabhu Murari Sinha vs. Project and Development India, 2002 SCC (L&S) 444, the Hon'ble Apex Court has held that when voluntary retirement was withdrawn by an employee, he continued to remain in service. The relationship of employer and employee did not come to an end and the employee had locus-penitentiae to withdraw his proposal for voluntary retirement. He was, therefore, entitled to rejoin duty and the Corporation was bound to allow him to work. In Power Finance Coprn. Ltd. v. Pramod Kumar Bhatia, 1997 SCC (L&S) 941, the Apex Court in para 7 has held as under:-

"7. It is now settled legal position that unless the employee is relieved of the duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end. Since the order accepting the voluntary retirement was

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a conditional one, the conditions ought to have been complied with. Before the conditions could be complied with, the appellant withdrew the scheme. Consequently, the order accepting voluntary retirement did not become effective. Thereby no vested right has been created in favour of the respondent. The High Court, therefore, was not right in holding that the respondent has acquired a vested right and, therefore, the appellant has no right to withdraw the scheme subsequently."

5. On the basis of above legal position, the learned counsel for the applicant is right in contending that the applicant continued to remain in service and it was not legally permissible for the respondents to pass the impugned order Ann.A1 thereby retiring the applicant from 31st August, 2008 (A/N) especially when the notice for voluntary retirement was withdrawn by the applicant before the effective date i.e. 7th August, 2008 as relationship of employer and employee did not come to an end on 7th August, 2008 as per the notice for voluntary retirement and the applicant also continued even after that date till 31st August, 2008.

6. The next question, which requires my consideration is that what benefits the applicants is entitled to ? The fact remains that the applicant withdrew the notice for voluntary retirement. He was not allowed to work from 1st September,, 2008. The learned counsel for the respondents submits that the applicant is not entitled to salary after 1st September, 2008 on the principle of 'no work no pay'


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as he has not actually worked. According to me, such contention of the learned counsel for the respondents cannot be accepted in view of the law laid down by the Hon'ble Apex Court in the cases as noticed above. Similar circumstances have arisen in J.N.Srivastava (supra) and similar argument was advanced by the employer. The Court has, however, negatived the argument observing that when the workman was willing to work but the employer did not allow him to work, it would not be open to the employer to deny monetary benefits to the workman who was not permitted to discharge his duties. Accordingly, benefits were granted to him. In Shambhu Murari Sinha (supra) also the Apex Court has held that since the relationship of employer and employee continued till the employee attained the age of superannuation he would be entitled to full salary and allowances of the entire period he was kept out of service. In Balram Gupta (supra) in spite of specific provision precluding the government servant from withdrawing notice of retirement, the Apex Court granted all consequential benefits to him. Thus, the applicant is entitled to salary and other benefits.

7. In view of above legal position, the OA is allowed. The action of the respondents in accepting voluntary retirement notice of the applicant w.e.f. 31st August, 2008 (A/N) is declared illegal and

unlawful, as such, the impugned order dated 1st September, 2008 (Ann.A1) is quashed and set-aside. The respondents are directed to treat the applicant as if the impugned order has not been passed and give him all benefits including arrear of salary.

8. With these observations, the OA is allowed with no order as to costs.



(M.L. CHAUHAN)
Judl. Member

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