

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Civil Writ Petition No.9449 of 2018

Reserved on : December 14, 2018

Date of decision: January 16, 2019

Union of India and others

...Petitioners

Versus

Central Administrative Tribunal, Chandigarh and others

...Respondents

**CORAM: HON'BLE MR. JUSTICE RAJIV SHARMA,
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU**

Present: Mr.R.T.P.S.Tulsi, Senior Advocate with
Mr.Abhay Kumar Sharma, Advocate and
Mr.Lakhinder Bir Singh, Advocate
for the petitioners.

Mr.Rajneesh Chadwal, Advocate for
respondent No.2.

HARINDER SINGH SIDHU, J.

The Union of India and others have filed the present writ petition impugning the order of the Central Administrative Tribunal, Chandigarh Bench dated 01.09.2017, whereby, TA No.060/00001/2016 has been allowed and the order dated 13.11.2017, whereby, its Review Application has been dismissed.

Respondent No.2 was appointed as a Clerk by the Railway Service Commission, Allahabad on 2.6.1964. After completing 20 years of service, he submitted a request dated 7.11.1984 seeking voluntary retirement w.e.f. 28.2.1985 due to family circumstances. His request was accepted vide communication dated 25.1.1985 and he was allowed to retire voluntarily w.e.f. 28.2.1985 on expiry of notice period of three months.

Before the effective date of voluntary retirement, respondent No.2 submitted application dated 22.2.1985 to withdraw his earlier request for voluntary retirement. He stated that he had initially applied for voluntary retirement on account of domestic circumstances. Now, his domestic circumstances have changed and he may be permitted to withdraw his aforesaid request. This request was declined vide communication dated 28.2.1985. On receipt thereof respondent No.2 again submitted a request on the same day i.e. 28.2.1985 that as his family circumstances had changed favourably, he may be allowed to continue in his present employment. He also addressed a detailed appeal dated 4.3.1985 to the Railway Minister explaining the circumstances which had impelled him to seek voluntary retirement and the reasons for withdrawing the same subsequently. There was no response either to his representation or appeal to the Railway Minister.

He filed CWP No.1686 of 1985 impugning the orders declining his request for withdrawal of voluntary retirement. The writ petition was allowed vide judgment and order dated 15.1.2003. It was taken in appeal to the Hon'ble Supreme Court by the Union of India. Hon'ble Supreme Court vide order dated 2.9.2015 set aside the judgment holding it to be without jurisdiction in view Section 14 of the Administrative Tribunals Act, 1987 which came into force w.e.f. 1.7.1985. The writ petition was directed to be transferred to the Central Administrative Tribunal, whereafter, it was registered as Transfer Application and the impugned orders were passed.

The learned Tribunal held that it was settled law that it was

open to a public servant to withdraw his resignation after its acceptance by the competent Authority in consonance with the Rules governing the acceptance. The Voluntary Retirement Scheme had been floated by the Railway Board on 9.11.1977. Paragraph 3(vi) of the Railway Board Policy, permitted withdrawal. The same is as under :

“A notice of voluntary retirement may be withdrawn subsequently only with the approval of the appointing authority provided the request for such withdrawal is made before the expiry of the notice.”

The learned Tribunal held that respondent No.2 had in the application seeking withdrawal of his request for voluntary retirement, given reasons that his family circumstances had improved substantially whereas no reason was furnished by the appointing authority as to why his request for withdrawal of voluntary retirement before the effective date of retirement could not be accepted. No reason was forthcoming even in the written statement. Accordingly, the TA was allowed. The order dated 28.2.1985 rejecting the application seeking withdrawal of the request for voluntary retirement was set aside. The Review filed by the petitioners was also dismissed.

Learned Senior Counsel for the petitioner Mr.R.T.P.S. Tulsi, relying on **Director General, E.S.I.C. vs. Puroshottam Malani, 2008 (3) KLT 613** contended- that a notice of voluntary retirement could be withdrawn subsequently only with the specific approval of the appointing authority. The Authority in this case having declined such request, the Tribunal was not justified in allowing the Transfer Application. On the other hand, learned Counsel for respondent No.2 supported the order of the

Tribunal. He relied on **Balram Gupta v. Union of India, 1987 Supp SCC 228.**

We have heard Ld. Counsel for the parties.

In **ESIC's case** (supra) Hon'ble Supreme Court was considering Rule 48(2) of the Central Civil Services (Pension) Rules, 1972, which was as under:-

“48(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the Appointing Authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority:

Provided that the request for withdrawal shall be within the intended date of his retirement.”

The Hon'ble Supreme Court upheld the action of the appointing authority in rejecting the application for withdrawal of voluntary retirement as no explanation whatsoever had been furnished by the employee for revoking the notice of voluntary retirement. Moreover, before submitting his request for voluntary retirement, he had withdrawn all the pensionary benefits including Leave Encashment, Gratuity, etc.

The Court formulated the question for consideration as under:-

“5. We have heard learned counsel for the parties and perused the record. It is true that the respondent herein has tendered the notice dated 31.12.1999 for seeking voluntary retirement with effect from 31.3.2000 and his request was accepted by the appellant on 10.2.2000. But the respondent revoked his request for voluntary retirement by letter dated 22.3.2000, i.e., prior to 31.3.2000. In this appeal, the question that arises for our consideration is whether after respondent's resignation has been accepted by the appellant and the appellant has been

given marching orders and he has already withdrawn all the pensionary benefits including leave encashment, gratuity, commutation on 14.9.2000, is it still open for him to agitate the matter. The respondent herein filed an Original Application before the Tribunal on 12.11.2000. Can such conduct of the respondent be permitted?”

The question was answered in paragraph 9 as under:-

“9. However, in the present case, we find that the incumbent who has given the notice of voluntary retirement on 31.12.1999 and wanted to revoke the same on 22.3.2000, i.e., before the last date 31.3.2000, has not given any explanation whatsoever for revoking the notice of voluntary retirement and has got all the benefits which he was entitled to get on the basis of voluntary retirement. After having received all the benefits of voluntary retirement, the respondent approached the Tribunal for setting aside the order dated 17.4.2000 accepting the notice of voluntary retirement. This conduct of the respondent also dis-entitles him any benefit.”

Such is not the case here. In the present case, respondent No.2 has given adequate reasons for withdrawal of his request for voluntary retirement which had been submitted without any delay and before the effective date of resignation. It is also not the case of the petitioners that he had withdrawn the retiral benefits before making such request. No reasons have been given by the petitioners for rejecting his request. His case is thus fully covered by the ratio of the judgment of Hon'ble Supreme Court in **Balram Gupta's case** where the order of the authorities rejecting the application for withdrawal of voluntary resignation was set aside by observing as under:

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 such 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 the respondent is to blame and not the appellant.

13. We hold, therefore, that there was no valid reason for withholding the permission by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty; a certain amount of flexibility is required, and if such flexibility does not jeopardize the Government or administration, 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 this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways “to ease out” uncomfortable employees. As a model employer the Government must conduct itself with high probity and candour with its employees.”

Accordingly, there is no merit in this writ petition.

Respondent No.2 had sought voluntary retirement through his application dated 7.11.1984. He had completed 20 years of service by then. In normal course, he would have retired long ago on attaining the age of superannuation (DOB 13.06.1942). He is also stated to have died and his widow Smt.Imarti Devi has been brought on record as his legal representative. In these circumstances, even though the order dated 28.2.1985 has been quashed, he cannot be granted the benefits of actual emoluments as he had not worked during the period. So, he would only be entitled to the notional benefits of pay-fixation towards pensionary benefits only.

The writ petition is disposed of in the above terms.

(RAJIV SHARMA)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

January 16, 2019
gian/Atul

Whether Speaking / Reasoned	Yes
Whether Reportable	Yes / No