

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No. 444 of 2023

Sri Srinibash Bhattacharjee, son of late Ratul Charan Bhattacharjee,
resident of Dhaleswar Road No.3, P.O. Dhaleswar, P.S. East Agartala,
Sub-Division- Agartala, District- West Tripura, PIN 799007

.....**Petitioner**

-VERSUS-

- 1. The State of Tripura**, represented by the Commissioner & Secretary, Power Department, Government of Tripura, having his office at Secretariat Building, P.O. Kunjaban-799006, P.S. New Capital Complex, District- West Tripura.
- 2. The Commissioner & Secretary**, Power Department, Government of Tripura, having his office at Secretariat Building, P.O. Kunjaban-799006, P.S. New Capital Complex, District- West Tripura.
- 3. The Additional Secretary**, Department of Power, Government of Tripura, having his office at Secretariat Building, P.O. Kunjaban-799006, P.S. New Capital Complex, District- West Tripura.
- 4. Tripura State Electricity Corporation Limited**, represented by its Managing Director, having his office at Banamalipur, Agartala.
- 5. The Managing Director**, Tripura State Electricity Corporation Limited, having his office at Banamalipur, Agartala.

....**Respondents**

For Petitioner (s) :	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For Respondent (s) :	Mr. Kohinoor N. Bhattacharyya, GA Mr. N. Majumder, Advocate
Date of hearing & delivery: of judgment & order	18.04.2024
Whether fit for reporting :	Yes

**HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)**

By means of filing the instant writ petition, the petitioner has challenged the impugned order of rejection of his request to withdraw his notice of voluntary retirement.

- 2.** The petitioner had joined in service on 26.11.1986. While discharging his duties and responsibilities as Deputy General Manager, (Rev), the petitioner vide his communication dated 20.08.2022 (Annexure 1

to the writ petition) addressed to the Managing Director, Tripura State Electricity Corporation Limited (for short “TSECL”) had expressed his willingness to go on voluntary retirement w.e.f. afternoon of 30.11.2022. However, his immediate superior officer vide Note no. 1, dated 26.08.2022, requested the petitioner to re-think over the matter. Ultimately, under Memorandum dated 14.10.2022 (Annexure 2 to the writ petition), the competent authority i.e. the Additional Secretary, Government of Tripura, accepted the request for voluntary retirement made by the petitioner with effect from afternoon on 30.11.2022 in terms of notice dated 20.08.2022. But, the petitioner vide his letter dated 18.11.2022 addressing the Managing Director, TSECL, requested for allowing him to withdraw his letter of request for voluntary retirement. The said letter dated 18.11.2022 (Annexure 3 to the writ petition), *inter alia*, reads as under:

“To,
The Managing director
Tripura State Electricity Corporation Ltd.,
Corporate Office, TSECL, Agartala.

(THROUGH PROPER CHANNEL)

Sub:- Withdrawal of the Notice of Voluntary retirement before the intended date of taking its effects.

Ref. 1) No. F.2(26-A)/Power/2005/pt-II/2537-45, dated 11.10.2022 of the Addl. Secretary to the Government of Tripura.

2) No. F.2(14)-TSECL/Estt-II/86/42019-21, Dated 19.10.2022 of the Deputy General Manager, Corporate, Corporate office, TSECL, Agartala.

Respected sir,

I beg to be allowed the refer to my prayer dated 20.08.2022 addressed to the Managing Director, T.S.E.C. Ltd. Out of emotion for allowing me to go to the Voluntary retirement w.e.f. the afternoon of 30.11.2022 which has not attained.

Acceptance of my Voluntary retirement having not been communicated to me, I have decided to withdraw my prayer/notice of voluntary retirement before the intended date of taking its effect under provision to rule 48 A(4), CCS(Pension) Rules, 1972.

I would, therefore, humbly request you for allowing me to withdraw my prayer/notice of Voluntary retirement in view of Rules quoted above.

With due Regards.

Dated, Agartala
The 18/11/2022

Yours faithfully
Sd/-
(SRINIBASH BHATTACHARJEE)
Deputy General Manager (Rev)
O/O the Deputy General Manager
Electrical Division No. II
Bardowali:Agartala.”

The said request of the petitioner had been rejected by the competent authority and the same was communicated to the petitioner vide

letter dated 07.12.2022 (Annexure 5 to the writ petition). The said letter of rejection, *inter alia*, reads as under:-

"TRIPURA STATE ELECTRICITY CORPORATION LIMITED
(A GOVERNMENT OF TRIPURA ENTERPRISE)
(CIN-U40101TR20045GC007434)
GSTN- 16AACCT2964MIZY

No. F.2(14)-TSECL/13/S/48,357-61,

Dated, Agartala, the 7th December, 2022

To,
Shri Srinibash Bhattacharjee
Retd. Executive Engineer (Electrical)
TPES Gr-III on ad-hoc basis,
C/o Lt. Ratul Charan Bhattacharjee,
Dhaleswar Road No. 3
Near Blue Lotus Club, Agartala, Tripura (W)
PIN-799007

Sub:- Representation dated 18.11.2022 for withdrawal the notice of voluntary retirement

Ref:- Your representation dated 18.11.2022.

Sir,

With reference to your afore-said representation dated 18.11.2022 for withdrawal the notice of voluntary retirement submitted by yourself has been rejected by the Department of Power, Govt. of Tripura communicated vide U.O. No. 2991/Power/2022 dated 06.12.2022.

This for favour of your kind information please.

Yours Sincerely

Sd/-

(Er. R. Debbarma)

Dy. General Manager (Corporate)
Corporate Office, TSECL"

Feeling aggrieved, the petitioner has filed the instant writ petition challenging the said order of rejection dated 07.12.2022 alleging that the same is contrary to the provisions embodied in Rule 48-A(4) of the Central Civil Services (Pension) Rules, 1972 [for short "CCS(Pension) Rules"]

3. With the aforesaid background of facts, I have heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioner, and Mr. N. Majumder, learned counsel appearing for the respondents No. 4 and 5, TSECL, and Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State.

4. The main argument advanced by learned senior counsel appearing for the petitioner, is that, Rule 48-A of the CCS(Pension) Rules provides that *an employee can withdraw his notice/request for voluntary retirement before the intended date mentioned in his letter of request*. According to

learned senior counsel, there is no rule debarring an employee from making such request of withdrawal before the date which he has elected in his notice for voluntary retirement. In support of his contention, Mr. Deb, learned senior counsel has pressed reliance upon the following decisions:

(i) *Balaram Gupta vs. Union of India and another*, reported in 1989 (2) SLR, 170; (ii) *Punjab National Bank vs. Shri P.K. Mittal*, reported in 1989 (1) SLR, 596;

5. On the other hand, Mr. Majumder, learned counsel for the respondent- TSECL has submitted that the conduct of the petitioner disentitles him from continuing his service. Mr. Majumder, learned counsel to persuade this court submits that earlier also the petitioner had made similar request for voluntary retirement vide letter dated 15.02.2019 w.e.f. 31.07.2019, which was accepted by respondent nos. 3 and 4 on 30.07.2019 allowing him to go on voluntary retirement with effect from 31.07.2019, i.e. the date he mentioned in his request letter. However, the same was withdrawn by the petitioner vide letter dated 16.07.2019 and competent authority of TSECL acceded to his request. Again the petitioner submitted a letter expressing to go on voluntary retirement w.e.f. 01.08.2020 vide letter dated 01.05.2020. The respondent-TSECL accepted it vide Memo dated 15.06.2020 and again, the petitioner made request for withdrawal of the same under communication dated 10.08.2020, which was accepted by the competent authority.

Learned counsel appearing on behalf of the respondents-TSECL further submits that the petitioner again made a request for voluntary retirement vide letter dated 20.08.2022 to be effective from afternoon of 30.11.2022. Under Memo dated 14.08.2022, the competent

authority of respondent-TSECL accepted the said request of the petitioner. This time also, the petitioner had withdrawn the said notice of voluntary retirement vide letter dated 18.11.2022. Mr. Majumder, has tried to bring to my notice that the office of the respondents-TSECL had received the same on 23.11.2022 as it was submitted on the said date.

The main contention of Mr. Majumder, learned counsel for the respondent-TSECL is that the petitioner is not fit to continue his service because of his conduct that on 3 occasions he submitted prayers for voluntary retirement and on each occasion he had withdrawn the same. Such conduct is not only unexpected from a disciplined employee, but, also unbecoming and a kind of disobedience towards the authority of the employer. As such, the impugned order of rejection should not be interfered with by this court.

6. In the above backdrop of submissions, this court has to decide the disputes raised in the writ petition and the only point falls for consideration is *whether the rejection to the request for withdrawal of voluntary retirement dated 20.08.2022 before the intended date i.e. w.e.f. 30.11.2022 (A/N), is tenable in law?*

7. To look for an answer to the above question, firstly, it would be apposite to make reference to Rule 48-A(1) (2) and (4) of “CCS(Pension) Rules”, 1972, which is as under:

“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.

xxx

xxx

xxx

(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) xxx

(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”.

8. F.R.56 (k) is also relevant to the context of the instant case, which reads thus:

“F.R.56(k) (1). Any government servant may, by giving notice of not less than three months in writing to the appropriate authority, retire from service after he has attained the age of fifty years, if he is in Group ‘A’ or Group ‘B’ service or post, (and had entered Government service before attaining the age of thirty-five years), and in all other cases after he has attained the age of fifty-five years”.

9. On conjoint reading of the above provisions, it comes to fore that normal rule to seek voluntary retirement is to request to go on voluntary retirement within a period not less than 3 months. A government employee make a request/prayer to the competent authority expressing his willingness to go on retirement before the normal date of retirement by giving notice of not less than three months in writing electing a specified date and time of such voluntary retirement. Proviso to sub-rule(4) to Rule 48-A of CCA (Pension) rules contemplates that such request/notice of voluntary retirement may be withdrawn before the intended/elected date the government employee mentions in his notice of voluntary retirement.

10. Now, keeping the above statutory schemes, in the context of the case in hand, it would be apposite to make reference to the letter dated 20.08.2022 addressed to the Managing Director, TSECL with a request expressing his willingness to go on voluntary retirement w.e.f. the afternoon on 30.11.2022, which reads as under:

“TRIPURA STATE ELECTRICITY CORPORATION LIMITED
(A Govt. of Tripura Enterprise)

File No. F.TECH/ED-II/27/116-17

Dated 20.08.2022

To,
The Managing Director,
Tripura State Electricity Corporation Limited
Banamalipur, Agartala
(Through Proper Channel)

Sub:- Posting as a DGM(Rev) under Electrical Division No.II, Bardowali.

Sir,

With due respect this is to inform you that I have joined in the office of the Deputy General Manager (Rev) vide office order no F.MD/14.0/TSECL/2022/174435-52, Dt-7th May 2022 on 18.05.2022 as a DGM (Rev) and rendering my service to increase the revenue.

It is very painful to me that for close monitoring of revenue activities, I have no vehicle for movement at Sub-Division level under ED-II (Six no. of Sub-Division) and other requirements of petty expenditure for boost up of revenue. So proper maintaining may not be possible.

In different occasion I have placed file before your authority for approval. But no fruitful corresponding received yet. I don't know about the decision of authority.

In this situation, it is very hard for me to hold the position of last year position in respect of revenue realization of ED-II Bordowali, even though my sincere works.

So, the authority may kindly be communicating proper work space / guide line in the interest of TSECL and to perform my service towards revenue boost-up as assigned, sanctioning minimum requirement of vehicle and petty expenditure.

Since beginning as DGM(Rev), of ED-II, Bordowali I am incapable to deliver the satisfied service for the lack of mentioned requirement rather I am burdening TSECL.

In this environment I shall bound to enclosing my voluntary retirement letter with this application for your kind acceptance w.e.f afternoon of 30th November 2022. So, I hope my submission may be accepted from your end please.

Thanking you.

Yours faithfully
Sd/Srinibash Bhattacharjee
Dy General Manager (Rev)
Electrical Division No. II
Bordowali, Agartala"

The said request was accepted by the competent authority under Memo dated 14.10.2022, which is quoted here-in-below:

"No.F.2(26-A)/Power/2005/Pt-II/2537-45

Government of Tripura

Department of Power

Tripura:Agartala

Dated:Agartala, the 14th October, 2022

MEMORANDUM

The undersigned is directed to inform that the prayer dated 20.08.2022 of Sri Srinibash Bhattacharjee, Executive Engineer (Electrical) attached to the office of the Deputy General Manager, Electrical Division No. II, Bardowali, Agartala, West Tripura for Voluntary Retirement w.e.f. 30.11.2022 (A.N) is hereby accepted subject to Rule 48(A)(b) of Central Civil Service (Pension) Rule 1972 under clause (a)

S/d U. Sinha
Additional Secretary to the
Government of Tripura"

11. Having given my thoughtful consideration to the above provisions, and particularly, the related law that notice period requires at least 3 (three) months, in my opinion, the legislature intended to enable a government employee to adjust and re-think over the matter, so that such government employee is not swayed or surrendered to his emotion or sentiment due to unfavourable working atmosphere or certain other

compelling circumstances which compelled him to seek voluntary retirement. For this purpose, *proviso* to Rule 48(A)(4) clearly bestows a government servant with the liberty, or to say it otherwise, an option to make a request for withdrawal of his notice of voluntary retirement prior to the intended date of his retirement. The expression “intended date of retirement” means and connotes the date and time the government employee mentions in letter of request for voluntary retirement.

12. In the instant case, in his letter dated 20.08.2022, the petitioner requested the competent authority-TSECL to accept his notice of voluntary retirement w.e.f. 30.11.2022 (afternoon). True it is, that before expiry of notice period of voluntary retirement, the competent authority had accepted the said request with effect from the date which was the intended date of retirement of the petitioner, but, that will not in any way create an embargo or debar the petitioner from withdrawing his letter of request for voluntary retirement prior to the date he mentions in his letter of request for voluntary retirement i.e. on 30.11.2022 (A/N).

13. Admittedly, the petitioner submitted his letter of request for withdrawal of the notice of voluntary retirement on 18.11.2022 which was received by the office of the competent authority on 23.11.2022 i.e. prior to 30.11.2022.

14. I have carefully gone through the decisions rendered in the cited cases referred to *supra* and accept the broad principles in the cases of *Balaram Gupta (supra)* and *P.K. Mittal (supra)* where the Hon’ble Supreme Court has categorically held that it is the wisdom of the employee to elect a specific date of voluntary retirement/ resignation and before the said intended date such employee can withdraw the same.

15. Keeping in view the statutory provisions quoted here-in-above and the principles delineated in the cases of *Balaram Gupta (supra)* and *P.K. Mittal (supra)*, in the context of the case, the impugned order of rejection of the letter of withdrawal of voluntary retirement made by the petitioner prior to the intended date of retirement is not sustainable and accordingly, the impugned order dated 07.12.2022 issued by the competent authority i.e. Additional Secretary to the Government of Tripura under Memo dated 14.10.2022 stands set-aside and quashed. As a sequel, the petitioner is entitled to all service benefits.

At this juncture, Mr. Majumder, learned counsel for the respondents-TSECL has submitted that consequent to his birth as on 17.10.1963, the petitioner has already been superannuated w.e.f. 31.10.2023 on attaining the age of 60 years. Be that as it may, the respondents are directed to regularize the service of the petitioner treating his normal date of retirement on attaining the age of superannuation, that is, 60 (sixty) years in terms of the observations and directions made here-in-above and provide all financial and service benefits to the petitioner in accordance with law.

The entire exercise shall be completed within a period of 6 (six) months from the date of receipt of the copy of this judgment.

16. The instant writ petition stands allowed and disposed of accordingly.

Pending application(s), if any, also stands disposed of.

JUDGE