
(2015) 07 RAJ CK 0058

In the Rajasthan High Court

Case No : DB Civil Writ Petition No. 633 of 2004

Pyare Lal Sharma

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 227

Citation : (2015) 07 RAJ CK 0058

Hon'ble Judges : Ajay Rastogi, J; J.K. Ranka, J

Bench : Division Bench

Advocate : Rajendra Pd. Sharma, for the Appellant; T.P. Sharma, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant writ petition is directed against order of Central Administrative Tribunal dt. 20/01/2004.

2. The brief facts, which have come on record and relevant for disposal of the instant petition, are that the petitioner initially joined service in the ministerial cadre (LDC) on 10/01/1974 and got further promotion in the cadre and while holding the post of Office Assistant, he tendered application seeking voluntary retirement on 30/06/2003 to be effective from 01/10/2003 and the reason assigned by him for seeking voluntary retirement was his wife's illness. His application was placed before the competent authority and he was allowed to take voluntary retirement vide order dt. 15/07/2003. In furtherance thereto, the petitioner was served with pension papers on 06/08/2003 and after complying with the due formalities, he submitted his pension papers in the department on 14/08/2003 and taking note of the vacancy which was going to occur on account of retirement of the petitioner and other vacant posts of Office Assistant, the Departmental Promotion Committee met and made its recommendations on 03/09/2003 and three of them were promoted vide order dt. 04/09/2003.

3. Thereafter, the petitioner took u-turn and submitted application on 08/09/2003 to recall and withdraw his application for voluntary retirement which he initially tendered on 30/06/2003 on which no action was taken by the respondents, at this stage, he approached before Id. Tribunal by filing OA and he was allowed to continue after 01/10/2003 under interim order of the Tribunal and the matter was finally heard and dismissed vide order impugned dt. 20/01/2004 and practically he served in the department upto the date of rejection of his OA and that is subject matter of challenge in the instant writ

4. It is informed that the date of birth of the petitioner is 12/09/1948 and he would be in service, if have been allowed to continue upto 30/09/2007 the date of superannuation.

5. Counsel for the petitioner submits that once application was submitted by the petitioner for recalling and withdrawal of his application for voluntary retirement on 08/09/2003, his application dt. 30/06/2003, on which the authority took decision to grant permission to the petitioner of seeking voluntary retirement, to be effective from 01/10/2003, stands withdrawn and in the absence of any decision to the contrary, it stood automatically recalled and he has a right to continue in service upto the date of superannuation and the reason assigned by the Id. Tribunal that since there was a reasonable justification forthcoming which may fulfill the requirement of Rule 48-A (4) of the CCS (Pension) Rules, 1972, is wholly unjustified and the Id. Tribunal has committed serious error of law in declining the request made by the petitioner and in support of submission placed reliance on judgment of the Apex Court in Balram Gupta Vs. Union of India (UOI) and Anr, AIR 1987 SC 2354 : (1987) 3 JT 480 : (1988) LabIC 46 : (1987) 2 LLJ 541 : (1987) 2 SCALE 521 : (1987) 1 SCC 228 Supp : (1987) SCC 228 Supp : (1987) 3 SCR 1173 : (1988) 1 SLJ 79 : (1987) 2 UJ 746 .

6. Counsel further submits that the very Rule 48-A(4) of the Rules, 1972 has come up for consideration and the Apex Court arrived to a conclusion that if the application has been tendered prior to the effective date of granting permission for voluntary retirement, the action of the authority in declining the request or not passing appropriate orders, is in violation of the Scheme of Rules and it has been held that the employee is entitled to be continued in service obviously upto the date of superannuation and the Id. Tribunal has mis-interpreted the judgment of the Apex Court on which the petitioner place reliance and submits that even if the petitioner has submitted pension papers on 14/08/2003, that may not jeopardize the right vested with the petitioner in seeking to withdraw his application for voluntary retirement before the effective date of 30/09/2003 and the Id. Tribunal has committed serious error of law in not appreciating the controversy which requires interference of this Court.

7. Counsel further submits that one Kishan Singh twice submitted application for voluntary retirement and that was accepted by the department and permission was granted to him in giving effect to his application for voluntary retirement from the future date but before the due date became effective, he was granted

permission to withdraw the application for voluntary retirement while in case of the present petitioner, without any reasonable justification, no order was passed by the department and he was forced to approach the Id. Tribunal and the two standards adopted by the department in the case of petitioner and that of Kishan Singh is wholly discriminatory and violative of Art. 14 of the Constitution and these documents could not be placed before the Id. Tribunal as he obtained the same thereafter under the RTI Act and the action being discriminatory, at least the petitioner is entitled to seek indulgence and for recalling of his application for voluntary retirement and to continue upto the date of superannuation.

8. Per-contra, counsel for the respondents, while supporting order of the Id. Tribunal, submits that the Id. Tribunal has considered the matter in detail and arrived to a conclusion that no reasonable justification is forthcoming in the application filed by the petitioner for withdrawal of his application for voluntary retirement and keeping in view the mandate of Rule 48A(4) of the Rules, 1972, the decision of the Id. Tribunal cannot be faulted with which may require interference at least within limited scope of review available under Art. 227 of the Constitution and further as regards the question of discrimination, which has been raised by petitioner for the first time in the instant petition, counsel submits that in the case of the present petitioner, apart from acceptance of his application and granting him permission and giving effect to his application for voluntary retirement from future date, he has submitted pension papers voluntarily on 14/08/2003 much prior thereto and treating his vacancy to be vacant, the DPC met on 03/09/2003 and on the recommendations, appointments were made vide order dt. 04/09/2003, it is not the case of Kishan Singh and before there could be a effective consideration by the appointing/competent authority, he himself took voluntary decision and submitted application for withdrawal of voluntary retirement and thus, the plea of discrimination, cannot be permitted to raise for the first time in the instant proceedings.

9. We have heard counsel for the parties and also perused the material available on record.

10. The undisputed facts, which have come on record and can be noted down in brief, are that the application seeking voluntary retirement to be effective from 01/10/2003 was submitted by the petitioner on 30/06/2003 and that came to be accepted by the appointing/competent authority granting permission of seeking voluntary retirement on 15/07/2003 w.e.f. 01/10/2003 and immediately thereafter, pension papers were made available to the petitioner on 06/08/2003 and after completing all the formalities for release of pension and other benefits, pension papers are submitted by the petitioner to the department on 14/08/2003 and thereafter DPC was also met on 03/09/2003 treating the post occupied by the petitioner as available vacancy and so also for other vacant posts and on the recommendations made by the DPC, certain appointments were made vide order dt. 04/09/2003 and at this juncture the petitioner came with application on 08/09/2003 for recalling and withdrawal of his application seeking voluntary

retirement dt. 30/06/2003 and when no order was passed, the petitioner approached the Id. Tribunal by filing OA which was rejected vide order impugned.

11. The Id. Tribunal rejected his prayer on the premise that he was supposed to seek permission from the competent authority as contemplated u/R. 48-A(4) of the Rules, 1972 and that certainly requires prior permission of the competent authority and if reasons are assigned by the competent authority declining to grant permission, that is always open for judicial review before the competent forum where the law permits the incumbent to ventilate his grievance but in the instant case, no order was passed by the department and he was going to retire on 01/10/2003, at this stage, he approached the Id. Tribunal and the department came with the defence in their reply to the OA that he furnished his pension papers voluntarily and of his own on 14/08/2003 and the DPC thereafter met on 03/09/2003 and recommendations were accepted and carried out by giving promotions to the four persons vide order dt. 04/09/2003 and taking note thereof and also the requirement of Rule 48-A(4) of the Rules, 1972, the Id. Tribunal arrived to a conclusion that there were bonafide reasons forthcoming in not granting permission to the petitioner of withdrawal of his application. We do not find any error being committed by the Id. Tribunal in rejecting the O.A. Under order impugned.

12. The judgment of the Apex Court in the case of Balram Gupta v. Union of India (supra) on which the petitioner has placed reliance, is of no assistance for the reason that it was a case where the application was submitted seeking voluntary retirement to be effective from a future date and before any acceptance, there was an application filed for withdrawal and the question was with regard to the reasons which he initially assigned seeking voluntary retirement and what was assigned by him at later stage to withdraw and the Apex Court observed that if bonafide reasons are forthcoming, the incumbent should not be deprived of seeking permission for withdrawal of voluntary retirement but it cannot be made a thumb rule that if the incumbent once submits application seeking voluntary retirement, later application seeking withdrawal of voluntary retirement, has been examined by the competent authority and if it is being permitted as a matter of course, the very mandate of Rule 48-A(4) of the Rules, 1972 would become otiose which is never the intent and purport of the rule making authority.

13. As we have noticed, in the instant case, after the change in circumstances and particularly, the voluntary act of the petitioner himself in submitting application for pension papers in the office on 14/08/2003 and further consideration as taken place by holding DPC and making further promotions thereafter and keeping in view all such facts into consideration the application filed at a later stage and looking to the conduct of the petitioner in submitting application for withdrawal of voluntary retirement by taking a u-turn, we do not find any error in the decision making process which has been examined by the Id. Tribunal while making judicial scrutiny of the action of the department under

order impugned.

14. As regards the submission in respect of discrimination between the two employees is concerned, the facts in itself are self explicit and may not require any reason to support thereof and each case has to be looked into as per its own facts and we do not find any error being committed by the Id. Tribunal in passing the order impugned which may require interference by this Court.

15. Consequently, the writ petition, being devoid of merit, is accordingly dismissed.