

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.1557/2015

Order reserved on 28th November 2017

Order pronounced on 21st December 2017

Hon'ble Mr. K.N. Shrivastava, Member (A)

Sh. Surendra Dhillon, aged 48

DSP

s/o late Shri Karan Singh

r/o Flat No.304

Mahalaxmi Apartment

Sector 43 Gurgaon

Haryana

..Applicant

(Mrs. P. K. Gupta, Advocate)

Versus

1. Central Bureau of Investigation
Through its Director General
Block No.B-5, New Building
CGO Complex
Lodhi Road, New Delhi

2. Deputy Director (Personal)
Central Bureau of Investigation
Block No.B-5, New Building
CGO Complex
Lodhi Road, New Delhi

3. Central Bureau of Investigation
Through Head of Branch
CBI, ACB Jaipur
1, Tilak Marg, C-Scheme/1
Jaipur – 302 001

4. Union of India through its Secretary
Department of Personnel & Training
North Block, New Delhi

..Respondents

(Mrs. Harvinder Oberoi, Advocate)

ORDER

Through the medium of this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

- “(i) set aside the impugned orders dated 29.1.2015 passed by Deputy Director (Personnel), CBI, HO, New Delhi, vide CBI ID No. DPPERS-1, 2015 / 3393/ 3/ 120 / 2010 and office order No.30/2015 dated 29.1.2015;
- (ii) direct the respondents to reinstate the applicant with full back wages and consequential benefits.”

2. The factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant joined as Sub Inspector in Central Bureau of Investigation (CBI). He secured his promotion as Inspector in the due course and was later promoted as Deputy Superintendent of Police (DSP) in the year 2010.

2.2 Vide his Annexure A-3 application dated 08.07.2014, the applicant applied for voluntary retirement from service (VRS) under Rule 48-A of CCS (Pension) Rules, 1972 (for short ‘Rules 1972’) after having put in 23 years of service. The rules require 90 days of advance notice.

2.3 Respondent Nos. 1 & 2, vide Annexure A-4 letter dated 25.09.2014, recommended applicant’s case to the Department of Personnel & Training (DoPT) – respondent No.4, who is the administrative Department of CBI. Paragraph (3) of the letter is extracted below:-

“3. It is requested that the voluntary retirement notice dated 08/07/2014 of Shri Surendra Dhillon, DSP, CBI, ACB Jaipur may please be accepted and decision of the Competent Authority on the accorded and conveyed to this Bureau before 05/10/2014.”

The applicant's VRS application was not accepted within the prescribed statutory period of 90 days, which expired on 05.10.2014. The applicant was allowed to continue in the service.

2.4 The applicant, vide his Annexure A-5 letter dated 30.10.2014, addressed to the President of India, withdrew his aforesaid VRS application. This letter of the applicant was forwarded to the DoPT by respondent Nos. 1 & 2 vide their Annexure A-6 letter dated 18.11.2014, the contents of which are reproduced below:-

“2. It is intimated that the proposal for acceptance of voluntary retirement notice dated 08/07/2014 has been forwarded to DoPT for obtaining the approval of the Competent Authority on 29/10/2014. However approval of the Competent Authority is still awaited.

3. In the meantime, Shri Surendra Dhillon has submitted an application dated 31/10/2014 for withdrawal of VRS notice dated 08/07/2014, which is sent herewith in original.

4. It is requested that the decision of the Competent Authority on the request of Shri Surendra Dhillon for withdrawal of VRS Notice may please be conveyed to this Bureau urgently.”

2.5 The DoPT (respondent No.4) much belatedly vide ID No.202/95/2014- ADVI.II dated 20/11/2014 communicated acceptance of VRS of the applicant by the competent authority to the CBI. The Deputy Director (Pers.), CBI (respondent No.2), vide CBI ID No.DPPERS.I/2015/339/3/ 120/2010 dated 29.01.2015 (Annexure A-1),

communicated the decision of DoPT to respondent No.3, under whom the applicant was then working.

2.6 Respondent No.3, in turn, vide impugned Annexure A-2 office order No.30/2015 dated 29.01.2015, relieved the applicant from service w.e.f. 29.01.2015. The contents of Annexure A-2 office order are reproduced below:-

“Sh. Surendra Dhillon, Dy. SP, CBI, ACB, Jaipur (Employee Code No.1166451) submitted an application/notice dated 08.07.2014 requesting for Voluntary Retirement followed by his request dated 31.10.2014 for withdrawal of the notice.

2. The DoPT vide their ID No.202/95/2014-AVD.II dated 20.11.2014 has conveyed the approval of competent authority for acceptance of notice dated 08.07.2014 for Voluntary Retirement of Sh. Surendra Dhillon, Dy. SP, CBI, ACB, Jaipur with immediate effect. The request of Sh. Surendra Dhillon for withdrawal of the notice has not been acceded to, as conveyed by the Dy. Director (Pers.), CBI, HO, New Delhi vide CBI ID No.DPPERS-I 2015/339/3/120/2010 dated 29.01.2015.

3. Therefore, Shri Surendra Dhillon, Dy. SP, CBI, ACB, Jaipur is hereby relieved with immediate effect i.e. 29.01.2015 (A/N) on his Voluntary Retirement.”

Aggrieved by the impugned Annexures A-1 & A-2 orders, the applicant has filed the instant O.A. praying for the reliefs, as indicated in paragraph (1) above.

3. The applicant has pleaded the following important grounds in support of the reliefs claimed:-

3.1 The Hon'ble Supreme Court in the case of **Shambhu Murari Sinha v. Project & Development India Ltd. & another**, (2002) 3 SCC 437 has held that as long as the jural relationship of employee and employer

continues, the employee can withdraw his proposal for voluntary retirement. Paragraph (18) of the said judgment is extracted below:-

“18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as though option of the appellant for the voluntary retirement under the scheme was accepted but it was stated that the 'release memo along with detailed particulars would follow'. Before the appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated August 07, 1997 and September 24, 1997, but there was no response from the respondent. By office memorandum dated 25th September, 1997, the appellant was released from the service and that too from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26 September, 1997, and, therefore, the jural relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary retirement and said relationship continued till 26th of September, 1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.”

3.2 The Principal Bench of this Tribunal, relying on the judgment of Hon'ble Apex Court in **Shambhu Murari Sinha's** case (supra), in the case of **Ved Prakash v. The Director General, Central Govt. Health Scheme & another** (O.A. No.581/2008) decided on 15.12.2008 in an identical case, has granted the same reliefs that have been claimed by the applicant in this O.A. The operative part of the said order reads as follows:-

“24. In the result, for the foregoing reasons, OA is allowed. Impugned orders are set aside. Applicant is deemed to be in service w.e.f. 30.11.2006 and shall be entitled to all consequences, including back wages, seniority, promotion and the period be treated as qualifying service for pension. However, if any retirement benefit is derived by the applicant, the same has to be refunded to the respondents. The respondents are further directed to comply with the aforesaid directions within a period of two months from the date of receipt of a copy of this order. No costs.”

4. Pursuant to the notices issued, the respondents entered appearance and filed their reply, in which they have averred as under:-

4.1 Admittedly, 3 months' VRS notice period expired on 07.10.2014 but the DoPT, vide ID dated 27.10.2014, had inquired from CBI whether the VRS proposal had the approval of the Director, CBI. The CBI, in turn, clarified on 29.10.2014 that the proposal for acceptance of VRS had the approval of the Director, CBI.

4.2 After the receipt of the withdrawal letter dated 31.10.2014, it was sent to DoPT on 19.11.2014 for a decision.

4.3 The DoPT, vide their letter dated 08.12.2014, requested the CBI to furnish its comments on the withdrawal of VRS notice dated 08.07.2014 along with approval of Director, CBI. The Director, CBI did not recommend the withdrawal of VRS notice / application dated 08.07.2014. The DoPT was accordingly informed by the CBI on 21.01.2015.

4.4 The acceptance of the VRS application of the applicant was conveyed by the DoPT to CBI on 20.11.2014. Based on the said communication, the impugned Annexures A-1 & A-2 orders have been issued.

4.5 The ratio of law laid down in **Shambhu Murari Sinha's** case (supra) would not apply to the instant case because in that case the VRS was applied under a scheme, whereas the application for VRS in the present case is made under statutory rules, i.e., CCS (Pension) Rules 1972.

4.6 The respondents were required to communicate only the refusal within the statutory period and not the acceptance.

5. The applicant has filed a rejoinder, in which, by and large, he has re-stressed the averments made in the O.A.

6. On completion of pleadings, the case was taken up for hearing the arguments of parties on 28.11.2017. Arguments of Mrs. P K Gupta, learned counsel for applicant and that of Mrs. Harvinder Oberoi, learned counsel for respondents were heard.

7. I have given my due consideration to the arguments of learned counsel for the parties and have also perused the pleadings and documents annexed thereto.

8. Admittedly, the applicant submitted his VRS application on 08.07.2014 for consideration of the respondents under Rule 48-A of CCS (Pension) Rules, 1972. The said rule is reproduced below:-

“(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.”

9. In terms of the *ibid* Rule, the respondents were under an obligation to take decision on the VRS application of the applicant within a period of 90 days. The decision was, however, taken much after the expiry of statutory notice period. The contention of the respondents is that the delay in decision making occurred due to a clarification sought by respondent No.4 from respondent Nos. 1 & 2 as to whether the VRS application of the

applicant had been recommended by the Director CBI (respondent No.1) or not and that after the receipt of the clarification that it had the recommendation of the Director, CBI, the case was processed and the order of the competent authority accepting the VRS application of the applicant, was communicated. This contention is indeed bizarre. The statutory period of 90 days has been prescribed for processing the application of the employee seeking VRS by the employer, which obviously includes the time taken in the internal correspondence between the entities of the employer.

10. It is also not in dispute that applicant's VRS application was accepted by the competent authority only on 20.11.2014 and much prior to that, i.e., on 30.10.2014, the applicant had withdrawn his VRS application. This letter of the applicant was forwarded by the CBI to DoPT for consideration, who again did not act promptly and sought unnecessary clarification from the CBI as to whether this has the approval of Director, CBI. Needless to say that any letter sent by a subordinate/attached office to its any Ministry / Department in the Central Government and signed by a junior functionary necessarily would have the approval of the competent authority in that subordinate / attached office. Hence, I am constrained to observe that the DoPT wasted time in unnecessary correspondence.

11. The Hon'ble Apex Court in **Shambhu Murari Sinha's** case (supra) has clearly laid the law that the jural relationship of employee and employer continues till the resignation of the employee is accepted and he is relieved. In the present case, even after the expiry of notice period of 90 days on 05.10.2014, the applicant has been continued in service by the respondents

and much before his VRS application was accepted by the competent authority, he had withdrawn his VRS application dated 08.07.2014. In other words, the applicant withdrew his VRS application during the period when his jural relationship with the respondents was still subsisting. Hence, relying on the law laid down by the Hon'ble Apex Court in **Shambhu Murari Sinha's** case (supra), I am of the view that impugned Annexures A-1 & A-2 orders have become *non-est* in the eyes of law.

12. In the conspectus of discussions in the foregoing paragraphs, the O.A. is allowed. Impugned Annexures A-1 & A-2 orders are quashed and set aside. The respondents are directed to allow the applicant to re-join CBI within a period of four weeks from the date of receipt of a copy of this order. The applicant shall be entitled to all consequential benefits, including the back wages. No order as to costs.

(K.N. Shrivastava)
Member (A)

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