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

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**W.P.(C) No.99/2012**

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**Date of decision: 31<sup>st</sup> July, 2013**

**MANVENDRA SINGH RAWAT**

**..... Petitioner**

Through **Mr.Dheeraj Kumar Nayal, Adv.**

**versus**

**UNION OF INDIA & ORS.**

**..... Respondents**

Through **Mr.Prasouk Jain, Adv.**

**CORAM:**

**HON'BLE MS. JUSTICE GITA MITTAL**

**HON'BLE MS. JUSTICE DEEPA SHARMA**

**GITA MITTAL, J (ORAL)**

1. While serving as an Assistant Engineer (E & M) with the Field Workshop of the General Reserve Engineer Force (GREF) of the Border Security Force (BSF), the petitioner in the instant case sent a letter dated 17<sup>th</sup> August, 2010 to the Secretary of the Border Road Development Board (BRDB) submitting that he had decided to take voluntary retirement from service w.e.f. 1<sup>st</sup> December, 2010 (FN). The petitioner stated in this application that he was giving three months notice of voluntary retirement commencing from 1<sup>st</sup> September, 2010.

2. It is claimed that the petitioner withdrew this letter by a communication dated 23<sup>rd</sup> November, 2010. In the present writ petition, he is aggrieved by the refusal of the respondents to permit the withdrawal

and their decision to proceed in the matter having accepted the resignation by an order passed on 15<sup>th</sup> November, 2010.

3. We have heard learned counsel for the parties and have also perused the available records. Before us, the petitioner has filed a copy of a letter dated 10<sup>th</sup> August, 2010 which he claims to have addressed to the Secretary, BRDB informing him that he had rendered thirty years qualifying service with the department and had decided to take voluntary retirement from service w.e.f. 1<sup>st</sup> December, 2010 (FN) “at my own due to my domestic compulsions”. The petitioner also sought relaxation of the requirement of three months notice and acceptance of the retirement forthwith due to ill health. The petitioner pressed that the notice may be accepted at the earliest and he may be allowed to proceed on voluntary retirement.

4. The petitioner claims that due to his domestic problems, he had proceeded on 26 days sanctioned leave w.e.f. 4<sup>th</sup> October, 2010. While he was on this leave, he had fallen ill due to his domestic problem and intimated to the respondents vide an application dated 29<sup>th</sup> October, 2010 seeking extension of leave on medical ground. As he could not recover from the illness again due to domestic problems, he intimated to the respondents vide an application dated 16<sup>th</sup> November, 2010 requesting for extension of leave on medical grounds. The petitioner claims that he continued to be sick due to domestic problem and again intimated to the

respondents vide a communication dated 17<sup>th</sup> December, 2010 requesting for extension of leave on medical grounds.

5. In the writ petition, the petitioner has claimed that finding improvement in his family circumstances, he submitted an application dated 23<sup>rd</sup> November, 2010 for withdrawal of his aforesaid application for voluntary retirement. This application dated 23<sup>rd</sup> November, 2010 was submitted under the provisions of Rule 48-A of the Central Civil Service (Pension) Rules, 1972. The petitioner also sought further extension of leave vide his application dated 29<sup>th</sup> December, 2010 on medical grounds.

6. The grievance of the petitioner is that the respondents issued a memorandum dated 14<sup>th</sup> January, 2011 which was never served upon him. It is complained that the respondents thereafter passed an order dated 20<sup>th</sup> January, 2011 whereby he was discharged from service with effect from the afore-noted date and intimated the petitioner, at his home address that he has been discharged. The petitioner submits that as he was on medical leave/extraordinary leave, he was unable to hand over the charge.

7. It is noteworthy that even in the writ petition, the petitioner claims to be seriously ill and needs treatment in the hospital and that he had intimated the respondents vide an application dated 24<sup>th</sup> January, 2011 requesting for extension of leave on medical grounds.

8. The petitioner has also complained that the respondents have

passed the impugned order dated 1<sup>st</sup> February, 2011 whereby they have intimated him that his application for withdrawal of voluntary retirement had not been approved by the respondent no.1.

9. Though the above facts are not essential for adjudication of the present writ petition, however, we have noted the same inasmuch as they are indicative of the conduct of the petitioner and clearly manifest the lack of intention on his part to continue to serve the respondents.

10. So far as the case of the respondents is concerned, it is contended that the respondents accepted the petitioner's request for voluntary retirement from service vide an order passed on 15<sup>th</sup> November, 2010.

11. The respondents submit that the order dated 15<sup>th</sup> November, 2010 was served upon the petitioner vide a letter dated 20<sup>th</sup> November, 2010. To support their plea that the petitioner has been duly served with the order of acceptance of his request for VRS, Mr. Prasouk Jain, learned counsel for the respondents, has handed over a speed post receipt bearing no.RLA No.3703 dated 23<sup>rd</sup> November, 2010 whereby the letter was despatched to the petitioner.

12. It has further been contended by the respondents that the request for withdrawal of voluntary retirement application has been processed in accordance with Rule 48-A(4) of the CCS Pension Rules and that the petitioner's request was rejected by the competent authority by its order dated 14<sup>th</sup> January, 2011 (page 98)

13. The above narration of facts would show that so far as the voluntary retirement of the petitioner was concerned, as per his request, the same was to take effect w.e.f. 1<sup>st</sup> December, 2010 (F/N). The petitioner made an application for withdrawal of the VRS application vide his letter dated 23<sup>rd</sup> November, 2010. The competent authority did not grant the prior permission for withdrawal of the VRS application. The petitioner has continued to be on leave throughout the entire period.

14. In support of the writ petition, learned counsel for the petitioner has placed reliance on the pronouncement reported at **(2002) 2 Supreme 391 : AIR 2002 SC 1341 Shambhu Murari Sinha Vs. Project & Development India Limited**. Perusal of this case would show that the Court has relied upon several binding judicial precedents wherein the Supreme Court has reiterated the well settled principle that an employee would be within his right to withdraw his option for voluntary retirement even after its acceptance but before the actual date of release from employment. The underlining principle is that the relationship of employer and employee would come to an end on the date the retirement would take effect. In this regard, in **Shambhu Murari case**, the Supreme Court placed reliance on the Constitutional Bench pronouncement of the Supreme Court reported at **1978 (2) SCC 301 Union of India Vs. Gopal Chander & Ors.**, wherein the court held as follows:-

“In our opinion, none of the aforesaid reasons

given by the High Court for getting out of the ratio of Jai Ram's case AIR 1954 SC 584 is valid. Firstly, it was not a 'casual' enunciation. It was necessary to dispose of effectually and completely the second point that had been canvassed on behalf of Jai Ram. Moreover, the same principle was reiterated pointedly in 1968 in Raj Kumar's case, AIR 1969 SC 180. Secondly a proposal to retire from service/office and a tender to resign office from a future date, for the purpose of the point under discussion stand on the same footing. Thirdly, the distinction between a case where the resignation is required to be accepted and the one where no acceptance is required, makes no difference to the applicability of the rule in Jai Ram's case.

15. The court has, therefore, laid down the general principle that in the absence of a legal, contractual or constitutional bar, the prospective resignation can be withdrawn at any time before it becomes effective and it becomes effective when it opts to terminate the employment of the office tenure of the resignor.

16. In the present case, so far as the voluntary retirement from service is concerned, the petitioner had communicated an effective date of voluntary resignation. However, so far as the withdrawal of the request is concerned, Rule 48-A (4) of the "Central Civil Service (Pension) Rules, 1972 would govern the consideration. There is, therefore, a guiding and binding legal prescription for consideration of a request for voluntary retirement from service. This rule bound the respondents while considering the petitioner's withdrawal application. It certainly binds our consideration.

17. In view of the present consideration, it will be useful to set out the Rule 48-A(4) of the CCS (Pension) Rules in extenso which reads as follows:-

“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.”

18. The only judicial pronouncement which has pointed out to us, which has construed Rule 48-A(4) is reported at *(1987) Suppl. 1 SCC 228 Balram Gupta Vs. Union of India*. In this case, the appellant offered to resign from service by the letter dated 24<sup>th</sup> December, 1980 w.e.f. 31<sup>st</sup> March, 1981 and according to the appellant, his resignation would have been effective if accepted only from 31<sup>st</sup> March, 1981. Before the resignation could have become effective, the appellant withdrew the same by a letter dated 31<sup>st</sup> January, 1981. In the meantime, however prior thereto, on 20<sup>th</sup> January, 1981, the respondents had accepted the resignation through effective from 31<sup>st</sup> March, 1981. The competent authority refused to grant approval to Balram Gupta's request for withdrawal of the resignation or retirement application even though the application for withdrawal had been made before the intended date of retirement. (para 8 of the judgment)

The Supreme Court has pointed out that the normal rule which prevails in cases that a person can withdraw his resignation before it is effective, would not apply in full force to a case of this nature because here the government servant cannot withdraw except with approval of such authority.

19. The petitioner has sought to rely on *Balram Gupta case (supra)* in which the appellant had sought to challenge the validity of Rule 48-A (4). However, this issue was not examined by the court though the question as to the correctness of the exercise of power under Sub-Rule 4 of Rule 48-A was examined. The observations and findings of this court on this aspect deserve to be considered in extenso. The Supreme Court while referring to yet another prior judicial pronouncement reported at *AIR 1981 SC 1829 Air India etc. Etc. Vs. Nirgesh Meerza etc.* observed as follows:-

11. xxx 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.”

20. It was on this background that the Supreme Court held that there was no valid reason for the competent authority withholding the permission by the respondent and the court further held that there had been compliance with the above guidelines because the appellant had indicated there was a change in the circumstances namely the persistent and personal request from the staff members and relations which had changed his attitude towards continuing in service and induced the appellant to withdraw the notice. The court also noticed the practical aspect of the issue observing that it was difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required and that if such flexibility does not jeopardize the government or administration, the 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 the case. Thus, it was the desire of the employee to continue to serve the organisation which had weighed with the court in holding that his application for withdrawal of the resignation was justified.

21. Certain essential facts in the present case which have been pointed out by learned counsel for the respondents, deserve to be noted. It is pointed out that the petitioner's application for withdrawal dated 23<sup>rd</sup> November, 2010 (sent barely six days before the resignation became effective) actually was not even sent in original with ink signatures. The petitioner had directly sent this by a FAX communication to the Secretary of the BRDB. This was certainly not a proper application in the file. Several notings in the original record have been pointed out. The petitioner had, thereafter, submitted an original ink signed application only on the 28<sup>th</sup> November, 2010, barely two days before his resignation took effect.

22. The petitioner being a Government employee, was well aware of the requirement of Rule 48-A of the CCS Pension Rules which mandated that he was required to obtain approval and he was precluded from withdrawing his notice except with the "specific approval of such authority". The clear rule prescription prohibited withdrawal of the

application without material change in the circumstances.

23. Coming now to the reasons given by the petitioner in his withdrawal request dated 23<sup>rd</sup> November, 2010, the petitioner has stated that he had come to know from reliable sources that he was in the promotion zone and that a Departmental Promotion Committee was under consideration of the UPSC which may get through any time within a month or so. The petitioner stated that he had decided to take post advantage of this promotion for which he was eligible and entitled before going on voluntary retirement.

24. It is noteworthy that the petitioner did not make the remotest suggestion that his domestic problems were over or that he had recovered his health, the reason for which he had sought the voluntary retirement.

25. The communication dated 23<sup>rd</sup> November, 2010 was followed by a letter dated 17<sup>th</sup> February, 2011 sent by the petitioner. In the letter dated 17<sup>th</sup> February, 2011, the petitioner had again stated that he was still recovering from illness and likely to rejoin duties in the last week of the month. He submitted that considering his “long dedicated and tough service”, he may be allowed to proceed on voluntary retirement w.e.f. 28<sup>th</sup> February, 2011 (AN). It is evident from the above that the petitioner had no intention of continuing service. This request was reiterated in the two legal notices dated 22<sup>nd</sup> February, 2011 (page 60) and 10<sup>th</sup> March, 2011 sent by the petitioner again requesting that he may be discharged

w.e.f. 28<sup>th</sup> February, 2011 (AN).

26. As noted above, the Supreme Court has clearly prescribed the guidelines and has clearly laid down in ***Balram Gupta case (Supra)*** that ordinarily, the permission should not be granted unless the officer is in a position to show that there has been a material change in the circumstances for which the notice of voluntary resignation was originally given. The petitioner has nowhere stated that his domestic problems were over or that he has recovered. On the contrary, the claim in the leave applications of the petitioner was that he was still not well and he purported to enclose medical certificates in support thereof.

27. Further, the petitioner's leave record would show that he was not in good health when he submitted application dated 17<sup>th</sup> August, 2010. He was not in good health even on 23<sup>rd</sup> November, 2010 when he submitted the application for withdrawal of VRS. As such, there was nothing which would enable this court to come to the conclusion that there was any material change in the circumstances in consideration of which the notice was originally given.

28. Even if we hold that the petitioner's expectation that he would be favourably considered by the Departmental Promotion Committee (DPC) and would be entitled to promotion is a material consideration, the same also loses any significance inasmuch as the petitioner has not prayed that he may be continued in employment but merely pressed for his VRS to

be postponed to a date thereafter. This reason which is the sole reason set out in the withdrawal letter dated 23<sup>rd</sup> November, 2011 is, therefore, of no relevance so far as the present consideration is concerned.

29. We are pained also to note that in the instant case, we are not satisfied about the bona fides of the petitioner. He opted to send a FAX communication dated 23<sup>rd</sup> November, 2011, which was not a notice in the eyes of law. He opted to send an ink signed communication on the eve of his notified date of retirement i.e. 1<sup>st</sup> December, 2010. The petitioner consciously and deliberately attempted to deprive the respondents of reasonable time for a meaningful consideration of the matter in the spirit and context of the guidelines governing the working of Rule 48-A (4) of the CCS Pension Rules.

30. The petitioner in his letters does not say that he did not have domestic problem which he purports to say in the writ petition. It is dishonesty on the part of the petitioner that he did not join duties, falsely claimed that he did not receive the communications from the respondents and respondents were compelled to assume the deemed discharge on 20<sup>th</sup> January, 2010 in the circumstances noted above.

In this background, the petitioner is disentitled to any relief as prayed for.

This writ petition is dismissed.

**(GITA MITTAL)**  
**JUDGE**

**(DEEPA SHARMA)**  
**JUDGE**

**JULY 31, 2013**

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