

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O. A. No.63/600/2017

Date of decision: 01.08.2018

(Reserved on: 11.07.2018)

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**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. AJANTA DAYALAN, MEMBER (A).**

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R. Sunil Kumar, son of Sh. Raveendran Nair, aged 48 years, working as Assistant Master (Maths) in Group 'B' service in Rashtriya Military School, R/o H. No.T-79/1, Rashtriya Military School, Chail, Shimla Hills, District Solan, H.P. 173217.

... APPLICANT

VERSUS

1. Union of India through Secretary, Ministry of Defence, Govt. of India, South Block, New Delhi.
2. Deputy Chief of Army Staff (IS &T), Secretariat Integrated Head Quarter of Ministry of Defence (Army), New Delhi-110011.
3. Principal, Rashtriya Military School, Chail, Solan, Distt. Himachal Pradesh 173217.

... RESPONDENTS

PRESENT: Sh. Arun Dogra, counsel for the applicant.
Sh. Arvind Moudgil, counsel for the respondents.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. The applicant is aggrieved against order dated 03.05.2017 (Annexure A-7) whereby his request for withdrawing the notice for voluntary retirement has been rejected and order dated 24.05.2017 (Annexure A-8) by which his application for voluntary retirement has been accepted.
2. The solitary issue that came up for consideration is whether an employee can withdraw notice for voluntary retirement, even though

the same has been accepted by the competent authority, before the intended date or not?

3. This issue is no more res-integra. There are various judicial pronouncements by the Lordships where this issue has been settled. Before examining the facts of the present case, we would like to take note of various decisions on the issue of withdrawal of notice for voluntary retirement, which are as follows:-

- i. **Balram Gupta vs. Union of India & Ors. (AIR 1987 SC 2354)**
- ii. **Shambhu Murari Sinha vs. Project and Development India Ltd. and Anr. (AIR 2002 SC 1341).**
- iii. **Union of India & Ors. vs. Gopal Chandra Misra (1978 (2) SCC 301).**
- iv. **J. N. Srivastava vs. Union of India and Ors. (1998 (9) SCC 559)**
- v. **Nand Keshwar Prasad vs. Indian Farmers Fertilizers Cooperative Ltd. & Ors. (1998 (5) SCC 461).**
- vi. **Raj Kumar vs. Union of India (1968 (3) SCR 857)**
- vii. **Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia (1997 (4) SCC 280)**

The underline theme of above noted authoritative law is that an employee can withdraw notice for voluntary retirement even if the same has been accepted by the competent authority before the intended date. Relation of employer and employee does not come to an end unless an employee is released from service.

4. In the light of above authoritative law, we now examine facts of the present case.
5. In the present case, the applicant was working as Assistant Master (Maths). After rendering 23 years, 5 months and 26 days of service,

he submitted an application for voluntary retirement by giving three months notice on 22.12.2016 with immediate effect due to adverse family circumstances and ill health of his parents. Thus, he was to sever relations w.e.f. 21.03.2017. In other words, he could withdraw the request upto 21.03.2017. The applicant submitted request for withdrawal of his notice for voluntary retirement on 21.03.2017 i.e. before the intended date of retirement. Surprisingly, vide order dated 03.05.2017 request of the applicant for withdrawing the notice for voluntary retirement was rejected and by another order 24.05.2017 he was ordered to be retired from service w.e.f. 01.06.2017. Against these orders, the applicant is before this Court.

6. The respondents have filed written statement wherein they have submitted that after submission of notice for voluntary retirement by the applicant, they had decided to fill up the post on contract basis and have issued public notice inviting applications and have also forwarded request to Employment Exchange for sponsoring eligible candidates on 11/12.2.2017. Pursuant to advertisement, candidates were interviewed on 28.02.2017 and competent authority had accorded its approval to the proceedings for appointment on contract basis on 03.3.2017. Since they had already completed selection process, therefore, they have rejected request of the applicant for withdrawal of notice for voluntary retirement. It is submitted that since his notice for voluntary retirement had already been accepted, therefore, applicant cannot withdraw the same and accordingly impugned orders have been passed in accordance with law.
7. The applicant has filed rejoinder wherein he has submitted that before submitting a notice for voluntary retirement, he had requested the

department for extra ordinary leave to look after his parents, which was rejected and under those circumstances, he requested for voluntary retirement. However, before the intended date he withdrew the same which has been rejected by the respondents on the ground that they have selected a candidate for appointment on contract basis.

8. We have heard learned counsel for the parties.
9. Sh. Arun Dogra, learned counsel for the applicant vehemently argued that impugned order dated 03.05.2017 rejecting request of the applicant for withdrawal of notice for voluntary retirement and order dated 24.05.2017 whereby they have accepted his application for voluntary retirement are arbitrary, illegal and against the settled proposition of law. To substantiate his claim he submitted that in view of the settled law an employee can withdraw notice for voluntary retirement before intended date. Thus, he submitted that since respondents accepted his request on 24.05.2017 and prior to that applicant had requested for withdrawal of notice, therefore, in view of the law laid down in the case of Balram Gupta (supra), the impugned orders are liable to be set aside. He also placed reliance on Pramod Kumar Bhatia's case (supra) and submitted that respondents cannot reject his request for voluntary retirement because before the intended date the relationship of employer and employee does not come to an end and in the present case applicant had withdrawn notice for voluntary retirement before the intended date, i.e. 21.03.2017.

10. Per contra Sh. Arvind Moudgil, learned counsel for the respondents vehemently opposed the prayer and submitted that the impugned orders have been passed in accordance with law.
11. No other points were raised.
12. We have given our thoughtful consideration to the entire matter and have perused pleadings available on record with their able assistance.
13. As noticed above, the solitary issue for consideration of the Court is whether an employee can withdraw notice for voluntary retirement before the intended date or not.
14. Law on the subject has already been discussed and when we consider the facts of the present case in the backdrop of settled proposition of law, we are in agreement with the submissions made at the hands of the applicant that the impugned orders are liable to set aside on the ground that before the respondents could accept notice for voluntary retirement w.e.f. 22.03.2016, the applicant had submitted application for withdrawal of notice for voluntary retirement on 21.03.2016. Also while rejecting the same the respondents have not given reasons for not accepting his request, which is the basic requirement of rules. The same reads as under:

"1. Refer to your letter no. AO 104/XII dated 20 Jan 2017 and AO 104/XII dated 22 Mar 2017.

2. DCOAS (IS&T), being the competent authority has rejected the application dated 21 Mar 2017, regarding withdrawal or voluntary retirement submitted by Shri. R. Sunil Kumar, Asst. Master (Math) RMS Chail.

3. DCOAS (IS&T) has approved the request dated 22 Dec 2016 for Voluntary Retirement from service in respect of Shri R Sunil Kumar, Asst. Master (Math), RMS Chail.

4. This is for your information and further necessary action."

Even while passing order dated 24.05.2017 on his notice for voluntary retirement, respondents have not given any reasons. The same reads as under:

"1. Refer following:

- (a) Your application dated 12 Nov 2016 requesting for extra ordinary leave for 02 x years with effect from 01 Apr 2017.
 - (b) Your application for Voluntary Retirement from Service dated 20 Dec 2016.
 - (c) Your application for withdrawal of Voluntary Retirement dated 21 Mar 2017.
2. Application referred in para 1(a) above was examined at DGMT/MT-7 and the leave was denied citing reasons that the same was not covered under rule 32 of CCS (Leave) Rules, 1972. Application for voluntary retirement mentioned in para 1(c) above was also forwarded to DGMT/MT-7 and application for voluntary retirement mentioned in para 1(c) above was also forwarded to DGMT/MT-7.
 3. DGMT/MT-7 vide their letter No.53136/AM/RMS/GS/MT-7 dated 03 May 2017 (copy enclosed), have intimated that your application of Voluntary Retirement from Service has been accepted and the application for withdrawal of application for voluntary retirement has been rejected.
 4. In view of the above, you are hereby informed that your Voluntary Retirement from Service will come into effect from 01 Jun 2017. You are further directed to initiate handing talking over of all the charges and commence the clearance procedure. All the handing taking over certificates are required to be submitted to the undersigned by 31 May 2017."

15. Rule 48 (a) of CCS (Pension) Rules, 1972, deals with notice for voluntary retirement, wherein it has categorically been mentioned that an employee can withdraw notice for voluntary retirement, which has also been interpreted by the Lordship in a number of cases, as noticed above. The rule reads as under:

"48(A)(4): A 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"

16. A perusal of the rule makes it more than clear that an employee has been given an option to withdraw the notice for voluntary retirement but with a caveat that it has to be done before the intended date of retirement. In the case in hand, the intended date for retirement was 21.03.2017 and the respondents could pass order for acceptance of request of the applicant from 22.03.2017 and upto 21.03.2017 he could withdraw it which he indeed did on that date itself. In these circumstances, case of the applicant is fully covered within the four corners of the extracted rule formation and could not be rejected by the respondents only because a contractual employee had been engaged, and the applicant had to make way for him.
17. Also, since respondents have not spelt out any reason for not accepting request of the applicant thus impugned orders are not sustainable. More so, when as per Rule 48 (a), which governs the field, an employee can withdraw notice for voluntary retirement before the intended date. Accordingly, the impugned orders are hereby quashed and set aside. Consequences to follow. No costs.

(AJANTA DAYALAN)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date:
Place: Chandigarh.

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