

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: 29th September, 2011**
Date of decision: 27th February, 2012

+ **LPA NO.1643/2006**

D.V. BHANDARI

.....Appellant

Through: Mr. Karan Singh Bhati with Mr. Kiran
Singh and Dr. Prikhshayat Singh,
Advocates.

-versus-

UNION OF INDIA & ORS.

.....Respondents

Through: Mr. Gaurav Sharma, Advocate.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

SIDDHARTH MRIDUL, J.

1. The present appeal assails the order of the Single Judge dated 30th March, 2006 in WP(C) No.4256/1993 whereby the said writ petition was dismissed.

2. The facts giving rise to the present appeal are adumbrated as follows:-

(a) The appellant joined the respondent, Indian Institute of Technology (IIT) on 2nd May, 1970 as Assistant. He was subsequently promoted as Accountant in the year 1978. The

appellant was later designated as Accountant (Selection Grade) on 1st July, 1986. After further promotion, the appellant became Assistant Registrar (Accounts) on 12th June, 1991.

- (b) On 29th April, 1993 after nearly 23 years of service the appellant submitted notice for voluntary retirement w.e.f. 1st August, 1993 in terms of Rule 48(A) of the CCS Pension Rules.
- (c) The Board of Governors (hereinafter referred to as 'BOG') of IIT being the Appointing Authority conveyed the approval for the voluntary retirement of the appellant vide communication dated 14th May, 1993 and it was stated therein that he would be relieved of his duties on 1st August, 1993.
- (d) In the meantime on 25th May, 1993 the petitioner withdrew the notice for voluntary retirement which according to him he had submitted due to acute depression.
- (e) On 31st May, 1993 adverse remarks were communicated in the appellant's ACR for the period 1st January, 1992 to 31st December, 1992. Further, eight cases of embezzlement of P.F. Accounts were reported during the period between January, 1988 to December, 1991 when the appellant was the Accounts Officer/Assistant Registrar(Accounts), P.F. Accounts. The preliminary enquiry was conducted by the Deputy Registrar(Accounts) which led to the conclusion that the

appellant's negligence/derelection of duty has facilitated the embezzlement.

- (f) The request of the appellant for withdrawal of notice for voluntary retirement was considered by the BOG in its meeting held on 22nd July, 1993 along with Government of India Rules and the appellant's record of service performance and after due consideration it was rejected.
- (g) The appellant approached this Court by way the said writ petition and sought direction to quash the impugned order dated 29th July, 1993 by which his employer, the IIT, declined the request for withdrawal of his notice seeking voluntary retirement.
- (h) Aggrieved by the dismissal of the said writ petition the appellant has preferred the present appeal against the impugned order dated 30th March, 2006.

3. Counsel appearing on behalf of the appellant firstly urged that the learned Single Judge gave the decision on an erroneous interpretation of the judgment of the Supreme Court in ***Balram Gupta v. Union of India***, AIR 1987 SC 2354. According to the appellant the said decision held that a Government servant or public employee has a right to withdraw the request for resignation or voluntary retirement before the notice period ends even if the employer had accepted the notice. It was also urged on behalf of the appellant that the purpose behind communicating adverse remarks to the

appellant after the appellant submitting his notice for voluntary retirement was indicative of mala fide motives. Counsel for the appellant placed reliance on the decisions of the Supreme Court in *Balram Gupta's case (supra)* and *Shambhu Murari Sinha v. Project and Development India Ltd. & Anr.*, (2002) 3 SCC 437.

4. On behalf of the respondent it was urged by counsel that since the preliminary enquiry conducted by the respondent brought out the negligence of the appellant and his dereliction of duty resulting in embezzlements and because the service performance of the appellant during the last few years was unsatisfactory the respondent had valid reasons for not accepting the request of the appellant herein for withdrawal of his application for voluntary retirement.

5. Before proceeding any further with the rival contentions of the parties it would be relevant to consider the import of the relevant provisions of Rule 48(A) of the CCS Pension Rules.

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.
- (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."

Sub-rule (4) of Rule 48-A prevents withdrawal of resignation letter except with the approval of the authority. The said sub-rule (4) provides as follows:

“(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.”

Thus, the question to be determined in the present appeal is whether the appointing authority has the power to reject the request for withdrawal of notice of voluntary retirement by way of a considered decision in this respect.

6. It would also be necessary to extract the relevant portions of the decisions of the Supreme Court in *Balram Gupta’s case (supra)* as well as *Shambhu Murari Sinha’s case (supra)*.

In *Balram Gupta* the Supreme Court, *inter alia*, held as follows:

“What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the government from withholding the withdrawal. In this respect the government affidavit certainly lacks candour. **In appropriate cases where the Government desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons.** There may be hundred and one situations where a situation or opportunity like this may be used by the Government to ease out a disgruntled or reluctant or troublesome employee.

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As mentioned hereinbefore the main question was whether the Sub-rule (4) of Rule 48-A was valid and if so whether the power exercised under the Sub-rule (4) of Rule 48-A was proper. In the view we have taken it is not necessary, in our

opinion, to decide whether Sub-rule (4) of Rule 48-A was valid or not. It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether Sub-rule (4) of Rule 48-A of the Pension Rules is valid or not. **If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally.** The only reason put forward here is that the appellant had not indicated his reasons for withdrawal. This, in our opinion, was sufficiently indicated that he was prevailed upon by his friends and the appellant had a second look at the matter. This is not an unreasonable reason. The guidelines indicated are as follows:

(2) A question has been raised whether a Government servant who has given to the appropriate authority notice of retirement under the para 2(2) above has any right subsequently (but during the currency of the notice) to withdraw the same and return to duty. The question has been considered carefully and the conclusion reached is that the Government servant has no such right. There would, however, be no objection to permission being given to such a Government servant, on consideration of the circumstances of his case to withdraw the notice given by him, but ordinarily such permission should not be granted unless he 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.

Where the notice of retirement has been served by Government on the Government servant, it may be withdrawn if so desired for adequate reasons, provided the Government servant concerned is agreeable.

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. If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but the appellant's offer to retire and withdrawal of the same happened in so quick succession that it cannot be said that any administrative set up or arrangement was affected. The administration has now taken a long time by its own attitude to communicate the matter. For this purpose the respondent is to blame and not the appellant.”

In *Shambhu Murari Sinha's case (supra)* in paragraph 18 it was held that:-

“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.”

7. Upon consideration of the above judgments and the relevant Rule the learned Single Judge observed as follows:-

- (a) A public servant has right to withdraw the request for voluntary retirement before expiry of the notice period, but the question is whether he can claim an absolute and unconditional right to withdraw the notice.
- (b) The scheme of Rule 48(A) requires the employee to give notice to the employer of a particular duration in order to enable the employer to rearrange or organize his workplace and manpower and that the notice remains one till it is accepted.
- (c) Even upon acceptance, the employee can ask for withdrawal provided that he does it before expiry of the notice period **although the employer appears to have some discretion either of accepting or rejecting the request for withdrawal.**

Thereafter, the learned Single Judge dismissed the writ petition by relying on the following reasons for the same

- (a) Previous adverse entry in the ACR.
- (b) Impending enquiry.
- (c) Report of preliminary enquiry.
- (d) Decision in *Balram Gupta's case*

In this regard it is observed that the impugned order accepted the submission of the counsel for the respondent that acceptance of a request for withdrawal of notice for voluntary retirement cannot be considered a matter of course, and the employer had discretion to refuse such request.

8. Predicated on the above reasons the learned Single Judge came to the conclusion that the decision of the employer that the official is not needed should not be a mere *ipse dixit* but based on valid reasons, which reasons existed in the present case. In this behalf the learned Single Judge observed as follows:

“21. In the present case, the petitioner’s voluntary retirement notice was accepted; he later withdrew it admittedly before expiry of the notice period. IIT has advanced three reasons for rejecting the withdrawal request: one, previous entries in the annual confidential reports; two, the impending enquiry, and three, report of preliminary enquiry. Had the rationale for rejection been some basis for the submission that unproved allegations of misconduct, absent fair procedure, should not form the basis of rejection of the request. But the records speak otherwise. On behalf of the IIT, the copies of documents and records considered by the Board of Governors were relied upon. They show that all the materials were taken into account, while concluding that the petitioner’s services should be retired as per his notice. The Petitioner’s service record shows that his confidential reports were unsatisfactory; IIT was also finding it difficult to exercise discipline. An adverse remark had been communicated and the preliminary report had indicted the Petitioner.

22. I am of the opinion that the considerations which weighed with the respondent IIT in issuing the impugned order cannot be called irrelevant or arbitrary. The petitioner had in more than 20 years service. He had been promoted, and for the preceding years, his record was below average; he was communicated an adverse remarks. The report of preliminary enquiry had cast a cloud over his functioning. In view of this, and also having regard to the fact that the petitioner was entitled to pension and pensionary benefits, the IIT decided that it was in the fitness of things that the petitioners withdrawal (of then notice for retirement) was unacceptable. These reasons were relevant, because IIT had to decide whether the petitioner’s further continuance was

conducive to its functioning. The impugned orders therefore were not arbitrary.”

9. Now coming to the submission made on behalf of the appellant, it is noticed that the decision in ***Balram Gupta’s case (supra)*** is not an authority for the proposition that once the employee had sought withdrawal of his resignation or voluntary retirement, after its acceptance by the employer, but before the expiry of the notice period, the employer would have no discretion either of accepting or rejecting the request for withdrawal. In ***Balram Gupta’s case (supra)*** it was held that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and that approval within the meaning of sub-Rule 4 of Rule 48-A of the CCS Rules has to be obtained from the employer. In other words, it was held that although the approval of the employer cannot be the mere *ipse dixit* of the approving authority and that the approving authority must act reasonably and rationally, the employer can on germane and relevant consideration refuse to grant approval for the withdrawal of the resignation or voluntary retirement. In ***Shambhu Murari Sinha’s case (supra)*** the Supreme Court placing reliance on the decision in ***Balram Gupta’s case (supra)*** held that the resignation/voluntary retirement in spite of its acceptance can be withdrawn from the effective date. In the facts and circumstances of that case the Supreme Court held that the appellant had locus poenitentiae to withdraw proposal of voluntary retirement before the relationship of employer and employee came to an end. There can be no quarrel with that proposition. However, we are in agreement with the impugned decision for the reason that ***Balram Gupta’s case (supra)*** clearly indicates that at the stage of application for withdrawal, the employer is presented with an

opportunity to end the relationship with a troublesome employee, so long as that determination is germane to the issue, and were based on relevant considerations. Further, the decision of the employer that the official is not needed should not be irrelevant or arbitrary. In the present case it is seen that the appellant's service record shows that his confidential reports were unsatisfactory; IIT was also finding it difficult to exercise discipline; an adverse remark had been communicated; the preliminary report had indicted the petitioner. In view of the aforesaid and having regard to the fact that the appellant would be entitled to pension and pensionary benefits the IIT decided that it was in the fitness of things that the appellant's withdrawal of the notice of retirement was not acceptable. In this regard we agree with the learned Single Judge that the reasons based on which the IIT decided to reject the request of the appellant for withdrawal of notice seeking voluntary retirement was based on cogent and relevant considerations and not on the *ipse dixit* of the employer.

10. In our opinion this particular case can be distinguished on facts from ***Balram Gupta's case (supra)*** and particularly ***Shambhu Murari Sinha's case (supra)*** for the reason that in those cases no reason had been given whatsoever for refusal of the request to withdraw whereas in the present appeal it is evident that the appellant's request was duly considered and subsequently rejected based on his performance and professional conduct. Furthermore, the core issue in ***Shambhu Murari Sinha's case (supra)*** was the time period within which the employee was entitled to withdraw his letter of voluntary retirement. In that case the letter of acceptance of notice of voluntary retirement was a conditional one, inasmuch as, though option of

the employee for the voluntary retirement under the scheme was accepted, however it was stated that the release memo along with detailed particulars would follow.

11. With regard to the other submission of the appellant, we note that it is easy to allege mala fides, but difficult to establish it. There is no cogent material before us to suggest that the action of IIT in rejecting the appellant's application for withdrawal of resignation was mala fide. As aforesaid the decision to do so was based on relevant and material consideration.

12. In view of the foregoing discussion we find no infirmity in the impugned order to merit interference in the present appeal and dismiss the same. No costs.

SIDDHARTH MRIDUL, J.

ACTING CHIEF JUSTICE

FEBRUARY 27, 2012/mk