

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.C (OA) NO.170 OF 2017

(An application under Section 19 of the Administrative Tribunal's Act)

Debraj Meher ... Petitioner

-versus-

State of Odisha & others ... Opposite Parties

Advocates appeared in the case through hybrid mode:

For Petitioner : Mr. S.N.Pattnaik, Advocate

-versus-

**For Opposite Parties : Mr. H.K.Panigrahi,
Addl. Standing Counsel**

CORAM:

JUSTICE SASHIKANTA MISHRA

**JUDGMENT
05.5.2022.**

Sashikanta Mishra,J. In the present Writ Petition, the Petitioner seeks to challenge the rejection of his application withdrawing his request for allowing him voluntary retirement from service and to allow him to resume his duty till he attains the age of superannuation by

treating the interregnum as leave due and admissible and to extend all service and financial benefits.

2. The facts of the case are that the Petitioner was appointed as a Constable of Police and joined as such on 15th November, 1996 under Superintendent of Police, Northern Range, Sambalpur (Opposite Party No.3) and was subsequently promoted as Asst. Sub-Inspector of Police in the year 2009. Because of his illness and other family problems, the Petitioner submitted an application seeking voluntary retirement before Opposite Party No.3 on 6th May, 2016 as per Rule 42 of the Orissa Civil Services (Pension) Rules, 1992 (for short “O.C.S (Pension) Rules”). By such time, the applicant had already completed 20 years of required service. The said application was allowed by Opposite Party No.3 by order dated 27th June, 2016 w.e.f. 31st July, 2016. Provisional pension was also sanctioned w.e.f. 1st August, 2016 and so also his unutilized leave salary. The Petitioner, after acceptance of his application for voluntary retirement, submitted another representation on 14th August, 2016 praying for withdrawal of his earlier application for voluntary retirement and to allow him to discharge his duty till the date of his superannuation. It is stated that as per Rule 671(b) of the Orissa Police Manual an officer can

be reinstated by recalling the order of voluntary retirement, but Opposite Party No.3 without taking note of the aforesaid Rules rejected the representation of the Petitioner vide order dated 20th August, 2016 on the ground that no such provision is available in O.C.S. Rules. It is further stated that in a similar matter involving an A.S.I. of Kandhamal Police District namely Basanta Kumar Swain, the authorities had revoked the order of acceptance of his application for voluntary retirement on compassionate ground.

3. The Opposite Party Nos.2 and 3 have filed counter affidavit specifically taking the stand that Rule 671(d) of Police Manual Rules relates to discharge or resignation of Police Officers, which does not apply to a case of voluntary retirement. It is further stated that the prayer for voluntary retirement of the Petitioner was considered and duly accepted and, accordingly, he was retired and allowed to draw provisional pension amounting to Rs.8200/- plus T.I. as admissible and he had also been sanctioned unutilized leave salary amounting to Rs.3,69,000/-. It is also stated that there is no provision in O.C.S. Rules to allow a retired Government servant to resume duty after his retirement and, therefore, his representation seeking withdrawal of his voluntary retirement application was rightly rejected.

4. Head Mr. S.N.Pattnaik, learned counsel for the Petitioner Mr. H.K.Panigrahi, learned Addl. Standing Counsel for the State.

5. It is argued by Mr. Pattnaik that the Petitioner had submitted application for voluntary retirement under Rule 42 of the O.C.S. (Pension) Rules specifically stating that the same may be accepted after expiry of the notice period of three months. Therefore, his retirement, if at all, ought to have been made effective only upon expiry of the three months' notice period, but the Opposite Party No.3 accepted the application prior to expiry of such period which is contrary to Rule 42 of the O.C.S. (Pension) Rules. It is also contended by Mr. Pattnaik that as per settled position of law, a Government servant is entitled to withdraw his application for voluntary retirement at any time prior to the same is made effective as the employer and the employee relationship cannot be treated as severed till then. Mr. Pattnaik has relied upon the decisions of the Apex Court in the case of **Balaram Gupta v. Union of India and others**; reported in (1987) (Supp.) 1 SCC 228 and in the case of **J.N. Srivastava v. Union of India and Others**; reported in (1998) 9 SCC 559.

6. Mr. H.K.Panigrahi, on the other hand, has argued that firstly, the Petitioner in his application for voluntary retirement had requested to accept the same '*with immediate effect*'. Therefore, the appointing authority after going by the provision under Rule 42 (3)(b) of the O.C.S. (Pension) Rules accepted the prayer of the Petitioner to curtail the notice period of three months. Secondly, it is argued that even otherwise the Petitioner could have withdrawn his application for voluntary retirement only before expiry of the three months notice period, but in the instant case, he sought to withdraw the same after expiry of the said period and, therefore, his representation was rightly rejected. Mr. Panigrahi has also referred to the decision of the Apex Court in the case of *New India Assurance Company Limited v. Raghuvir Singh Narang and another*; reported in (2010) 5 SCC 335; *Union of India and others v. Hitender Kumar Soni*; reported in (2014) 13 SCC 204 and *Air India Express Limited and others v. Captain Gurdarshan Kaur Sandhu*; reported in (2019) 17 SCC 129.

7. Before advertng to the merits of the rival contentions, it would be proper to examine the relevant statutory provision governing the issue at hand, which is Rule 42 of the O.C.S. (Pension) Rules. The said Rule reads as follows:-

“(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.

(3) (a) A Government servant desirous of retiring under Sub-rule (1) may make a request in writing to the appointing authority to accept notice of voluntary retirement of less than three months giving reason therefor.

(b) On receipt of a request under Clause (a), the appointing authority subject to the provision of Sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merit and if he is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the appointing authority may relax the requirement of notice of three months on the conditions that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

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A reading of aforesaid Rule makes it clear that a person having completed the required qualifying service may make an application to retire from service giving notice of not less than three months to the appointing authority and that such notice requires acceptance by the appointing authority. This implies that

merely by giving a notice, the application cannot be treated as having become effective unless the application is accepted by the appointing authority. Of course, it is provided that if the authority does not refuse to grant permission before the expiry of the notice period, the retirement shall become effective from the date of such expiry. It is also open to a Government servant to request the appointing authority to accept notice of voluntary retirement of less than three months giving reason therefor, which may be considered by the said authority and, if satisfied, may relax the said period.

8. Coming to the facts of the present case, undisputedly, the Petitioner submitted the application for voluntary retirement on 6th May, 2016. The said application states that the same may be accepted 'with immediate effect' and also speaks of three months notice as per Rule 42 of the O.C.S. (Pension) Rules. Firstly, the contention of Mr. Panigrahi that in this case the authority considered the request of the Petitioner to accept the application 'with immediate effect' and, therefore, relaxed the three months' period, is not acceptable. Had it been so, the application would have been accepted with immediate effect i.e. from 6th May, 2016 the date on which the application was submitted, but the authority accepted the application by order dated 27th June, 2016 allowing

the Petitioner to voluntarily retire from 31st July, 2016. Therefore, this is not a case where the authority has exercised power under Rule 42 (3)(b) of the O.C.S. (Pension) Rules. As already stated, law mandates that ordinarily an application for voluntary retirement becomes effective only on the date of expiry of the notice period i.e., three months. So in the instant case, the Petitioner having submitted his application on 6th May, 2016, the three months period would have expired on 5th August, 2016. In the case of *Balaram Gupta (supra)* the Apex Court has held that a person can withdraw his resignation before it has become effective. As already stated, the proviso to Sub-rule (2) of Rule 42 of the O.C.S. (Pension) Rules clearly implies that the retirement shall become effective from the date of expiry of the notice period, which in the instant case is 5th August, 2016. This Court, however, finds that the Petitioner sought to withdraw his application for voluntary retirement by submitting a representation on 14th August, 2016 which is after the date of expiry of the notice period and the date on which his original application for voluntary retirement would ordinarily have become effective. Therefore, the case law cited by the learned counsel for the Petitioner cannot be applied to the facts of the present case. To reiterate, this is a case where the

Government servant sought withdrawal of his application for voluntary retirement after the same would have become effective by operation of law. There is no provision permitting withdrawal of the application for voluntary retirement after expiry of the notice period. So, even if the application was accepted w.e.f. 31st July, 2016, he shall be deemed to have retired only upon expiry of the notice period i.e., 5th August, 2016 but not having withdrawn his original application in the interregnum, he cannot be permitted to seek its withdrawal at any time thereafter.

9. For the foregoing reasons therefore, this Court finds that the Petitioner's application for withdrawal of his application for voluntary retirement being submitted after expiry of the notice period of three months, was rightly rejected by the authority and, therefore, the same does not warrant any interference whatsoever. Resultantly, the Writ Petition is found to be devoid of merit and is, therefore, dismissed.

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Sashikanta Mishra,
Judge

Ashok Kumar Behera

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Ashok Kumar Behera

Sashikanta Mishra,
Judge





