

**Administrative Tribunal
Principal Bench
New Delhi**

OA No.2540/2017

Reserved on : 17.05.2018

Pronounced on : 24.05.2018

**Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K. N. Shrivastava, Member (A)**

Dr. Chandra Shekhar Sahukar,
Deputy Commissioner (AH) (Retd.),
Department of Animal Husbandry & Dairying,
Ministry of Agriculture and Farmers Welfare,
Krishi Bhawan, New Delhi-110001.
Resident of : C-376, DDA Flats,
East Loni Road, Delhi-110093.

... Applicant

(By Advocate : Mr. M. K. Bhardwaj)

Versus

Secretary,
Department of Animal Husbandry & Dairying,
Ministry of Agriculture and Farmers Welfare,
Krishi Bhawan, New Delhi-110001.

... Respondent

(By Advocate : Mr. J. P. Tiwari)

O R D E R

Justice Dinesh Gupta, Chairman :

The applicant while posted as Deputy Commissioner (Animal Husbandry) with the respondent, submitted a notice dated 14.10.2016 seeking voluntary retirement from service with effect from 15.01.2017. He sent another communication dated 05.01.2017 to the

respondent requesting for withdrawal of his notice for voluntary retirement with immediate effect. The aforesaid communication reads as under:

"Respected sir,

I beg to state that I had served notice of 90 days for VRS vide my letter dated 14th October, 2016, however, the SLP for DACP No.3505/2015 filed by the DAHDF is listed on 16th January, 2016, therefore, I withdraw the notice for VRS with immediate effect as my pension would be fixed based on ensuing judgment.

It would not be out of place to mention that I had joined Government of India, Ministry of Agriculture, New Delhi on 13th Feb, 1987 and I was transferred to Ministry of Food Processing Industries in 1988, and there was no promotional avenues and I had joined back this Ministry as Assistant Commissioner on 3rd November, 1995 (through UPSC Direct Recruitment). Till 2005, I did not get any promotion, and again I was selected as Deputy Adviser (Animal Husbandry) (through UPSC on deputation) in 2005 and worked up to 2012. I did not get a single promotion with financial upgradation in about 30 years in Central Government. As per the Hon'ble Delhi High Court Judgment I am entitled to get Pay-Band-4 with GP of 10000/- w.e.f. 3rd November 2008.

Now I am in Level-2 (Old Pay Band-3 with GP of Rs.7600/-). I would like to inform your kind self that, I had to file my first case for NPS in Hon'ble CAT, Principal Bench, New Delhi (Hon'ble High Court status) during my probation period, as I was working under Ministry of Food Processing Industries, the Ministry did not file SLP in the Hon'ble Supreme Court of India and implemented the order of Hon'ble CAT in 1990 for grant of Non-Practicing Allowance (NPA).

I have been suffering with huge financial losses on account of lesser pay due to filing of SLP by the Department against me and I am yet to get justice. As

the SLP for DACP, No.3505/2015 filed by the department is listed on 16th January, 2017, and I don't want to undergo undue mental harassment during the pension period, therefore, I withdraw notice for VRS with immediate effect unconditionally.

Submitted for kind consideration please."

2. It appears that earlier the applicant had filed OA No.242/2009 before this Tribunal claiming benefit under the Dynamic Assured Career Progression Scheme (DACP). The said OA was dismissed by the Tribunal vide order dated 05.05.2010. Review application preferred by the applicant thereagainst also came to be rejected. The applicant challenged the order of the Tribunal in the High Court of Delhi in WP(C) No.2780/2010. The said writ petition was allowed by the High Court vide order dated 14.10.2014. The order of the High Court was carried by the respondent before the Hon'ble Supreme Court in SLP(C) No.3505/2015 which is stated to be pending disposal before the Apex Court.

3. However, the applicant received a notification dated 25.01.2017 issued by the respondent accepting his notice of voluntary retirement with effect from the forenoon of 25.01.2017. The said notification reads as under:

"The President is pleased to accept the notice of Voluntary Retirement given by Dr. C. S. Sahukar, Deputy Commissioner (AH) under Rule 48(A) of the CCS (Pension) Rules with effect from 25th January, 2017.

2. This supersedes earlier notification of even number dated 06.01.2017."

Vide the earlier notice dated 06.01.2017 mentioned in the notification dated 25.01.2017 the applicant's notice for voluntary retirement was accepted w.e.f. 15.01.2017. The applicant received another notification dated 25.01.2017 informing him that his request dated 05.01.2017 for withdrawal of the notice of voluntary retirement had not been acceded to by the competent authority. The applicant again requested for reconsideration of withdrawal of his notice for voluntary retirement vide his letter dated 27.01.2017 and allow him to continue in service till 31.05.2018, i.e., his normal date of superannuation. However, vide communication dated 13.02.2017 the respondent informed him that his request had not been acceded to by the competent authority. He was accordingly asked to fill his pension papers for further necessary action. Aggrieved by this action of the respondent the applicant has filed the present OA seeking following reliefs:

"(1) Stay Order on the notification dated 25.1.2017, which was not within the time limit of 90 days and issued after 114 days of VRS Notice date 14.10.2016.

(2) Directions to continue my service till 31.05.2018 with my arrears of salary, which is the actual date of superannuation.

(3) Withholding any promotion/deputation for the post of Deputy Commissioner (Animal Husbandry) till outcome of this petition."

4. On being put to notice, the respondent has filed its counter affidavit wherein it is stated that the applicant gave three months' notice seeking voluntary retirement w.e.f. 15.01.2017 vide his request dated 14.10.2016, which was accepted by the competent authority on 28.12.2016 permitting the applicant to voluntarily retire w.e.f. 15.01.2017. However, the applicant vide his request dated 05.01.2017 sought withdrawal of the notice of voluntary retirement. It is submitted that the request of the applicant was considered by the competent authority in accordance with rules but the grounds adduced by him seeking withdrawal were found to be frivolous and devoid of merit, and the same was not acceded to. It is further stated that even though the request for withdrawal had been made before the intended date of retirement, however, it is the prerogative of the Government to reject or accept the request, and accordingly by a conscious decision his request was rejected. It is then submitted that the request for withdrawal of voluntary retirement notice was under consideration around the time when the notice was made effective. However, the decision not to accede to his request for withdrawal of notice was taken on 20.01.2017, and to cover-up the intervening period between the date from which the notice was accepted, i.e.,

15.01.2017, and the date of decision of the competent authority rejecting the applicant's request for withdrawal, i.e., 20.01.2017, the effective date of voluntary retirement was subsequently changed to 25.01.2017 superseding the earlier notification. It is further submitted that merely because the applicant had applied for withdrawal of notice before the intended date of voluntary retirement, he cannot claim it as a matter of right and the right of the Government to accept or reject is absolute and exclusive in the public interest and administrative exigencies. Relying upon the rule position, the respondents have submitted that the rules make it explicitly clear that the concerned employee shall be precluded from withdrawing his notice for voluntary retirement except with the specific approval of such authority, and that the rule vests the Government with the right to either reject or accept the notice notwithstanding whether the notice was withdrawn before the intended date of retirement.

5. It is further submitted by the respondent that the pensionary benefits of the applicant have already been paid, and that there is no provision which allows refund of pensionary benefits once paid. It is alleged that the applicant while applying for pensionary benefits bid his time till the same were fully settled only to file court case seeking revocation of the order of acceptance of voluntary retirement, and his case stands barred by time on this count as all the

retirement benefits accruing to him have been paid. The applicant's notice for voluntary retirement was accepted with effect from 25.01.2017 whereas he has filed the present OA towards the end of July, 2017. It is accordingly submitted that if the applicant had felt so aggrieved, he ought to have filed this OA immediately after rejection of his request for withdrawal of notice.

6 Replying to the facts of the case, it is submitted that the tentative date of hearing in the aforementioned SLP before the Hon'ble Supreme Court was 12.02.2018, and that it is the perception of the applicant which makes him believe that the judgment will come in his favour and that too in the time frame of his choosing, however, the Government is not bound in any way to consider his request as per his convenience. It is further stated that the notice of the applicant required acceptance under rule 48-A of the CCS (Pension) Rules, 1972, unlike under rule 48 whereunder it is automatic, and it was the prerogative of the Government to accept it from even date subsequent to the intended date of retirement. It is also submitted that the date of voluntary retirement was changed from 15.01.2017 to 25.01.2017 to cover-up the period between 15.01.2017 and the date of decision on his request for withdrawal of notice. It is contended that the claim of the applicant that his notice should have been accepted within 90 days has no relation to the case,

as the notice would be presumed to be accepted if acceptance is not conveyed before expiry of the notice period.

7. The applicant has also filed a rejoinder affidavit reiterating the averments made in the OA.

8. Heard the learned counsel representing the parties.

9. Rule 48-A of the Central Civil Services (Pension) Rules, 1972 dealing with retirement on completion of 20 years' qualifying service, insofar as the same is relevant for the purpose, is reproduced hereunder:

"48-A. Retirement on completion of 20 years' qualifying service

(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.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is -

- (i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,
- (ii) posted abroad in foreign based offices of the Ministries/Departments,
- (iii) on a specific contract assignment to a foreign Government,

unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) shall require acceptance by the appointing authority:

Provided that where the appointing authority does not refuse to grant the permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of the said period.

(3) *Deleted*

(3-A) (a) Government servant referred to in sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) on receipt of a request under clause (a), the appointing authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the appointing authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."

10. Thus the question that arises for consideration is whether the applicant is entitled to withdraw the notice of voluntary retirement before the intended the date of retirement. It may be recalled that the applicant submitted notice dated 14.10.2016 seeking voluntary retirement from service with effect from 15.01.2017. He sent another communication dated 05.01.2017 to the respondent requesting for withdrawal of his notice for voluntary retirement with immediate effect. Therefore, his request for withdrawal of notice was within the intended date of retirement. However, sub-rule (4) of rule 48-A of CCS (Pension) Rules, 1972 provided that such withdrawal is not permissible except with the specific approval of the appointing authority.

11. The issue is no more *res integra* having been settled by the Hon'ble Supreme Court in *Balram Gupta v Union of India & another* [1987 (Supp) SCC 228]. In the aforesaid case, the appellant before the Apex Court after completion of more than 20 years' service applied for voluntary retirement on 24.12.1980 w.e.f. 31.03.1981. The respondent vide its letter dated 01.01.1981 allowed the appellant to retire from service. However, in the meantime the appellant changed his mind and vide his letter dated 31.01.1981 sought to withdraw his notice for voluntary retirement. However, his request was rejected taking refuge to rule 48-A(4) of the Rules of 1972 which would

preclude a government servant from withdrawing his notice "except with the specific approval of such authority". The Apex Court turned down the contention made on behalf of the respondent that once notice was given it became operative immediately and automatically brought about the dissolution of contract after the expiry of the notice period. Their Lordships observed such dissolution would be brought about only on the date indicated, i.e., 31.03.1981, and up to that date the appellant would be a government employee, and that there is no unilateral termination of the contract prior thereto. The Apex Court further observed that independent of sub-rule (4) of rule 48-A, as a government servant the appellant was entitled to withdraw his notice of voluntary retirement, and in this respect the notice of voluntary retirement would stand at par with letter of resignation. Accordingly, holding that there was no valid reason for withholding the permission by the respondent, the Apex Court allowed the appeal and directed the appellant to be put back to his job with all consequential benefits. Relevant observations of the Hon'ble Supreme Court are reproduced hereunder:

"12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. The appellant has stated that on the persistent and personal requests of the staff members he had dropped

the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom....

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize the Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees."

The Hon'ble Supreme Court reiterated the above view in a later judgment in *J. N. Srivastava v Union of India & another* [(1998) 9 SCC 559].

12. In the aforesaid judgment cited by the applicant, certain issues are settled that when a notice for voluntary retirement is given

by the employee to the employer fixing a particular date from which the retirement would be effective, the employee has every right to withdraw the notice before the fixed date. Insofar as the contention of the respondent that they have right to refuse to accept the withdrawal notice is concerned, the respondents have to cite certain reasons for not accepting the request of the applicant to withdraw his notice for voluntary retirement. The judgment of the Apex Court covers the issue in controversy in the present OA. Learned counsel for the respondents has failed to demonstrate that the case of the applicant is not covered by the judgment of the Apex Court.

13. Insofar as the contention of the respondents that the applicant has accepted his pensionary benefits and thereafter he chose to prefer this OA and there is no provision for refund of the pensionary benefits given to the applicant is concerned, the same can be of force, as the respondents can recover the amount of pensionary benefits which were paid to the applicant, along with reasonable interest thereon, and for that no direction of the court is required. The applicant is also under a legal obligation to refund the pensionary benefits accepted by him after acceptance of his voluntary retirement notice. Further, the contention of the respondents that the applicant should have approached the Tribunal promptly after acceptance of his voluntary retirement notice is also of no value as

the applicant has preferred this OA within the period of limitation as prescribed by the Administrative Tribunals Act, 1985. As the Apex Court in the case of *Balram Gupta* (supra) has clearly observed, the respondents have no valid reason for withholding the permission as the applicant had already indicated in his application for withdrawal of voluntary retirement notice in the changed circumstances, which has not been denied by the respondents in their reply.

14. In view of the above discussion, we are of the view that the respondents erred in not giving permission to withdraw the notice of voluntary retirement give by the applicant and retiring him from service.

15. The OA is accordingly allowed. The applicant will be entitled to continue in service till 31.05.2018, i.e., the date of his superannuation, as also to the arrears of salary minus the pensionary benefits and the pension received by him during the above said period. Insofar as relief (3) is concerned, the applicant is not entitled to the said relief as he is going to superannuate on 31.05.2018. No costs.

(K. N. Shrivastava)
Member (A)

/as/

(Justice Dinesh Gupta)
Chairman