

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

OA-3516/2013

Reserved on : 20.01.2017.

Pronounced on : 02.02.2017.

Hon'ble Mr. Shekhar Agarwal, Member (A)

Sh. Udai Vir Singh Rathi (ACP),
S/o late Sh. Kaley Singh,
R/o B-5/112, Safderjung Enclave,
New Delhi.

..... Applicant

(through Sh. Suraj Rathi, Advocate)

Versus

1. Chief Secretary,
Govt. of NCT of Delhi,
Delhi Sechivalaya,
Players Building, I.P. Estates,
ITO, New Delhi-2.

2. Delhi Police through
The Commissioner of Police,
Police Headquarters, I.P. Estate,
ITO, New Delhi.

3. Union of India through
the Secretary,
Ministry of Home Affairs,
North Block, New Delhi.

4. Union of India through
The Joint Secretary (UT),
Ministry of Home Affairs,
Government of India,
North Block, New Delhi. Respondents

(through Sh. R.N. Singh and Sh. Anmol Pandita for Sh. Vijay Pandita,
Advocate)

ORDER

The applicant joined Delhi Police on 29.06.1978 as Sub Inspector. Gradually, he got promoted to the level of ACP. On 26.08.2013, he submitted a request for voluntary retirement w.e.f. 01.12.2013. Before further action could be taken on the same, on 20.09.2013, he submitted an application seeking voluntary retirement w.e.f. 30.09.2013 due to his family circumstances. The respondents issued a Notification on 26.09.2013 accepting the request of the applicant under Rule-48 of the CCS (Pension) Rules, 1972 to voluntarily retire w.e.f. 30.09.2013. The applicant, however, submitted another application on 27.09.2013 withdrawing his request for voluntary retirement and stating that he wants to retire on 31.12.2013 on attaining the age of superannuation. This request was not accepted by the respondents and hence he has filed this O.A. before the Tribunal seeking the following relief:-

- "(i) The respondents may be directed not to act on the representation seeking voluntary retirement dated 20.09.2013 and 26.08.2013.
- (ii) The respondents may be directed to allow the applicant to remain on the rolls of Delhi Police till at least 31.12.2013 i.e. his normal date of superannuation.
- (iii) It may be declared that the applicant has withdrawn his request for voluntary retirement and hence is entitled to continue in service till 31.12.2013.
- (iv) and any action or order issued, even though not served on the applicant, taken to retire the applicant may be quashed and set aside.

- (v) Cost of the petition be also awarded to the applicant.
- (vi) Any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case may also be passed in favour of the Petitioner and against the respondents."

2. In their reply, the respondents have stated that the competent authority had accepted the request of voluntary retirement of the applicant to retire w.e.f. 30.09.2013 and the applicant has been accordingly retired. Therefore, this O.A. has become infructuous. Narrating the background of the case, the respondents submitted that the applicant was transferred to Andaman & Nicobar Islands in the year 2010 due to administrative exigencies. However, instead of joining there, he approached the Tribunal by filing OA-2785/2010. The aforesaid O.A. was dismissed by the Tribunal on 11.03.2011. The applicant then filed Writ Petition(C) No. 2435/2011 in Hon'ble High Court of Delhi. This was also dismissed on 03.06.2011. He then filed SLP No. 16006/2011 before Hon'ble Supreme Court. Hon'ble Supreme Court dismissed the same on 22.08.2013 and passed the following order:-

"Special leave petition is dismissed. If the petitioner does not join his posting at the place he has been transferred it will be open to the Government to proceed against him in accordance with law."

The Ministry, which was the cadre controlling authority of the applicant, then directed Delhi Police to relieve him so that he can

join his posting in Andaman & Nicobar Islands. However, instead of joining there, the applicant opted for voluntary retirement. The applicant, in fact, was required to submit the notice of voluntary retirement after joining at Andaman & Nicobar Islands. Nevertheless, he was allowed to retire from Delhi. Now in the instant O.A., the applicant is praying that he may be allowed to stay in Delhi till 31.12.2013. Since this issue has been settled by the Hon'ble Supreme Court, this Tribunal cannot interfere in this matter.

3. I have heard both sides and have perused the material placed on record. Learned counsel for the respondents Sh. R.N. Singh also argued that the applicant had been granted voluntary retirement under Rule-48 of the CCS (Pension) Rules, 1972. Rule-48(2) of the aforesaid rules reads as follows:-

“A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.”

3.1 Thus, the applicant is precluded from withdrawing his request for voluntary retirement except with the approval of competent authority. Moreover, Sh. Singh argued that the application withdrawing the voluntary retirement never reached the competent

authority i.e. Ministry of Home Affairs before the voluntary retirement of the applicant became effective on 30.09.2013.

4. Learned counsel for the applicant has, however, relied on the following judgments:-

(a) In the case of **Vinod Kumar Aroa Vs. Rashtriya Sanskriti Sansthan and Ors.**, WP(C) No. 8157/2013 Hon'ble High Court of Delhi on 12.08.2015 in para-7 has held as follows:-

“Having considered the pleadings and heard the learned counsel for the parties, this Court is of the view that this issue is no more res-integra. The Supreme Court in the cases reported as **Balram Gupta Vs. Union of India and Anr., 1987 (Suppl.) SCC 228, Shambu Murari Sinha Vs. Project & Development India and Anr., 2000(5) SCC 621** and **J.N. Srivastava Vs. Union of India & Ors., 1998(9) SCC 559** has settled the issue inasmuch it has been held that it is always permissible for an employee even though, request for voluntary retirement has been accepted by employer, to withdraw the same before the last date of notice period.

(b) In the case of **J.N. Srivastava Vs. UOI & Anr.**, 1998(9)SCC 559 Hon'ble Supreme Court in para-3 has 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 v. Union of India*.”

(c) In the case of **Balram Gupta Vs. UOI & Anr.**, 1987 (Supp) SCC 228 Hon'ble Supreme Court in the head note has held as under:-

"There was no valid reason for withholding the permission by the respondent. Therefore, the applicant is entitled to be put back to his job with all the consequential benefits being treated as in the job from March 31, 1981.

In the facts of the instant case the retirement from the government service was to take effect at a subsequent date prospectively and that withdrawal was long before that date. Therefore, the appellant had **locus poenitentiae**. The dissolution of the contract of employment would be brought about only on the date indicated i.e. March 31, 1981; up to that the appellant was and is a government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation."

(d) In the case of **UOI & Anr. Vs. Wing Commander T. Parthasarathy**, 2001 (1) SCC 158 Hon'ble Supreme Court in para-6 has held as under:-

"6. We have carefully considered the submissions of the learned counsel appearing on either side. The reliance placed for the appellants on the decision reported in Raj Kumars case (Supra) is inappropriate to the facts of this case. In that case this Court merely emphasised the position that when a public servant has invited by his letter of resignation determination of his employment his service clearly 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 condition of the 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 and that till the resignation is accepted by the appropriate Authority in consonance with the rules governing the acceptance, the public servant concerned had Locus Penitentiae but not thereafter. This judgment was the subject matter of consideration alongside the other relevant case law on the subject by a Constitution Bench of this Court in the decision reported in Union of India Etc. vs Gopal Chandra Misra and Others (AIR 1978 SC 694). A request for pre-mature retirement which required the acceptance of the competent or

appropriate Authority will not be complete till accepted by such competent Authority and the request could definitely be withdrawn before it became so complete. It is all the more so in a case where the request for pre-mature retirement was made to take effect from a future date as in this case. The majority of the Constitution Bench analysed and declared the position of law to be as hereunder:

50. It will bear repetition 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. This general rule is equally applicable to Government servants and constitutional functionaries. In the case of a Government servant or functionary who cannot, under the conditions of his service/or office, by his own unilateral act of tendering resignation, give up his service/or office, normally, the tender of resignation becomes effective and his service/or office-tenure terminated, when it is accepted by the competent authority. In the case of a Judge of a High Court, who is a constitutional functionary and under Proviso (a) to Article 217 (1) has a unilateral right or privilege to resign his office, his resignation becomes effective and tenure terminated on the date from which he, of his own volition, chooses to quit office. If in terms of the writing under his hand addressed to the President, he resigns *in praesenti* the resignation terminates his office-tenure forthwith, and cannot therefore, be withdrawn or revoked thereafter. But, if he by such writing, chooses to resign from a future date, the act of resigning office is not complete because it does not terminate his tenure before such date and the Judge can at any time before the arrival of that prospective date on which it was intended to be effective withdraw it, because the Constitution does not bar such withdrawal.

[Emphasis supplied]"

(e) In the case of **Shambu Murari Sinha Vs. Project & Development India and Anr.**, 2000(5) SCC 621 Hon'ble Supreme Court in para-5

has held as under:-

"5. From the facts stated above, it would be seen that though the option of voluntary retirement exercised by the appellant by his letter dated 18.10.1995 was accepted by the respondent-management by their letter dated 30.7.1997, the appellant was not relieved from service and he was allowed to continue in service till 26.9.1997, which, for all practical purposes, would be the "effective date" as it was on this date that he was relieved from service. In the meantime, as pointed out above, the appellant had already withdrawn the offer of voluntary retirement vide his letter dated 7.8.1997. The question which, therefore, arises in this appeal is whether it is open to a person having exercised option of voluntary retirement to withdraw the said offer after its acceptance but before it is made effective. The question is squarely answered by the three decisions, namely, Balram Gupta vs. Union of India & Anr. 1987 (Supp.) SCC 228; J.N. Srivastava vs. Union of India & Anr. (1998) 9 SCC 559 and Power Finance Corporation Ltd. vs. Pramod Kumar Bhatia (1997) 4 SCC 280, in which it was held that the resignation, in spite of its acceptance, can be withdrawn before the "effective date". That being so, the appeal is allowed. The impugned judgment of the High Court is set aside with the direction that the appellant shall be allowed to continue in service with all consequential benefits. There will, however, be no order as to costs."

5. I have considered the aforesaid submissions. Learned counsel for the applicant had contended that the applicant had withdrawn his request for voluntary retirement w.e.f 30.09.2013 before the due date on 27.09.2013. Sh. Singh, learned counsel for the respondents, on the other hand, contended that withdrawal request has not been received by the competent authority before the voluntary retirement had become effective. On perusal of material placed on record, we find that on pages- 70-72 applicant had submitted an application to the Addl. Commissioner of Police on 27.09.2013 withdrawing his request for voluntary retirement. This has been

received in the office of the Addl. Commissioner of Police on 27.09.2013 as is evident from the stamp on that application. If the respondents have delayed transmitting that application to the competent authority in the Ministry of Home Affairs, the applicant cannot be blamed for the same. Thus, it has to be held that the applicant withdrew his request for voluntary retirement before the voluntary retirement had become effective on 30.09.2013.

5.1 Learned counsel for the respondents Sh. Singh had argued that under Rule-48(2) of CCS (Pension) Rules, 1972 once a government servant has elected to retire under that rule, he is precluded from withdrawing his election subsequently except with the specific approval of such authority. Sh. Singh stated that in the instant case no such approval was granted. Hence, withdrawal cannot be considered to have become effective. To counter this, learned counsel for the applicant has cited several judgments extracted above.

5.2 On going through these judgments, I find that Hon'ble Supreme Court has ruled that a government servant has **locus poenitentiae** to withdraw his request for voluntary retirement before the due date. In these judgments, Rule-48 of the CCS (Pension) Rules, 1972 has also been considered. I find that judicial pronouncements are overwhelmingly in favour of the applicant.

5.3 Lastly, Sh. Singh had argued that the applicant had resorted this of voluntary retirement only to stall his transfer to Andaman & Nicobar Islands. He argued that Hon'ble Supreme Court has already rejected the request of the applicant for stay of his transfer to Andaman & Nicobar Island and, therefore, this Tribunal is now barred from interfering in the same. However, I am not impressed by this argument. This is because in this O.A. I am concerned with the withdrawal of voluntary retirement request of the applicant. This issue had never been brought before the Hon'ble Supreme Court.

6. I, therefore, allow this O.A. and direct the respondents to let the applicant retire from service on his normal date of superannuation i.e. 31.12.2013. He may be treated as in service during the period 01.10.2013 to 31.12.2013. However, considering the facts and circumstances of this case and considering that the applicant did not actually work during this period, I direct that this period be regularized by granting leave of the kind due including extra ordinary leave to the applicant. The above benefits may be given to the applicant within 08 weeks from the date of receipt of a certified copy of this order. No costs.

**(Shekhar Agarwal)
Member (A)**

/Vinita/

