

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

OA No. 060/00380/2014 &

MA No. 060/00580/2014 Date of decision: 5.2.2015

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MR. UDAY KUMAR VARMA, MEMBER (A)**

Jagdish Chander S/o Sh. Mohinder Singh Bhoria, R/o #1200/B, Vishwakarma Colony, Pinjore (Panchkula) Ex. Hindi Supdt. Under respondents.

...APPLICANT

BY ADVOCATE : Sh. Karnail Singh

VERSUS

1. Union of India through Chief Administrative Officer (R) Diesel Modernization Works Patiala, Punjab.
2. Chief Personnel Officer Diesel Modernization Works Patiala, Punjab.

...RESPONDENTS

BY ADVOCATE: Ms. Jyoti Chaudhary

ORDER

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J):-

The present Original Application is directed against an order dated 11.11.2011 whereby the respondents have rejected the prayer of the applicant for withdrawal of notice for voluntary retirement.

2. The facts, which led to the filing of the present Original Application, are that the applicant herein was working with the respondents as Hindi Superintendent. He moved an application for voluntary retirement from

service on 22.08.2011 w.e.f. 21.11.2011. His request was processed and accepted by the competent authority vide letter dated 13.10.2011 and was also communicated to him. A notice bearing no.DMW/P/S/11/Retirement/Part-III dated 11.11.2011 regarding the voluntary retirement of the applicant was also circulated by the Personnel Department of DMW, Patiala, indicating that the applicant will be retiring from Railway service from 22.11.2011. Before the proposed date of retirement i.e., 21.11.2011 the applicant submitted a request on the same very day for withdrawal of his notice for voluntary retirement, which was rejected by the impugned order. Hence the O.A

3. The respondents have taken a categorical stand that three months' notice for voluntary retirement moved on 22.08.2011 by the applicant was accepted on 13.10.2011 by the competent authority which was also communicated to him and notice to this effect was also circulated. The applicant submitted a notice for withdrawal of voluntary retirement after the office hours on 21.11.2011 i.e., the date when his name had already been struck off from the rolls of the Railways. They have further submitted that once the name of a person has been struck off from the roll, he cannot be allowed to withdraw his notice, which has already been accepted and cannot be allowed to continue in service thereafter.

4. Shri Karnail Singh, learned counsel appearing on behalf of the applicant vehemently submitted that the impugned order rejecting his request for withdrawal of notice for voluntary retirement is bad in law, as

the applicant has a right to withdraw the notice at any time before the same takes effect. To buttress his submission he placed reliance upon a judgment reported in **M.D. Orissa S.H.W. Coop. Sty. Ltd. V. Satyanarayan Pattnaik and another**, 2014 (2) RSJ 149.

5. On the other hand, Ms. Jyoti Chaudhary, learned counsel appearing on behalf of the respondents reiterated what has been stated in the written statement and apart from that she submitted that office has not received any communication from the applicant during the office hours of the last date when the applicant's name was to be struck off from the rolls of the Railways. She also submitted that the O.A also deserves to be dismissed on the ground of delay and laches because the impugned order was passed in the year 2011 whereas the present OA has been filed in the year 2014. In this regard she placed reliance on a judgment of the Hon'ble Supreme Court in the case of **Union of India v. M.K. Sarkar**, 2010 (2) SCC 58.

6. We have considered the rival submissions and have gone through the pleadings available on record with the able assistance of the learned counsels appearing for the respective parties.

7. Before coming to the present controversy, we may consider the various decisions of the Hon'ble Supreme Court on withdrawal of voluntary retirement notice. In almost identical fact situation, Hon'ble Supreme Court, in the case of **Shambhu Murari Sinha Vs. Project and**

Development India Ltd. and Anr. reported in AIR 2002 Supreme Court page 1341, after considering various judgments including the well-known judgment of **Balram Gupta** (supra.), has held as under:

"8. A Constitution Bench of this Court in **Union of India & Others versus Gopal Chandra Misra & Others** [(1978) 2 SCC 301] in paragraph 50 held that the general principle is that in the absence of a legal, contractual or constitutional bar, a 'prospective' resignation can be withdrawn at any time before it becomes effective, and 'it becomes effective when it operates to terminate the employment or the office-tenure of the resignor.' (emphasis ours) As stated above in the present case in the VRS, there was no indication regarding effective date of voluntary resignation and there is also no condition that once it was accepted it could not be withdrawn.

9. In **Balram Gupta** (supra) the principle laid down in **Union of India & Others v. Gopal Chandra Misra**, (1978) 2 SCC 301, was summarised as follows:-

"A complete and effective act of resigning office is one which severs the link of the resignor with his office and terminates his tenure."

10. In **Balram Gupta's** case (supra), the appellant-employee offered to voluntary retirement from service w.e.f.31st March, 1981 and accordingly sent a letter within the notice period. However, he changed his mind and sent a letter on 31.01.1981 seeking to withdraw his notice of voluntary retirement but the request was disallowed by the concerned authority on the ground that the withdrawal of notice could only be with the specific approval of the authority. This Court held that the dissolution of the contract of employment would be brought about only on the date indicated i.e.31.03.1981 and upto that date the appellant continued as Government employee. He is at liberty to withdraw his notice of voluntary retirement and for this purpose, prior approval is not required.

11. The decision in **J.N. Srivastava versus Union of India** [(1998) 9 SCC 559] is also to the same effect. This Court held as follows:-

"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*."

12. In **Nand Keshwar Prasad versus Indian Farmers Fertilizers Cooperative Ltd. & Ors.** [(1998) 5 SCC 461], in paragraph 11, this Court reiterated that it is open to the employee concerned to withdraw letter of resignation before the date indicated in the notice of voluntary retirement. It was also observed therein:

"It appears to us that the law is well settled by this Court in a number of decisions that unless controlled by condition of service or the statutory provisions, the retirement mentioned in the letter of resignation must take effect from the date mentioned therein and such date cannot be advanced by accepting the resignation from an earlier date when the employee concerned did not intend to retire from such earlier date."

13. In **Raj Kumar versus Union of India** [(1968) 3 SCR 857] the normal rule has been stated as follows:-

"When a public servant invited by a letter of his resignation determination of his employment, his service normally stands terminated from the date on which the letter of resignation is accepted by the appropriate authority and in the absence of any law or rule governing the conditions of his service to the contrary it will not be open to the public servant to withdraw his resignation after it is accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter."

The above cases may not have direct application to the facts of the present case, however, the principles laid down therein deserve notice.

14. In **Power Finance Corporation Ltd. versus Pramod Kumar Bhatia** [(1997) 4 SCC 280] this Court went a step further and observed thus:-

"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."

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We, therefore, hold that the respondent could not have refused to accept the resignation of the appellant as it was sent before the jural relationship of employee and employer came to an end. Consequently, the impugned judgment is liable to be set aside, which we hereby do. The appellant shall be entitled to rejoin his duty and he shall be paid all his salaries and other benefits during the period he was out from the service. The learned counsel for the respondent has stated that by this time the appellant might have retired from service on attaining the age of superannuation, if that be so, he shall be paid full salary and allowances for the entire period he was out of service till the date of his retirement and thereafter, he shall be entitled to get all retiral benefits counting the above period as if he was in service."

8. We may now consider the scheme of voluntary retirement applicable qua the employees of the respondents. Clause VI deals with notice of voluntary retirement and its withdrawal. Subsequently, with the approval of competent authority provided the request is made before the expiry of notice. The same reads as under:-

"SCHEME OF VOLUNTARY RETIREMENT

In pursuance of the recommendations of the Administrative Reforms Commission, the Ministry of Railways has decided that the Railway servants may be allowed to retire voluntarily after 20 years of service on proportionate pension and gratuity or S.C. to P.F., as the case may be, with a weightage of up to 5 years towards qualifying service, subject to certain conditions, as given below:

(1) The Railway servants who have put in not less than 20 years qualifying service may, by giving 3 months notice in writing to the appointment authority, retire from service voluntarily. The initiative rests with the Railway servant himself. The notice is to be given to the Ministry of Railways in respect of Group A employees and to the General Manager in respect of Group B, C & D employees.

(2) xxx xxx

(3) xxx xxx

(4) xxx xxx

(5) xxx xxx

(6) Notice of voluntary retirement may be withdrawn subsequently with the approval of the appointing authority provided the request is made before the expiry of the notice.

Withdrawal of notice for voluntary retirement:

(i) An employee, who wishes to withdraw his/her notice for voluntary retirement before expiry of prescribed three months period should indicate clearly in his/her request the circumstances/reasons for withdrawing the same.

(ii) Such application may be made by the concerned employee even after the competent authority has accepted his/her request for voluntary retirement provided it is submitted before expiry of the 3 months period.

(iii) Competent authority should consider the request for withdrawal of the notice for voluntary retirement in a reasonable and rational manner and refuse such a request only if there are valid reasons for doing so, which should be recorded by way of a speaking order. (R.B. No.E(P&A) 1-2000/RT-9, dated 5.11.2001] (N.R., S.N. 12349)(R.B.E. No.217/2001).

The relevant instructions on the subject are dated 5.11.2001 which read as under:-

Sub: Voluntary retirement of Railway employees-Clarification regarding:-

Attention is invited to the instructions contained in Boards letter No.E(P&A)I-90/RT-18 dated 6.11.90 and the clarification issued under Boards letter of even number dated 27.03.01.

A reference has been received from one of the Federations, citing verdicts of the Supreme Court in Civil Appeals No.6573 6574 of 1997 (arising out of SLPO Nos.8500-8501 of 1997) dated 22.09.97 in the case of Sri J.N.Srivastava Vs U.O.I. and in the earlier Civil Appeal No.2057 of 1987 dated 01.09.87 in the case of Shri Balram Gupta Vs U.O.I and seeking review of the above instructions of the Board, in the light of those judgements.

The matter has been examined at length by this Ministry in consultation with the nodal Ministry and Legal Advisor, railway Board and it has been decided that the following procedure should be adhered to, while considering requests for withdrawal of notices for voluntary retirement.

1. An employee who wishes to withdraw his/her notice for voluntary retirement, before expiry of the prescribed three month period, should indicate clearly in his/her request the circumstances/reasons for withdrawing the same.
2. Such an application may be made by the concerned employee, even after the competent authority has accepted his/her request for voluntary retirement, provided it is submitted before expiry of the three month period.
- iii The competent authority should consider the request for withdrawal of the notice for voluntary retirement in a reasonable and rational manner and refuse such a request only if there are valid reasons for doing so, which should be recorded by way of a speaking order. From perusal of the above, it is clear that notice for voluntary retirement can be withdrawn with the approval of the appointing authority provided the request is made before the expiry of notice period. Not only this, sub clause II shows that even after the acceptance of the voluntary retirement by the competent authority, an employee can submit application for withdrawal of his request provided the same is filed before expiry of three months period. A clarification was issued which also mandate the same procedure. Now applying the above ratio of the authoritative law coupled with the relevant rules and instructions on the subject,

admittedly applicant submitted an application on 17.2.2009 (Annexure A-7). The same was accepted by the competent authority on 21.5.2009. The request for withdrawal of Voluntary retirement was submitted in the shape of appeal on 9.8.2009. The mandatory three months period come to end on 16.5.2009, therefore, admittedly the application for withdrawal is beyond the mandatory period of three months."

9. There is no quarrel on the issue that the notice for voluntary retirement from a future date can be withdrawn before it takes effect though it has been accepted by the competent authority. Reliance in this regard is placed on the observations made by the Hon'ble Supreme Court in the case of **Balram Gupta v. Union of India**, AIR 1987 SC 2354. It is also equally settled that if the rules permit that notice of voluntary retirement can be withdrawn then it is to be seen that what prompted the employee to withdraw the voluntary retirement which he submitted earlier, i.e., the changed circumstances while passing order on his application for voluntary retirement.

10. Concededly, in the present case the applicant submitted an application for voluntary retirement on 22.08.2011 by giving three months' notice where he has shown his intention to serve the society and the Nation, which was processed by the respondents in accordance with the rules and was virtually accepted by the competent authority by serving him the approval and allow him to retire on a future date, i.e., 21.11.2011. This order has been communicated to the applicant as is clear from the Annexure A-1. The applicant submitted an application for

withdrawal of his notice on even date where he shown his intention to withdraw the same and allow him to continue in service. Perusal of the same does not suggest existence of any changed circumstances. Considering the categorical stand of the respondents that they have not received the same during office hours and that the relation of employer-employer had come to an end and as such the plea of applicant does not persuade us to accept the present Original Application. The applicant was having sufficient time after receiving the order of his acceptance, i.e., 11.11.2011 to withdraw the notice but he did not choose to make an application before the alleged notice was served on the last date. Considering that no doubt the Courts of law have given a right to an employee to withdraw notice of voluntary retirement before it comes into effect but the same is dependent upon certain terms and conditions and in this case the non-existence of changed circumstances, does not give a right to the applicant to withdraw the notice for voluntary retirement that too by submission of representation in a manner which is filled with doubt.

11. In view of the above discussion, this OA is liable to be dismissed and is dismissed. There is yet another reason for dismissal of the OA, i.e., delay in approaching the Court. The impugned order was passed in the year 2011 and the applicant chose to approach this Court after a delay of three years, i.e., in 2014. Therefore the OA is barred by Section 21 of the Administrative Tribunals Act, 1985, as the OA was to be

filed within one year from the date of the cause of action which has not been done. Though the applicant has filed a Miscellaneous Application seeking condonation of delay but we do not find any grounds made out to condone the delay and as such the M.A. is dismissed.

12. In view of the above discussion, this O.A is dismissed both on merit as well as on delay and laches. No costs.

Uday Kumar Varma
(Uday Kumar Varma)
Member (A)

San.
(Sanjeev Kaushik)
Member (J)

Place: Chandigarh

Dated: 5. 2. 2015

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