

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

FRIDAY, THE 18TH DAY OF DECEMBER 2015/27TH AGRAHAYANA, 1937

WA.No. 2678 of 2015 IN WP(C).25113/2015

AGAINST THE JUDGMENT IN WP(C) 25113/2015 DATED 05-10-2015
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APPELLANT/PETITIONER :

NAVAS A.,
NO. 941110975 HEAD CONSTABLE /DRIVER, GROUP CENTRE
CENTRAL RESERVE POLICE FORCE, PALLIPURAM
THIRUVANANTHAPURAM-695 316

BY ADV. SRI.S.VISHNU

RESPONDENTS/RESPONDENTS :

1. THE COMMANDANT, CRPF
GROUP CENTRE, CENTRAL RESERVE POLICE FORCE
PALLIPURAM, THIRUVANANTHAPURAM-695 316
2. THE DEPUTY INSPECTOR GENERAL OF POLICE
GROUP CENTRE, CENTRAL RESERVE POLICE FORCE, PALLIPURAM
THIRUVANANTHAPURAM-695 316
3. THE INSPECTOR GENERAL
SOUTHERN SECTOR, CENTRAL RESERVE POLICE FORCE
ROAD NO. 10C, NEW MP/MLA COLONY, GAYATHRI HILLS
HYDERABAD-500 033
4. INSPECTOR GENERAL OF POLICE (PERSONNEL)
DIRECTORATE GENERAL, CENTRAL RESERVE POLICE FORCE
CENTRAL GOVERNMENT OFFICE COMPLEX, LODHI ROAD
NEW DELHI-110 003
5. THE DIRECTOR GENERAL
DIRECTORATE, CENTRAL RESERVE POLICE FORCE
CENTRAL GOVERNMENT OFFICE COMPLEX, LODHI ROAD
NEW DELHI-110 003

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6. UNION OF INDIA
REPRESENTED BY THE SECRETARY
MINISTRY OF HOME AFFAIRS, NEW DELHI-110 001

R1-R6 BY ADV. SMT.O.M.SHALINA, CGC

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 18-12-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WA.No. 2678 of 2015 IN WP(C).25113/2015

APPENDIX

APPELLANT'S EXHIBITS :

ANNEXURE A1 : TRUE COPY OF THE UNDERTAKING FURNISHED BY THE
PETITIONER/APPELLANT ON 27.06.2015.

ANNEXURE A2 : TRUE COPY OF REPRESENTATION DATED 01.07.2015 TO THE
DEPUTY INSPECTOR GENERAL.

RESPONDENTS' EXHIBITS :

NIL

/TRUE COPY/

PA TO JUDGE

ASHOK BHUSHAN, C.J. & A.M. SHAFFIQUE, J.

W.A. No. 2678 OF 2015

Dated this the 18th day of December, 2015

JUDGMENT

Ashok Bhushan, C.J.

Heard learned counsel for the appellant as well as learned Assistant Solicitor General.

2. This writ appeal has been filed against the judgment of learned Single Judge dated 05.10.2015 in W.P.(C) No. 25113 of 2015. The appellant had filed the writ petition praying for quashing Ext.P10 order by which he was transferred from CRPF Pallipuram to 170 Battalion, Bijapur, Chattisgarh. There were certain other reliefs in the writ petition which were to the following effect:

"2. A writ of mandamus or other appropriate writ, order or direction directing the respondents to consider permitting the petitioner to continue in Group Centre, Pallipuram up to 01.10.2015 as ordered in Exhibit P9.

Or in the alternative

3. A writ of mandamus or other appropriate writ, order or direction directing the respondents to permit the petitioner to continue in Group Centre, Pallipuram upto 31.01.2016 and to go on voluntary retirement w.e.f. 31.10.2016."

3. When the matter came up for hearing before the learned Single Judge it was pointed out that request made by

petitioner for voluntary retirement with effect from 01.10.2015 has been accepted and the petitioner's name has already been struck off from the rolls on the request of voluntary retirement. The learned Single Judge dismissed the writ petition by observing that nothing survives in the writ petition.

4. In the writ appeal the only submission pressed by learned counsel for the appellant is that though he has submitted for voluntary retirement with effect from 01.10.2015 but before the aforesaid date, an application was submitted on 31.08.2015 seeking to withdraw the request for voluntary retirement and to permit the petitioner to retire on 31.01.2016. He submits that the said application was never considered by the respondent, hence the 3rd relief did survive and learned Single Judge ought to have considered the said relief.

5. Learned counsel for the respondents Smt.O.M. Salina submits that the petitioner had earlier filed a writ petition before this court which was decided by this Court by Ext.P8 judgment dated 03.07.2015. In the said writ petition the petitioner's counsel submitted that an application has already

been submitted for voluntary retirement with effect from 10.10.2014, since the earlier application was rejected for want of qualifying service. Now the petitioner has completed 20 years of service, hence the respondent may consider and pass orders on his application for voluntary retirement. This Court disposed of the writ petition directing the respondents to consider the application for voluntary retirement.

6. Learned counsel for the respondent submits that the application for voluntary retirement was accepted by Ext.P9 order dated 07.08.2015 and in view of the aforesaid order nothing more is required to be done. Petitioner himself has submitted the application for voluntary retirement with effect from 01.10.2015.

7. We have considered the submissions of learned counsel for the parties and perused the record.

8. The only issue which we have to consider in this appeal is regarding the issue as to whether the petitioner could withdraw the application for voluntary retirement which has already submitted on 07.08.2015. Learned counsel for the petitioner has also referred to Rule 48-A of the Rules namely the

Central Civil Services Pension Rules, 1972. Rule 48-A(4) is to the following effect :

"(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."

9. The aforesaid rule clearly indicates that the notice for voluntary retirement once given cannot be withdrawn except with the specific approval of the authority and further the request for withdrawal has to be made before the intended date of retirement. In the present case the intended date of retirement was 01.10.2015 and petitioner after submitting the application for voluntary retirement on 02.07.2015, he has submitted another application on 30.08.2015 seeking to withdraw the earlier application for voluntary retirement.

10. When petitioner has given an application to withdraw his notice before the intended date of retirement, i.e. 01.10.2015, it was the duty of the authorities to consider the

application and to take a decision, whether notice deserves to be granted approval or not. In view of the aforesaid, we dispose of the writ appeal with an observation that the application submitted by the petitioner Ext.P11 dated 30.08.2015 be considered and appropriate decision be taken as to whether the notice given by the petitioner on 30.08.2015 can be approved or not. We make it clear that we have not expressed anything on merits on the claim of the petitioner as to whether his notice deserves to be approved or not and it is for the authorities to take a decision in accordance with law.

In view of the aforesaid, the writ appeal is disposed of with an observation that the 5th respondent shall consider Ext.P11 and take appropriate decision within four weeks from the date of receipt of a copy of this judgment.

**Ashok Bhushan,
Chief Justice.**

**A.M. Shaffique,
Judge.**