

(2018) 11 DEL CK 0136

In the Delhi High Court

Case No : Civil Writ Petition No.7910 Of 2018 with Civil Miscellaneous APPL.
30333 Of 2018

Central Bureau Of Investigation And Ors

APPELLANT

Vs

Sh. Surendra Dhillon

RESPONDENT

Date of Decision : 14-11-2018

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Section 48A, 48A(2)

Citation : (2018) 11 DEL CK 0136

Hon'ble Judges : Vipin Sanghi, J;A. K. Chawla, J

Bench : Division Bench

Advocate : Sanjeev Sabharwal, Pritish Sabharwal, Shambha, Pratima Gupta,
Arun Bhardwaj

Final Decision : Disposed Off

Judgement

VIPIN SANGHI, J. (ORAL)

1. The petitioner has preferred the present petition to assail the order dated 21.12.2017 passed by the Central Administrative Tribunal, Principal

Bench, New Delhi (â??the Tribunalâ??) in O.A. No.1557 of 2015.

2. The Tribunal allowed the said original application preferred by the respondent and set aside the office order dated 29.01.2015 passed by the

petitioner, whereby the petitioner communicated that the respondent stood voluntarily retired. The Tribunal also directed the petitioner to allow the

respondent to re-join his services within a period of four weeks from the date of receipt of the order.

3. The respondent, at the relevant time, was serving as Deputy Superintendant of Police (DSP) with the CBI. On 08.07.2014, he submitted his

application seeking Voluntary Retirement from Service (VRS) under Rule 48-A of

the CCS (Pension) Rules, 1972 (hereinafter "Rules"), having put in 23 years of service.

4. The request of the respondent to seek voluntary retirement was responded to by the petitioner vide communication dated 25.09.2014. This communication, inter alia, took notice of the fact that the 90 days notice period was to expire on 05.10.2014, and in light thereof the Deputy Director (Personnel) recommended acceptance of the said request and sought the decision of the competent authority before 05.10.2014. The communication specifically stated as follows:-

"Copy to:- HoZ, CBI, ACB New Delhi w.r.t. his ID No. 336/ VRS/ CBI/ ACB/ ZO/ 2014 dated 27/07/2014 for information please and requested

that Shri. Surendra Dhillon, DSP, CBI, ACB Jaipur may not be relieved till approval of the Competent Authority received." (emphasis supplied)

5. The respondent continued to serve even after expiry of the notice period of 90 days on 05.10.2014 as he was not relieved. Admittedly, he attended

to his duties and responsibilities. While doing so, on 31.10.2014, he submitted his letter withdrawing his application to seek voluntary retirement. Nearly

three months later, the respondent issued the impugned communication dated 29.01.2015 seeking to convey the approval of the competent authority

for acceptance of the notice of voluntary retirement dated 08.07.2014, with immediate effect. Since the petitioner insisted that the respondent stood

voluntarily retired, he preferred the Original Application. The Tribunal allowed the original application placing reliance on the judgment in Shambhu

Murari Sinha v. Project & Development India Ltd. & Anr., (2002) 3 SCC 437, and its own order in the case of Ved Prakash & Ors. v. Director

General & Anr., OA No. 581/2008, decided on 12.05.2008.

6. The submission of learned counsel for the petitioner is that the decision in Shambhu Murari Sinha (supra) was rendered in respect of a private

employer, whereas, the case of the respondent is covered by Rule 48-A of the CCS Pension Rules. He specifically places reliance on State of

Haryana and others vs. S.K. Singhal, (1999) 4 SCC 293, and in particular on the following extract (paragraph 13) of the said decision, which reads as

follows:-

"13. Thus, from the aforesaid three decisions it is clear that if the right to voluntarily retire is conferred in absolute terms as in Dinesh Chandra

Sangma case [(1977) 4 SCC 441 : 1978 SCC (L&S) 7] by the relevant rules and there is no provision in the rules to withhold permission in certain

contingencies the voluntary retirement comes into effect automatically on the expiry of the period specified in the notice. If, however, as in B.J. Shelat

case [(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and as in Sayed Muzaffar Mir case [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] the authority

concerned is empowered to withhold permission to retire if certain conditions exist, viz., in case the employee is under suspension or in case a

departmental enquiry is pending or is contemplated, the mere pendency of the suspension or departmental enquiry or its contemplation does not result

in the notice for voluntary retirement not coming into effect on the expiry of the period specified. What is further needed is that the authority

concerned must pass a positive order withholding permission to retire and must also communicate the same to the employee as stated in B.J. Shelat

case[(1978) 2 SCC 202 : 1978 SCC (L&S) 208] and in Sayed Muzaffar Mir case [1995 Supp (1) SCC 76 : 1995 SCC (L&S) 256] before the expiry

of the notice period. Consequently, there is no requirement of an order of acceptance of the notice to be communicated to the employee nor can it be

said that non-communication of acceptance should be treated as amounting to withholding of permission.â?? (emphasis supplied)

7. He also placed reliance on Tek Chand v. Dile Ram (2001) 3 SCC 290 and in particular paragraph 33 thereof which reads as follows:-

â??33. It is clear from sub-rule (2) of the Rule that the appointing authority is required to accept the notice of voluntary retirement given under sub-

rule (1). It is open to the appointing authority to refuse also, on whatever grounds available to it, but such refusal has to be before the expiry of the

period specified in the notice. The proviso to sub-rule (2) is clear and certain in its terms. If the appointing authority does not refuse to grant the

permission for retirement before the expiry of the period specified in the said notice, the retirement sought for becomes effective from the date of

expiry of the said period. In this case, admittedly, the appointing authority did not refuse to grant the permission for retirement to Nikka Ram before

the expiry of the period specified in the notice dated 5-12-1994. The learned Senior Counsel for the respondent argued that the acceptance of

voluntary retirement by appointing authority in all cases is mandatory. In the absence of such express acceptance the government servant continues to

be in service. In support of this submission, he drew our attention to Rule 56(k) of the Fundamental Rules. He also submitted that acceptance may be on a later date, that is, even after the expiry of the period specified in the notice and the retirement could be effective from the date specified in the notice. Since the proviso to sub-rule (2) of Rule 48-A is clear in itself and the said Rule 48-A is self-contained, in our opinion, it is unnecessary to look to other provisions, more so in the light of law laid down by this Court. An argument that acceptance can be even long after the date of the expiry of the period specified in the notice and that the voluntary retirement may become effective from the date specified in the notice, will lead to anomalous situation. Take a case, if an application for voluntary retirement is accepted few years later from the date specified in the notice and voluntary retirement becomes operative from the date of expiry of the notice period itself, what would be the position or status of such a government servant during the period from the date of expiry of the notice period up to the date of acceptance of the voluntary retirement by the appointing authority? One either continues in service or does not continue in service. It cannot be both that the voluntary retirement could be effective from the date of expiry of the period mentioned in the notice and still a government servant could continue in service till the voluntary retirement is accepted. The proviso to sub-rule (2) of Rule 48-A of the Rules does not admit such situation.â?? (emphasis supplied)

8. At this stage, we may reproduce Rule 48-A of the Rules in so far as it is relevant, which reads as follows:-

â??48-A. Retirement on completion of 20 yrsâ?? qualifying service

(1) At any time after a Government Servant has completed twenty yearsâ?? qualifying service, he may, by giving notice of not less than three months in writing to the Appointing Authority, retire from service.

Provided that this sub-rule shall not apply to a Government servant, including scientist or technical expert who is-

(i) On assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid

programmes.

(ii) Posted abroad in foreign based offices of the Ministries/ Departments.

(iii) On a specific contract assignment to a foreign Government, Unless, after

having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(2) The notice of voluntary retirement given under sub-rule (1) Shall require acceptance by the Appointing Authority:

Provided that where the Appointing Authority does not refuse to grant the permission for retirement before the expiry of the period specified in the

said notice, the retirement shall become effective from the date of expiry of the said period.....â??

(emphasis supplied)

9. Rule 48-A of the Rules enables a Government servant, who has completed 20 years of qualifying service to, at any time, give notice of not less than

three months in writing to the appointing authority to retire from service. Sub-rule (2) to Rule 48-A mandates that the notice of voluntary retirement

shall require acceptance by the appointing authority. However, according to the proviso, if the appointing authority does not refuse to grant the

permission for retirement before the expiry of the period specified in the said notice, the retirement shall become effective from the date of expiry of

the said period.

10. Having heard learned counsel for the petitioner and perused the impugned order and the decisions relied upon by the petitioner as well as the

decision of the Supreme Court in Shambhu Murari Sinha (supra), we are of the view that there is absolutely no merit in the present petition and,

despite the legal position being settled by a catena of decisions, including the judgment of the Supreme Court in Shambhu Murari Sinha (supra), the

Government continues to litigate and re-agitate the same settled issues, at the cost of Government exchequer, judicial time, and to the financial

detriment of the employees.

11. As noticed above, the respondent submitted his notice to seek voluntary retirement on 08.07.2014 under Rule 48A of the Rules after having put 23

years of service. Under Rule 48A, he was obliged to give 90 days notice. Under sub-rule (2) of Rule 48A, his notice required acceptance by the

appointing authority. Thus, his right to seek voluntary retirement was not unconditional. In case the appointing authority had not responded to the said

request within 90 days, the same would have become effective on the expiry of the said period of 90 days i.e. on 05.10.2014. However, the appointing

authority responded to the respondents request by observing that the respondent may not be relieved till approval of the competent authority is received. Thus, the respondent continued to serve and shoulder responsibilities even after the expiry of the 90 day notice period on 05.10.2014. While he was still in service and before acceptance of notice of voluntary retirement, the respondent sought to withdraw the same on 31.10.2014. Consequently, on 29.01.2015, there was no notice of voluntary retirement in existence which could possibly have been granted approval by the competent authority for its acceptance.

12. In *S.K. Singhal (supra)*, the Supreme Court drew a distinction between cases where - under the rules, the notice of voluntary retirement does not require acceptance and the same becomes effective on the appointed date automatically on the one hand, the cases where the notice of voluntary retirement would require acceptance. Similarly, in *Tek Chand (supra)*, the Supreme Court emphasised the same aspect.

13. Rule 48A(2) specifically requires the appointing authority to accept the notice of voluntary retirement. In the present case, that notice was not accepted by the appointing authority within the period of 90 days. In fact, the respondent was informed that he shall not be relieved unless express approval is granted by the competent authority. It is only on that account that the respondent continued to function and discharge his duties and responsibilities even after the expiry of the 90 day period on 05.10.2014.

14. In *Shambhu Murari Sinha (supra)*, the fact situation was that there was an acceptance letter issued by the competent authority. However, that was conditional "the condition being that "release memo along with detailed particulars would follow". In that case as well, before the employee was relieved from service, he withdrew his option for voluntary retirement. The Supreme Court held that the employee had the locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end. The Supreme Court observed in para 18 of this decision as follows:

"18. Coming to the case in hand the letter of acceptance was a conditional one inasmuch as, though option of the appellant for the voluntary retirement under the Scheme was accepted but it was stated that the "release memo along with detailed particulars would follow". Before the

appellant was actually released from the service, he withdrew his option for voluntary retirement by sending two letters dated 7-8-1997 and 24-9-1997,

but there was no response from the respondent. By office memorandum dated 25-9-1997 the appellant was released from the service and that too

from the next day. It is not disputed that the appellant was paid his salaries etc. till his date of actual release i.e. 26-9-1997, and, therefore, the jural

relationship of employee and employer between the appellant and the respondents did not come to an end on the date of acceptance of the voluntary

retirement and the said relationship continued till 26-9-1997. The appellant admittedly sent two letters withdrawing his voluntary retirement before his

actual date of release from service. Therefore, in view of the settled position of the law and the terms of the letter of acceptance, the appellant had

locus poenitentiae to withdraw his proposal for voluntary retirement before the relationship of employer and employee came to an end.â??

15. The decision in Shambhu Murari Sinha (Supra) holds that the jural relationship of employee and employer does not come to an end till the voluntary retirement of such an employee is accepted by the employer. Pertinently, in the present case, vide office order dated 25.09.2014, the petitioner

informed the respondent, before the expiry of the period of 90 days, that the latter will not be relieved from service till his retirement request is

approved by the Competent Authority. On 30.10.14, the respondent withdrew his request of voluntary retirement before the petitioner could accept his

request of voluntary retirement from service. The respondent withdrew his retirement request when the jural relation between him and his employer

was still in existence and while he was carrying out his duties and responsibilities of his service. In our view, since there was no legally pending

voluntary retirement request on behalf of the respondent, the petitioner could not have accepted a request for voluntary retirement, which was no

longer in existence.

16. The argument of the petitioner that the decision in Shambhu Murari Sinha (Supra) was rendered in respect of a private employer is neither here

nor there. What is pertinent is that like in Shambhu Murari Sinha (supra), in the present case, the respondent was not relieved from service even after

the expiry of the notice period and while continuing in service, he withdrew the notice.

17. Recently in Secretary, Department of Animal husbandry and Dairying v. Dr. Chandra Shekhar Sahukar, W.P. (C) 11882/ 2018, we dismissed a

similar petition with costs of Rs. 10,000/-.

18. In these circumstances, we find absolutely no merit in this petition. The same is, accordingly, dismissed. The petitioner is subjected to costs of Rs.

20,000/- for wasting the time of this court by filing this frivolous petition. The costs shall be paid to the Delhi Legal Services Authority within four

weeks.

19. The petition stands disposed of in the aforesaid terms.