

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 4611 OF 2008
(Arising out of SLP(C) No. 1551 of 2007)

Director General ESIC & Anr.

.... Appellants

Versus

Puroshottam Malani

.... Respondent

ORDER

1. Leave granted.

2. This appeal is directed against the judgment and order dated 29.08.2006 of the High Court of Madhya Pradesh, Bench at Indore in Writ Petition(s) No. 1028 of 2004 whereby the Division Bench of the High Court has dismissed the writ petition filed by the appellant herein and affirmed the order dated 13.01.2004 passed by the Central Administrative Tribunal, Jabalpur, Circuit Bench, Indore in O.A. No. 1002/2000.

3. Brief facts which are necessary for the disposal of the present appeal are that the respondent herein was working in the appellant organization as Manager. Since he wanted to go on voluntary retirement, he tendered a three months' notice dated 31.12.1999 for voluntary retirement to retire him with effect from 31.3.2000. The said notice of the respondent for relieving him on voluntary retirement was accepted by the appellant corporation on 10.2.2000. However, on 22.3.2000, i.e., 10 days prior to the date of relieving him, the respondent sought to withdraw his notice of voluntary retirement whereby the respondent had sought voluntary retirement with effect from 31.3.2000. The request for withdrawal of the notice for voluntary retirement was rejected by the appellant corporation on 17.4.2000. Aggrieved against the said order of rejection dated 17.4.2000, the respondent

herein approached the CAT, Jabalpur, Circuit Bench, Indore. The CAT vide its order dated 13.01.2004 quashed and set aside the order dated 17.4.2000 of the appellant herein and directed the appellant to treat the applicant-respondent to have continuously worked till the date of actual superannuation and granted him all arrears of salary and other emoluments including increments and to get his pensionary benefits refixed accordingly. Aggrieved against the said order of the CAT, the appellant filed a writ petition before the High Court of Madhya Pradesh which was dismissed by the impugned judgment and order and the order of the Tribunal was affirmed. Hence the present appeal by special leave.

4. The Division Bench of the High Court with reference to sub-Rule (2) of Rule 48 of the Central Civil Services (Pension Rules, 1972) held that the respondent has revoked his resignation before the last date i.e. 31.3.2000. Therefore, he should have been permitted to withdraw the same and the acceptance of retiral benefits including pension, gratuity, leave encashment etc. ought to have been ignored. Placing reliance on various decisions of this Court including the cases of Union of India Vs. Gopal Chandra Misra (1978) 2 SCC, 301, Balram Gupta Vs. Union of India 1987 (Supp.) SCC, 228 and Punjab National Bank Vs. P.K. Mittal 1989 (Supp. 2) SCC, 175, the Division Bench dismissed the writ petition. That is how the appellant is before us.

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.

6. Rule 48(2) of the Central Civil Services (Pension) Rules, 1972 reads as under :-

"(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."

7. In the present case also, the respondent has expressed his intention for withdrawing the notice of voluntary retirement prior to 31.3.2000 which was the last date given by him. Normally, there is no prohibition for the incumbent to revoke the notice of voluntary retirement before the penultimate day but that can only be permitted to withdraw the same with the specific approval of the appointing authority and secondly it has to be done before the penultimate day. In this case, the authorities have refused to withdraw the notice of voluntary retirement and the authorities observed that the respondent has not given any reason for withdrawal of the notice seeking voluntary retirement. In the case of Balram Gupta (supra) the appellant was working as an Accountant in the Photo Division of the Ministry of Information and Broadcasting and by letter dated 24.12.1980 he sought voluntary retirement from service with effect from 31.3.1981. But later on by his letter dated 20.1.1981 he sought to revoke the same on the ground that on account of persistent and personal requests from the staff members, he had to change his mind". This reason was found to be justified by this Court and this Court accordingly allowed the appeal of the appellant. This Court held that the appellant has given some plausible explanation for revoking his notice of voluntary retirement and there is no reason why such explanation

does not go well with the authorities and the authorities should not resort to short cut methods to get rid of the employees. Accordingly, this Court allowed the appeal and granted all consequential benefits. Therefore, the case of Balram Gupta (supra) stand distinguished from the facts of the present case.

8. In the case of K.L.E. Society Vs. Dr. R.R.Patil and Another (2002)5 SCC 278 in almost identical situation, the respondent therein had sought voluntary retirement from service on the ground that "He was severely hit by ill health and misfortune. As a result, he was undergoing both physical and mental agony, since long time." However, in the case of Dr. R.R. Patil (supra) there was no question agitated that whether the reason for withdrawal was given in the letter for withdrawal of notice for voluntary retirement. Therefore, this aspect was not gone into by this Court. Hence, the said case is also distinguishable from the facts of the case at hand.

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.

10. The government service is not contractual. It is a service which confers status and a person who opts for voluntary retirement and later on wants to revoke the same before the expiry of the period of notice has to satisfy the authorities why he is seeking to revoke the notice of voluntary retirement. Rule 48(2) of the Central Civil Services (Pension)

Rules, 1972 clearly states that the incumbent can seek withdrawal of the notice of voluntary retirement but with the specific approval of the authorities. Therefore, as per sub-Rule (2) of Rule 48 of the CCS (Pension) Rules, 1972 specific approval of the authority is required for withdrawal of the notice of voluntary retirement. If the incumbent does not provide any reason or material for revoking his notice of voluntary retirement then it is always open for the authority to decline the request for withdrawal of notice of voluntary retirement. If such discipline is not read into the Rule then perhaps every employee can send a notice for voluntary retirement and revokes the same at his sweet will. This cannot be permitted. The Rule mandates that there should be a specific approval of the appointing authority. Clearly, the Rule provides that the appointing authority can certainly approve or disapprove a request for withdrawal of notice of voluntary retirement.

11. Therefore, in the facts of the present case where the respondent has not provided for reason for withdrawal of his notice for voluntary retirement and secondly that the respondent had already received all the pensionary benefits including leave encashment, gratuity, commutation etc. and woke up to file an application before the Tribunal as late as November, 2000, we are of the opinion that this appeal deserves to be allowed. Accordingly, we allow this appeal and set aside the impugned judgment and order dated 29.8.2006 of the Division Bench of the High Court and that of the Central Administrative Tribunal, Circuit Bench, Indore dated 13.1.2004.

The appeal is allowed. No order as to costs.

.....J.
(A.K.MATHUR)

.....J.

(P. SATHASIVAM)

**New Delhi
July 22, 2008**