

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-9027-2017 (O&M).
Decided on: August 4, 2022.

Harpal Singh

.... Petitioner

VERSUS

Union of India and others

.... Respondents

* * *

CORAM: HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI

* * *

PRESENT Mr.Mohinder Pal, Advocate,
for the petitioner.

Mr.Praveen Chander Goyal, Advocate,
for respondent – Union of India.

G.S. SANDHAWALIA, J. (ORAL)

Challenge in the present writ petition is to the order dated 18.8.2015 (Annexure P-20) whereby the Central Administrative Tribunal, Chandigarh Bench, Chandigarh, dismissed the original application filed by the petitioner wherein the challenge had been raised to letter dated 7.6.2014 (Annexure A-5) vide which his request for withdrawal of the resignation was rejected on the ground that he had tendered his resignation on 20.2.2014 which was to take effect from 28.2.2014. The order dismissing the review on 28.10.2015 (Annexure P-22) is also impugned. The reason that prevailed with the Tribunal was that the writ petitioner herein had requested to waive off the condition of three months notice period or deposit the salary of three months before resignation as a special case. The Commandant had given him a hearing and he gave affirmation with regard to the request for voluntary

retirement and therefore, the withdrawal on 24.3.2014 after the acceptance was not tenable since the resignation had come into force.

It has been brought to our notice that the application for resignation was submitted on the ground that his wife had died and there was some domestic problem and he was tendering the resignation without any pressure but it was to take effect w.e.f. 28.2.2014 afternoon. The condition of three months notice was to be waived off as a special case as per his application dated 20.2.2014 (Annexure P-10). The same reads as under:-

*“Sub APPLICATION FOR RESIGNATION WEF
28 FEB 2014.*

Respected Sir,

With due respect beg to say that I am working as Tradesman Mate w.e.f. 10 Dec 2001 and have completed 12 yrs approx service in the Field Ammunition Depot Bathinda. Now I am unable to continue my service due to death of my wife and domestic problems. I am submitting resignation will fully without any pressure. Kindly accept my Resignation w.e.f. 28 Feb 2014 (A/N). Condition of three months notice please be waived as a special case.

I shall be very thankful to you for this act of kindness.

Dated: 20 Feb 2014

*Yours faithfully
Sd/
Harpal Singh
T. No. 3259
Group: 2ASD”*

Apparently, on the same day, the Commandant as such had interviewed the official and noticed that he had completed approximately 12 years of continuous service and that he was empowered being the appointing authority to waive off the condition of three months period or the deposit of salary of three months before resignation. Further, it was noticed that the employee was not under suspension, and, therefore, keeping in view the fact that he would be an unwilling servant in Government service, direction was issued to do the needful. Apparently, no specific order was passed and none has been brought to our notice that after 28.2.2014 which was the date given, any specific order was passed accepting his request which could have only been done after 28.2.2014 and not on 20th itself which date the Tribunal has taken as the date of voluntary retirement. Apparently, before the period of three months, the requisite legal notice was served on 24.3.2014 (Annexure P-11) wherein it was held out that due to sudden domestic problem on account of wife's death, the employee could not assess the impact of resignation and was now suffering hardship and domestic problem. He had joint family to maintain along with three young children and therefore, the resignation was sought to be withdrawn. The respondent authorities instead of placing anything on record to show that the resignation has been accepted on 28.2.2014 replied vide a communication on 11.4.2014 taking the technical plea that the counsel was not authorized to send the legal notice. The relevant portion reads as under:-

“1 Please refer legal notice dated 24 March 2014, (Photocopy enclosed).

2 In this connection it seems that notice has been issued from your good office on behalf of Shri Harpal Singh S/O Shri Jeet Singh, Resident of Gali No. 4/2, Baba Farid Nagar, Bathinda. However your official rubber stamp has not been found affixed. Also the Power of Attorney of the individual authorising you to fight the court case of Shri Harpal Singh has also not been found enclosed with the legal notice.

3 In view of the above, you are requested to confirm whether above said legal notice has been issued by your good self or otherwise. You are also requested to forward the above said documents for action at this end.

Thanking you”,

Vide subsequent communication another legal notice dated 3.5.2014 was also served. The counsel submitted that his client had appointed the Advocate and authorized him to serve the legal notice and sent a photocopy of the power of attorney on 3.5.2014 (Annexure P-13). Thereafter, the impugned order was passed on 7.6.2014 (Annexure P-14) wherein, it has been mentioned that individual was an ex-servicemen and already getting pensionary benefits and he had attended 12 years of service but not attained 60 years and therefore, the voluntary retirement benefits were not applicable to him. The impugned order reads as under:-

1 *“Ref legal notice dated 24 Mar 2014 and 03 Apr 2014.*

2 *It is once again intimated that power of Attorney of the individual authorising you to fight the court case as mentioned in your notice is not found attached, however, it is intimated that T No. 3259 Mate Sh. Harpal Singh son of Sh. Jeet Singh was appointed in this depot on 10 Dec 2001. On 20 Feb 2014, he tendered his resignation w.e.f. 28 Feb 2014. It is further intimated that the individual is ex-serviceman and he is getting his pensionary benefits as ex-serviceman.*

3 *Pension and retirement gratuity are admissible to permanent govt. servant who retires from service on superannuation i.e. on attaining the age of 60 yrs of age or invalidation after rendering a service of ten years or more continuous and those retiring voluntarily after rendering not less than twenty years of continuous service. In present case the individual is of 50 yrs of age and has not superannuated. He has rendered only 12 yrs of service but not attained 60 yrs of age hence voluntarily retirement benefits is not applicable to him.”*

Thus, apparently from the same also, it would be crystal clear that there is no reference to any specific order passed after 28.2.2014 that the resignation had been accepted. The Tribunal apparently seems to have missed this aspect while dismissing the original application. It is settled position that a resignation whereby the employee proposes to resign has to be accepted and if before the same comes into

force, the person withdraws the same, he has to be given due benefit of change of mind. Reliance can be placed upon the judgment of the Apex Court in this context passed by the Constitution Bench in **Union of India Vs. Shri Gopal Chandra Misra, (1978) 2 SCC 301, Balram Gupta Vs. Union of India, 1987 Supp SCC 228, Union of India Vs. Wing Commander T Parthasarathy, (2001) 1 SCC 158 and Shambhu Murari Sinha Vs. Project & Development India Ltd., (2002) 3 SCC 437.** Similarly, while dealing with the principle of Voluntarily Retirement Scheme of Nationalized Banks, a three-Judge Bench of the Apex Court in **Bank of India Vs. O.P.Swarnakar, (2003) 2 SCC 721** also dealt with the same proposition that the request made for voluntarily retirement had to be kept open and until a decision was taken the employee would be deemed to continue in service. In **J.N.Srivastava Vs. Union of India, (1998) 9 SCC 559** the Apex Court held that the employee has a right to withdraw the proposal for voluntarily retirement before the date of retirement is reached.

The said case laws have also been discussed in the recent judgments rendered by the Apex Court in **Union of India & others Vs. WG. CDR. Subrata Das, (2020) 12 SCC 784 and Air India Express Ltd. & others Vs. Capt. Gurdarshan Kaur Sandhu, (2019) 17 SCC 129** though distinguished on different principles since specific rules were to the contrary and the appeals of the employers were allowed by noticing that the principles laid down in the said judgments referred to above were pertaining to service jurisprudence which would be applicable in the facts

and circumstances of the present case.

The same would also be clear from the provisions the Tribunal had dealt with, which would be applicable which is namely Rule 26 of the CCS (Pension) Rules, 1972 which read as under:-

"(4) The appointing authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-

(i) that the resignation was tendered by the Government servant for some compelling reasons which did not involve any reflection on his integrity, efficiency or conduct and the request for withdrawal of the resignation has been made as a result of a material change in the circumstances which originally compelled him to tender the resignation;

(ii) that during the period intervening between the date on which the resignation became effective and the date from which the request for withdrawal was made, the conduct of the person concerned was in no way improper;

(iii) that the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days

(iv) that the post, which was vacated by the Government servant on the acceptance of his resignation or any other comparable post, is available;

(v) request for withdrawal of resignation shall not be accepted by the appointing authority where a Government servant resigns his service or post with a view to taking up an appointment in or under a corporation or company wholly or substantially owned or controlled by the Government or in or under a body controlled or financed by the Government;

(vi) When an order is passed by the appointing authority allowing a person to withdraw his resignation and to resume duty the order shall be deemed to include the condonation of interruption in service but the period of interruption shall not count as qualifying service."

A perusal of the above said Rule would go on to show that if there were some compelling reasons which had prevailed upon the petitioner which compelled him to tender the resignation and before the resignation became effective, he could withdraw it but not after 90 days. In such circumstances, we are of the considered opinion that the order dated 7.6.2014 (Annexure P-14) suffers from infirmity which the Tribunal failed to correct.

Resultantly, keeping in view the above, we allow the present writ petition and quash the order dated 7.6.2014 (Annexure P-14), the order of the Tribunal dated 18.8.2015 (Annexure P-20) and also the order of review dated 28.10.2015 (Annexure P-22). The petitioner shall be deemed to be in service from the date of his resignation and shall be

taken back in service within one month. However, keeping in view the principal of 'no work no pay', the petitioner shall not be entitled for any salary for the said period. However, the said period shall count for all other benefits including the purpose for calculation of pension.

(G.S. SANDHAWALIA)
JUDGE

August 4, 2022
raj arora/sailesh

(VIKAS SURI)
JUDGE

Whether speaking / reasoned	Yes
Whether reportable	Yes