

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.2088/2003

✓

New Delhi this the 9<sup>th</sup> day of December, 2004.

**HON'BLE MR. SHANKER RAJU, MEMBER (J)  
HON'BLE SHRI S.A. SINGH, MEMBER (A)**

K.K. Keshwani

...Applicant

(By Advocate Shri VSR Krishna)

-Versus-

Union of India and others.

-Respondents

(By Advocate Shri S. Mohd. Arif)

1. To be referred to the Reporters or not? YES

2. To be circulated to other Benches of the Tribunal or not? YES

*S. Raju*  
(Shanker Raju)  
Member (J)

21

Central Administrative Tribunal  
Principal Bench, New Delhi.

OA-2088/2003

New Delhi this the *9<sup>th</sup>* day of December, 2004.

Hon'ble Shri Shanker Raju, Member(J)  
Hon'ble Shri S.A. Singh, Member(A)

Shri K.K. Keshwani,  
S/o Sh. Notandas,  
R/o 51/1-C, Sector-II,  
DIZ Area, Type-III,  
Gole Market,  
New Delhi-1. .... Applicant  
(through Sh. VSR Krishna, Advocate)

-Versus-

Union of India through

1. The Secretary,  
Ministry of Agriculture,  
Department of A.H. & Dairying,  
Krishi Bhawan,  
New Delhi. .... Respondents
2. The Dy. General Manager (Admn.),  
Delhi Milk Scheme,  
West Patel Nagar,  
New Delhi-8. .... Respondents

(through Sh. S.M. Arif, Advocate)

**O R D E R**

**Hon'ble Shri Shanker Raju, Member(J):**

Applicant impugns respondents' orders dated 31.10.2002 and 6.5.2003 whereby on acceptance of request made by the applicant for voluntary retirement, applicant was retired w.e.f. 1.11.2002 and his request for withdrawal of voluntary retirement was turned down.

22

2. Applicant, who was working as Senior Clerk, was placed under suspension on 22.7.2002 on contemplated disciplinary proceedings. On preliminary enquiry as the fault of the applicant was not established, suspension was revoked on 19.10.002 and the applicant was reinstated in service and he joined duties on the same date. The period of suspension was treated as 'spent on duty' for all purposes.

3. Applicant, vide his undated request received by the department on 21.10.2002, sought for voluntary retirement due to falling health with a request to relax the notice period. A decision was taken on the aforesaid by the competent authority to retire the applicant w.e.f. 1.11.2002 and accordingly an order was passed on 31.10.2002.

4. After the retirement, representations were made by the applicant for cancellation of voluntary retirement on 13.12.2002 and 24.1.2003. This was turned down and pension papers of the applicant were prepared and on his request he has been paid transport expenses to shift his family in Maharashtra.

5. Applicant contends that before acceptance of request of voluntary retirement and the intended future date of 1.12.2002, on 26.10.2002, he made a request, as the earlier request for voluntary retirement did not contain the effective date of voluntary retirement, intending his voluntary retirement to be effective from 1.2.2003 and further contended that on 28.10.2002 he sought cancellation of his request for voluntary retirement and wanted to be retired on attaining the actual date of superannuation i.e. 31.8.2003.

6. Learned counsel of the applicant Shri VSR Krishna contended that in the record of respondents the request of the applicant for withdrawal

of voluntary retirement dated 28.10.2002 is present and it has been duly received by their own officer, namely, Shri Gopal, yet the same has been denied by the respondents arbitrarily and without holding any enquiry into the interpolation or otherwise as alleged by them. Once the applicant, before the intended date of voluntary retirement and its acceptance, has made a request for withdrawal of voluntary retirement, the same cannot be made effective and, therefore, he is entitled for benefits till 31.8.2003. Learned counsel relies upon a catena of decisions to propagate his plea which include the decision of the Apex Court in Balram Gupta & Anr. Vs. UOI (1988 SCC (L&S) 126), U.O.I. & Anr. Vs. Gopal Chander Misra & Ors. (1978(2) SCC 301), Raj Kumar Vs. U.O.I. (AIR 1969 SC 180). A reliance has also been placed on a decision of the Apex Court in Union of India & Anr. Vs. Wing Commander T. Parthasarthy (2001(1)SCC 158).

7. On the other hand, respondents' counsel produced before us the entire record and contended that the applicant has not come up with clean hands and has played fraud and misrepresentation on the Tribunal and also instrumentally interpolated the record of the department by introducing letter dated 28.10.2002. However, he denies receipt of letters dated 26.10.2002 and 28.10.2002. By referring to the record, it is stated that there has been interpolation in the pages of the concerned files from page 31c onwards. It is further stated that the request for withdrawal of voluntary retirement has been manipulated as the same is stated to have been received by the applicant himself who was posted in dispatch section and the acknowledgement does not contain the Diary number nor the date of its receipt. Likewise, it is stated that letter dated

23

26.10.2002 is non-existent in the record. By referring to the order sheet maintained, it is stated that if applicant had filed this application for withdrawal, this should have been referred to the noting part of the file which is on his conspicuous action clearly shows that the attempt is afterthought and this has been manipulated in connivance with the staff for which an enquiry is already in progress.

8. Shri S.M. Arif, learned counsel for respondents stated that if the contention raised by the applicant is correct then the request for voluntary retirement made to the Joint Secretary on 13.12.2002 should have contained relaxation to the letters dated 26.10.2002 and 28.10.2002.

9. In the aforesaid backdrop, it is stated that once the request is accepted on 1.11.2002 for voluntary retirement of the applicant, the same cannot be withdrawn subsequently as per Rule 48(a) of the CCS (Pension) Rules, 1972 and the action of the respondents is legal and application is liable to be dismissed along with costs.

10. We have carefully considered the rival contentions of the parties and perused the material placed on record.

11. It is trite law that one, who comes with unclean hands before the Tribunal and as admitted had played fraud or misrepresented and used documents which are brought on record through deceitful means, his grievance cannot be entertained otherwise it would be an abuse to process of law. However, it is also trite law that a fraud or interpolation in the record has to be established by due process of law and unless there is definite finding as to the above allegations, it cannot be accepted only on presumption.



12. In the above backdrop, it is also stated that once the request made for voluntary retirement is accepted, it cannot be withdrawn.

13. Applicant who was suspended on account of contemplated proceedings was not found involved in a preliminary enquiry. With the result on 19.10.2002, on revocation of his suspension he was reinstated and was paid all the benefits by treating the suspension period as 'spent on duty'.

14. Applicant admittedly made a request to the respondents on health ground for voluntary retire him and has also requested them to relax the notice period. Accordingly, a decision had been taken by the competent authority to retire the applicant on relaxation of the notice period of three months w.e.f. 1.11.2002. As regards Annexure A-6 with the OA i.e. letter dated 26.10.2002, applicant has stated that he had not mentioned the date of voluntary retirement. It is further mentioned that request for voluntary retirement be considered w.e.f. 1.2.2003, is not on record though the letter has been received by General Section but there is no number on the aforesaid letter which shows its authenticity. This letter also appears to be illegal and irrelevant as the earlier request which has not been denied by the applicant, in which he has specifically prayed for relaxation of the notice period and no other meaning can be imputed that the applicant wanted immediate retirement on account of family circumstances and falling health.

15. As regards letter dated 28.10.2002, from the perusal of the record, we find that the aforesaid letter though submitted through proper channel has an endorsement of diary but without any number and date.

This is an inadmissible document. Moreover, we are certain about its



ingenuity as the applicant in his letter has referred to his earlier letter of voluntary retirement where he had not mentioned the date and in this view of the matter he sought cancellation of the request for voluntary retirement with a prayer to allow him to retire w.e.f. 31.8.2003. This shows that the applicant in this letter has referred to his initial request for voluntary retirement made on 21.10.2002. If it is so, then the letter allegedly submitted to the Dy. General Manager on 26.10.2002 has not been mentioned in this letter, which conclusively establishes that letter dated 26.10.2002 is a false and concocted document.

16. We also find from the noting side of the file that whenever a documents is tendered or a request is made and any action taken in respect of the applicant has been duly mentioned with reference to the pages, the said note sheet does not contain the reference to the letters dated 26.10.2002 and 28.10.2002. Otherwise, if these letters were received by the respondents, there would have been a discussion to that and a reference on the noting side. What has been referred is a request made on 13.12.2002 for withdrawal for voluntary retirement and as the same is beyond stipulated period and received after acceptance of the request for voluntary retirement, the same was not acted upon.

17. The falsity of the statement of the applicant is also established in his request for voluntary retirement made on 13.12.2002 assuming that the letters of the applicants made to the respondents on 26.10.2002 and 28.10.2002 are genuine and are on record. There would have been a whisper of these two letters but the same has not been found mentioned in the representation. It appears that if the applicant has come to know about the DPC and his promotion as an afterthought he introduced these

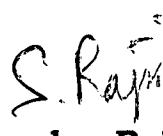
2X

two letters. We also find that there has been interpolation in number of pages and these are changed by overwriting on the figures. Whosoever has made such an interpolation but the ultimate beneficiary is the applicant. If one has done so, the respondents on enquiry shall take appropriate action and in that event law shall take its own course.

18. However, the applicant has miserably failed to establish that his request for withdrawal of voluntary retirement was made and received by the respondents before the effective date of voluntary retirement dated 1.11.2002. As such once the voluntary retirement has been accepted, it cannot be withdrawn. The case law cited by the learned counsel of the applicant are distinguishable and not applicable to the facts and circumstances of the present case. Moreover, redeeming feature, which makes this case as not covered by the ratio of the Apex Court (supra), is fraud and misrepresentation played by the applicant by introducing false documents before us to establish his claim. For such a conduct, we could have imposed a heavy cost upon the applicant but keeping in view his status as a retiree, we decide otherwise.

19. In the result, for the forgoing reasons O.A. is found bereft of merit, which is accordingly dismissed. No costs.

  
**(S.A. Singh)**  
 Member(A)

  
**(Shanker Raju)**  
 Member(J)

9/12/2004.

/vv/