

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...
(Reserved on 13.08.2015)

O.A No. 060/01113/2014

Date of decision - 18.8.2015

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)
HON'BLE MS. RAJWANT SANDHU, MEMBER (A)**

...

Harpal Singh Son of Sh. Jeet Singh, R/o Gali No. 4/2, Baba Farid Nagar, Bathinda (Punjab).

...APPLICANT

BY ADVOCATE: Sh. Shailendra Sharma

VERSUS

1. Union of India through its Secretary Ministry of Defence, New Delhi.
2. The Director General of Ordnance Services, IHQ of MoD (Army), DHQ PO New Delhi.
3. The Commandant, Field Ammunition Depot, Bathinda Cantt.

...RESPONDENTS

BY ADVOCATE: Ms. Nidhi Garg

ORDER

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

The present Original Application filed under Section 19 of the Administrative Tribunals Act, 1985 is directed against the letter dated 07.06.2014 passed by respondent no. 3 (Annexure A-5) rejecting his request for withdrawal of resignation, which was accepted on 20.02.2014, and made effective from the intended date i.e. 28.02.2014

2. The facts as pleaded by the applicant, which led to filing of the present application are the applicant is an ex-serviceman who was appointed as Mazdoor (Now T/Mate) against the reservation quota on 10.12.2001. Unfortunately his wife died on 29.09.2011. The family circumstance compelled him to serve an application seeking voluntary retirement vide letter dated 20.02.2014 requesting to respondent no. 3 to wave off the condition of three months notice period or deposit of salary of three months before resignation as a special case. It is the case of the applicant that his request for voluntary retirement was accepted by the respondents. However, he served a legal notice dated 24.03.2014 through his counsel upon the respondents showing his intention to withdraw his resignation as he had not completed service which could make him entitled to get the service benefits. Various letters were written to the respondents and ultimately, vide impugned order dated

07.06.2014, they have informed the applicant that his request has already been accepted by the competent authority from the date of applicant's request and request via legal notice is of subsequent date and same stands rejected. Hence, the present O.A.

3. The respondents contested the claim of the applicant by filing a detailed written statement. The relevant paras are 8 & 10 and same is reproduced below:-

"8. In the month of Feb. 2014, he tendered his resignation from service. His application for resignation from service was received in Estt. Section of this depot vide 2 Amn. Sub Depot ION No. 001/Gen/TK/63/2ASD dated 20 Feb. 2014 (Copy enclosed as Annexure R/1 & R/2) under which he had requested to accept his resignation from service with effect from 28 Feb. 2014. In his resignation, he had stated that he is unable to continue his service due to death of his wife and domestic problems and requested to accept his resignation by waiving off the condition of three months notice period or deposit of salary for three months as a special case.

10. Prior to accepting the resignation of Shri Harpal Singh, he was called for an interview by the Adm. Officer of this depot on 20 Feb. 2014. The individual had stated before the Adm. Officer as well as in writing in his application that he is tendering his resignation willfully without any pressure. Thereafter, his resignation was accepted by the Comdt this depot being appointing authority & empowered to accept the resignation. Acceptance of Comdt 36FAD is appended as Annexure R/3."

4. The applicant has also filed a rejoinder.

5. We have heard Sh. Shailendra Sharma, learned counsel for the applicant and Ms. Nidhi Garg, learned counsel for the respondents.

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6. Sh. Shailendra Sharma, learned counsel for the applicant vehemently argued that action of the respondents in rejecting his request for withdrawal of his resignation is illegal, arbitrary and liable to be set aside. To substantiate his argument, he submitted that the applicant was never conveyed decision on his resignation, which was accepted by the competent authority in the month of Feb, 2014, therefore, relationship of employer-employee has not been terminated or came to an end. Thus, action of the respondents in rejecting his claim may be set aside and quashed.

7. Per contra, Ms. Nidhi Garg, learned counsel for the respondents opposed the prayer of the applicant and submitted that applicant's request for voluntary retirement dated 20.02.2014 was immediately dealt with by the official-respondents and on the same very date it was accepted by the competent authority and plea for waiving off of notice period was also accepted. In terms of Rule 26 of CCS (Pension) Rules, 1972 (in short '1972 Rule'), once a request for voluntary retirement/resignation has been accepted then request for withdrawing the same, even of a date prior to the intended date cannot be accepted. Therefore, rightly his case has been rejected by passing the impugned order. To buttress her submission, she relied upon the judgments passed by the Hon'ble Supreme Court in case of **North Zone Cultural Centre and another Vs. Vedpathi Dinesh Kumar**, 2003(2) RSJ 720 and **The**

Secretary, Technical Education, U.P & Ors. Vs. Lalit Mohan

Upadhyay & Another, 2007(3) RSJ 23.

8. We have given our thoughtful consideration to the entire matter and perused the pleadings of the parties as available on record with the able assistance of respective counsels.

9. The solitary contention at the hands of the applicant, which is to be adjudicated upon is as to whether notice of voluntary retirement can be allowed even when the same has been accepted and request is of the date beyond the intended date of voluntary retirement. This issue is no more res-integra. There are various judicial pronouncements on the issue by the Hon'ble Supreme court like **Shambhu Murari Sinha Vs. Project and Development India Ltd. and Anr.** reported in AIR 2002 Supreme Court page 1341; **Union of India & Others v. Gopal Chandra Misra**, (1978) 2 SCC 301; **J.N. Srivastava versus Union of India** [(1998) 9 SCC 559]; **Nand Keshwar Prasad versus Indian Farmers Fertilizers Cooperative Ltd. & Ors.** [(1998) 5 SCC 461]; **Raj Kumar versus Union of India** [(1968) 3 SCR 857]; and **Power Finance Corporation Ltd. versus Pramod Kumar Bhatia** [(1997) 4 SCC 280].

10. The underline theme of the aforesaid judicial pronouncements which are binding upon the various courts across the India, is that Voluntary retirement can be allowed to be withdrawn, firstly, if the

employee gives change in circumstances & secondly, it is to be before the intended date of voluntary retirement, even though the authority has accepted the same. The procedure for withdrawal of resignation after it has become effective and the Government servant had relinquished the charge of his earlier post, is to be found in sub-rules (4) to (6) of Rule 26 of the CCS (Pension) Rules, 1972 which corresponds to Art. 418 (b) of the Civil Service Regulations:-

"(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

- (i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;
- (ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;
- (iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days;

- (iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available;
- (v) request for withdrawal of resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government;
- (vi) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

11. In the light of the Rule 26 of the 1972 Rule and the aforesaid judgments, we proceed to examine the facts of the present case. Concededly, the applicant submitted an application for voluntary retirement on 20.02.2014 requesting the Commandant, Field Ammunition Depot, Bathinda to accept his request w.e.f. 28.02.2014(A/N). He further requested to waive of the conditions of three months notice period or deposit salary for three months before resignation as a special case. His request was considered by the Commandant on the same very date and the applicant was also given personal hearing, who gave his affirmation with regard to his request for voluntary retirement. It is only, thereafter, commandant accepted the same on 20.02.2014 with intended date as reflected in

his request dated 20.02.2014. The request of the applicant for withdrawal in shape of legal notice is dated 24.03.2014 i.e. after the intended date and that is too after the acceptance of his request. Therefore, we find no illegality in the impugned order which is well reasoned order rejecting his request and is in consonance with law pronounced on the subject. The O.A stands dismissed, accordingly.

12. No costs.

(SANJEEV KAUSHIK)
MEMBER (J)

(RAJWANT SANDHU)
MEMBER (A)

Dated: /8.8.2015.

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