
(1992) 01 DEL CK 0057

In the Delhi High Court

Case No : Civil Writ Appeal No. 2564 of 1988

J.P. Sharma

APPELLANT

Vs

Director General Border Roads and Others

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Army Act, 1950 — Section 39

Central Civil Services (Pension) Rules, 1972 — Rule 48A(1)(2)

Citation : (1992) 47 DLT 575

Hon'ble Judges : Chander Mohan Nayar, J

Bench : Single Bench

Advocate : Ashok Kashyap, A.P. Aggarwal and Y.R. Sharma, for the Appellant;

Judgement

C.M. Nayar, J.

(1) The present petition is directed against (A)Apprehension Roll, issued vide No. 1011/219/14/E dated 17/09/1988, by the respondent Border Roads Organisation, on the ground, that the petitioner was absent without leave with effect from 26/05/1988, and thus committed a cognizable offence u/s 39 of the Army Act, 1950, (B) the order issued vide letter No.107171/JPS/210/92/E dated 6/08/1988, which, inter-alia, stated that the notice of voluntary retirement, given by the petitioner, is subject to acceptance by the Appointing Authority. The voluntary retirement notice cannot be accepted by the Appointing Authority, till completion of the Court of Inquiry, being conducted against one of the other members of the staff.

(2) The brief facts, which are relevant for the present controversy, are that the petitioner joined service in the Border Roads Organisation of the General Reserve Engineer Force as a Civilian Superintendent B/R Grade Ii on 3/08/1966. He was promoted as superintendent B/R Grade I as from December, 1975. The petitioner was appointed as Assistant Engineer (Civil) on adhoc basis with effect from 27/02/1985, and worked as such for about 2 years and 7 months from 26/02/1985, to 8/09/1987, and he was reverted to the post of Superintendent,

B&R Grade I from 9/09/1987. The respondents have filed a counter affidavit giving out dates in this regard, but the same are not relevant for the purposes of present controversy. The petitioner further stated in the petition that at the time of his adhoc promotion/appointment, he was drawing pay at the rate of Rs. 750.00 per month in the pay scale of Rs. 550-20-65-25-750 (the revised scale as per 4th pay commission is Rs. 1640-6-26-EB-75-2900).

(3) The pay of the petitioner in the scale of Rs. 2000-60-2300-EB-75-3200-100-3500 in accordance with the revised pay Rules 1986, was fixed as Rs. 2375.00 with effect from 1/01/1986. The petitioner submitted that the increments, which fell due in the post of Assistant Engineer (Civil), with effect from 26/02/1986, raising basic pay to Rs. 2450.00 and from 26/02/1987 raising basic pay to Rs. 2525.00, have not been granted in spite of his representations, though the respondents contended that petitioner is working purely as adhoc Assistant Engineer (Civil) from February 27, 1985/01/1986, in the pay scale of Rs. 2000-3500, and relinquished this post of Adhoc Assistant Engineer (Civil) with effect from 1/02/1986. The petitioner thus stood reverted to the post of Superintendent Roads Grade I in the pay scale of Rs. 1640-2900, Therefore, petitioner was not entitled to annual increment with effect from 26/02/1986 in the post of Adhoc Assistant Engineer (Civil). Petitioner had again assumed the appointment of Adhoc Assistant Engineer with effect from 3/03/1986 only and in view of this, he is not entitled to any annual increment with effect from 26/02/1987 too, as adhoc Assistant Engineer. The respondents further submitted in their reply that the petitioner was not entitled to any increment in "Grade Assistant Engineer after 5/04/1987.

(4) The petitioner having completed 20 years qualifying service on 16/09/1986, decided to seek voluntary retirement and gave a notice on 13/05/1987, as required under the Rules. The said notice of retirement was acknowledged by the respondents and vide communication dated 17/08/1987, it was stated that the notice of voluntary retirement, submitted by the petitioner, was not considered by the department, as it had not reached 60 days in advance from the expiry date of 3 months notice, due to being defective and incomplete. The respondents advised the petitioner to submit a fresh notice and enclosed the following forms for completion and return:

(A) Application for voluntary retirement; (b) Certificate regarding, not signed/ stood surety for house building advance.

Thereafter, the petitioner submitted another notice of voluntary retirement on 1/09/1987, which was also returned by the respondents vide communication dated 21/09/1987, which is reproduced as follows :

"THE extension of your adhoc appointment as Ae (Civil) beyond 8 Sep, 1987 has not been accepted by the Government and accordingly you have been reverted to the post of Supdt. Br I w.e.f. 09 Sep., 1987; Your papers for voluntary retirement have Therefore to be prepared as Supdt. Bri and the retirement can be

accepted by the Chief Engineer (P) Swastik very readily. You are Therefore directed to submit fresh papers in the capacity of Supdt. Br I immediately for processing the papers, 578 It is also added for your information that you can proceed on voluntary retirement only after joining the unit from leave, (K.C. Bhatia) SE(C) Commander Copy to: 86 RCC-The papers along with service records of Shri J.P. Sharma are returned herewith. The retirement papers of the individual in the capacity of Supdt. Br Grade I may please be submitted immediately on receipt from him. A copy of the casualty under which the officer has been reverted as Supdt. Bri may also be attached with the papers while submitting the case. Please acknowledge receipt."

(5) The petitioner submitted third notice for voluntary retirement on 1/10/1987, stating once again that he has completed 20 years qualifying service on 16/09/1986, as verified by the concerned authorities, so he was eligible for the same. The said three months notice of voluntary retirement commenced with effect from 1/10/1987. He further requested to relax the requirement of 3 months notice and to accept his retirement at the earliest due to domestic problems. The relevant certificate dated 12/10/1987, was also issued to the petitioner by the Commanding Officer, with regard to his noninvolvement in the Court of Inquiry/Disciplinary case/Vigilance case, in respect of G/107171K Supdt. B/R Grade I, which reads as follows : "Certified that G/107171K Supdt. B/R Gde I.J.P. Sharma who has been posted to 219 Public Witness Platoon attached to this . unit is not involved in any Court of Inquiry/Disciplinary case and no vigilance case is pending against him."

(6) The third notice of voluntary retirement was also not accepted, as it was stated in the departmental communication of 20/11/1987, that involvement of the officer has been anticipated in the vigilance case of one Overseer Shri P.B. Bhat. As such, his notice of voluntary retirement cannot be considered at this stage and the same will be considered after the finalisation of vigilance case of the said officer. The petitioner submitted the fourth notice of voluntary retirement on 1/04/1988.

(7) The petitioner averred in the writ petition that while being posted at Gangtok, Sikkim on 16/04/1988, he received a telegram, that his mother was seriously sick and in view of this he applied for 60 days leave but, he was only granted 30 days leave from 26/04/1988 to 8/05/1988. His mother continued to be unwell and he applied for extension of leave by another one month and the same was not granted. The petitioner expressed his helplessness to rejoin his post and he informed the authorities accordingly and requested that as, he was due to retire on 1/07/1988, after completion of three months notice, the period after 25/05/1988 may be relaxed as per the Leave Rules. In the notice of voluntary retirement dated 1/04/1988, the petitioner even requested to relax the requirement of 3 months notice and to accept his retirement at the earliest, due to domestic problems. The petitioner did not report for duty and maintained that the Government servant, giving the notice of retirement, may presume

acceptance and the retirement shall be effective, in terms of notice unless the Competent Authority issues an order to the contrary, before the expiry of period of notice. As, no such order has been issued by the Appointing Authority before 30/06/1988, (the date of expiry of three months) the petitioner lawfully stood retired as from 1/07/1988.

(8) The respondents took the plea that the notice of voluntary retirement could be accepted, if required by curtailing the three months period. However, the case would be processed only after the evidence of the Supervisor in the Court of Inquiry, ordered on 1/01/1988, was recorded. The petitioner was, Therefore, requested to give evidence and obtain clearance from the Presiding Officer, without further delay so that his case could be processed further. It was also submitted in this communication that the extension of leave, as applied vide application dated 20/05/1988, was not granted and the petitioner was directed to report for duty. Further communications were sent to the petitioner on 18/06/1988 and on 30/06/1988, stating that the petitioner was advised to report for duty forthwith and he had failed to do so. He was once again advised to report to the Unit within 10 days, failing which necessary apprehension roll for apprehension by the Civil Police Authorities would be issued. The petitioner did not report for duty and on the contrary served the respondents with a legal notice dated 19/07/1988, to the effect that petitioner stood voluntarily retired as from 1/07/1988, as per the Rules. The notice further stated that in case, the necessary action is not taken, the petitioner will feel free to proceed in a Court of law, as deemed necessary. The respondents replied to the application of the petitioner dated 25/06/1988, on 6/08/1988, and the relevant portion reads as follows :

"(A) Your statement was recorded during February, 1988, but after recording the statement of Shri Harmohan Singh. Aee (C) your further statement/examination is required by the Court. Hence your presence is essential in this case. (b) As regards extension of leave you are advised to rejoin duty forthwith as the extension of leave has not been granted. (c) Notice of voluntary retirement given by you is subject to acceptance by the appointing authority. In this context please refer to rule 48-A(2) of Ccs Pension Rules 1972. The voluntary retirement notice cannot be accepted by the Appointing Authority till completion of the Court of Inquiry."

(9) The learned Counsel for petitioner has raised two arguments in the present case: (a) The notices of retirement, having been submitted by the petitioner in accordance with law, shall be deemed to be effective unless the Competent Authority issues an order to the contrary, before the expiry of the period of notice. As, no such order has been issued by the Appointing Authority before 30/06/1988, (the date of expiry of 3 months notice) the petitioner rightfully and lawfully stands retired with effect from 1/07/1988; (b) No order of rejection of notice of voluntary retirement has been issued by the Appointing Authority. Admittedly, the Appointing Authority in the case of petitioner is the Chief

Engineer and the alleged order of refusal dated 31/05/1988, is issued by the Officer Commanding. The same is, Therefore, illegal and cannot be sustained.

(10) The respondents have filed reply to the show-cause notice, issued by the Court and reiterated that petitioner was suspected of involvement in a disciplinary/vigilance case of an Overseer Shri P.B. Bhat. The notice was not accepted and the decision of the Competent Authority was conveyed under Head Quarter Chief Engineer (Project) Swastik letter No: 11058/180/EIB dated 8/04/1988. This communication also indicated that the petitioner was an essential witness in the said case and since the Court of Inquiry had not been finalised, his case for voluntary retirement could not be considered at this stage. The petitioner had applied for extension of leave on different occasions, and the same having not been granted, he was asked to report for duty. The petitioner fully knowing his involvement in the Vigilance/Disciplinary case wanted to escape the investigation and continued to insist for leave/voluntary retirement. Furthermore, it was pleaded that under "Rules 48-A (1) & (2) of Central Civil Services (Pension) Rules, 1972, and proviso under Sub-rule(2), the notice of voluntary retirement given, shall require acceptance by the Competent 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 notice. The relevant Rule in this connection is Rule 48-A, which may be reproduced as follows :

"RULE 48-A-Retirement on completion of 20 years qualifying service-(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) Proviso-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."

The Rule would clearly lay down that in case of refusal to grant permission for voluntary retirement is not communicated to the petitioner by the Appointing Authority, within the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. The facts of this case would indicate that the petitioner submitted four notices for voluntary retirement on 13/05/1987, Sep. 1, 1987/10/1987 and 1/04/1988 respectively. The first notice was returned on the ground that it did not reach the Head Quarter DGBR 60 days in advance from the expiry date of 3 months notice. The second notice was also returned on the ground that papers for voluntary retirement have to be prepared on the reverted post of Superintendent Brt and the retirement can be accepted by the Chief Engineer (P) Swastik very readily. The third notice was not accepted vide departmental communication dated 20/11/1987, signed by one Shri K.C. Bhatia, Superintending Engineer (Civil) Commander, who stated in the said communication that involvement of the officer had been anticipated in the

vigilance case of Overseer Shri P.B. Bhat and, as such, his notice for voluntary retirement cannot be considered at this stage. This letter, however, was not addressed to the petitioner nor was signed by the Appointing Authority, which was the Chief Engineer in the present case. The last notice dated 1/04/1988, was submitted by the petitioner, when the petitioner was on leave, i.e. 26/04/1988/05/1988, in view of the illness of his mother.

(11) Learned Counsel for respondents has seriously contended that the communications dated 8/04/1988 and 31/05/1988, should be taken to be refusal and the petitioner cannot derive any benefit of the provisions of Rule 48-A. There is no force in this contention as the communication of 8/04/1988, is only a departmental communication, which was not addressed to the petitioner and the same only indicated that the petitioner was an essential witness in the Court of Inquiry with the following observations :

"(A) Industrial is an essential witness in the Court of Inquiry regarding deposition of excess amount of Rs. 2525.90 in Sbi Gangtok out of Cpl Bonus bill of 86 Rcc vide convening order No. 13005/274/EID dated 1/01/1988. Since the Court of Inquiry has not been finalised, his case for voluntary retirement cannot be considered at this stage; (b) Vide Commander Do Letter No. 1006/257/EID dated 29/10/1987 the individual is suspected to be involved in the vigilance case of Overseer P.D. Bhatt of 86 RCC."

(12) The second communication, which was addressed to the petitioner on 31/05/1988, only stated that the notice of voluntary retirement can be accepted, if required, by curtailing three months period, but the case of the petitioner will be processed only after the evidence of the Supervisor, in the Court of Inquiry ordered on 1/01/1988. The petitioner was requested to give evidence and obtain clearance from the Presiding Officer without further delay so that the case can be processed further. This communication also cannot be termed as refusal of acceptance of notice of voluntary retirement, as the same clearly indicated that the matter was under consideration and the case will be processed after the evidence was recorded. The petitioner was only warned that as his leave had not been granted, he must report for duty forthwith. There is no communication of refusal to the petitioner for permission for voluntary retirement within the time specified in the notice by the Appointing Authority. The provisions of Sub-rule 2 of Rule 48-A of the Central Civil Services (Pension) Rules, 1972, will come into operation and the retirement shall become effective from the date of expiry of the notice period by operation of law. In this context, reference may be made to the judgment in Shri Jivan Krishna v Union of India and Another A.T.R. 1989 C.A.T. 118

(13) The next contention, raised by the petitioner, has also some force in view of the fact that the alleged letter dated 31/05/1988, was only signed by EE(C) Officer Commanding with a copy endorsed to Head Quarter CE(P) Swastik for information. It may be relevant to say that the second notice of retirement, submitted by the petitioner, on 1/09/1987, was refused on the ground that

papers for voluntary retirement have to be prepared as Supdt BR 1 and the retirement can be accepted by the Chief Engineer. The communication dated 31/05/1988, even if it is accepted as refusal of the notice of voluntary retirement, was not issued by the Appointing Authority. There fore the same has no force in law. "

(14) The only other ground, which has been canvassed before me, to withhold the retirement of the petitioner is, that he is required to give evidence in a Court of Inquiry, in the case of one Shri P.B. Bhat and a suspicion is also cast on the petitioner in the said inquiry. These are only vague averments and it is not necessary to withhold the voluntary retirement of the petitioner. the petitioner was only required to give evidence in the said Court of Inquiry and he could be asked to do so even if he had voluntarily retired.

(15) The petition, as a consequence, is allowed and the Rule is made absolute. The petitioner will be entitled to pension and other retirement benefits with effect from 1/07/1988. No order as to costs.