
(1985) 02 DEL CK 0036

In the Delhi High Court

Case No : Civil Writ Petition No. 790 of 1981

Trilochan Singh Gill

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 25-02-1985

Acts Referred:

Citation : (1985) 27 DLT 349

Hon'ble Judges : S.S. Chadha, J

Bench : Single Bench

Advocate : M.N. Tikku, Rakesh Tikku, D.K. Kapur, Vijay Mehta, Sanjeev Khanna and S.K. Nandi, for the Appellant;

Judgement

S.S. Chadha, J.

(1) This petition under Articles 226 and 227 of the Constitution of India seeks the quashing of the notification date July 2, 1979 notifying the voluntary retirement from service by the petitioner, a member of Indian Administrative Service with effect from July 2, 1979 under Rule 16(2A) of the All India Service (Death-cum-Retirement Benefit) Rules, 1958. The petitioner further seeks the quashing of the appellate order dated October 27, 1980 rejecting the appeal of the petitioner in exercise of the powers conferred under sub-rule (2) of Rule 19 of the All India Services (Discipline and Appeals) Rules, 1969.

(2) The petitioner was selected in Indian Administrative Service in 1954 on the basis of the competitive examination held in 1953 and was allotted the Assam Cadre of I.A.S. in May, 1954. From May, 1954 to August, 1976, the petitioner continued to work on various assignments as an officer of Assam Cadre and in Assam Province, except for the period 1959 to 1964 when the petitioner was on deputation to the Government of India, New Delhi, In 1971 the Districts of Khasi and Jainta Hills and another District of Garo Hills were separated from the Assam State and were constituted as a new State named Meghalaya and all the officers of All India Services of the erstwhile Assam Cadre were put under the overall

management and control of the Joint Cadre Authority constituted under the All India Services (Joint Cadre) Rules, 1972. The petitioner was placed all along in its Assam Government constituent till August, 1976. The petitioner was then deputed to work as the Special Secretary to Shri L.P. Singh, the then Governor of Nagaland at Kohima.

(3) While the petitioner was on deputation to the Government of Nagaland and was posted as Special Secretary to the Governor, certain adverse remarks were recorded in his confidential reports by the Governor for the period August, 1976 to March, 1978. These adverse remarks were communicated to the petitioner and he made a representation against it in October, 1978. The representation submitted by the petitioner, in the opinion of the Government of Assam, contained wild insinuations and charges against the Head of the State. The State Government, Therefore, contemplated to initiate disciplinary proceedings and also to place the petitioner under suspension pending initiation of disciplinary proceedings.

(4) It appears from the communication dated January 17, 1979 (Annexure P-4 to the writ petition) that the State Government indicated its displeasure about the intemperate language and the contents of the petitioner's representation. It was, however, decided :

"IT has been decided, however, that considering the long period of service rendered by you and taking into account the possibility of your having made such irresponsible and insulting statements in your representation because of the mental strain undergone by you due to your non-promotion to the supertime scale, it would be appropriate to give you an opportunity to retire voluntarily from the India Administrative Service under Rule 16(2A) of the All India Services (Death-cum-Retirement Benefits) Rules, 1958. You are accordingly advised that you may, if you so desire, submit your letter seeking retirement from the Indian Administrative Service so as to reach the State Government on or before 15th February, 1979. If no such letter is received by that date, the State Government will have no option but to take formal action on that lines indicated earlier."

(5) By notification dated February 27, 1979 it was notified that the petitioner is placed under suspension with immediate effect and until further orders. The petitioner sent a representation dated March 10, 1979 in which it was mentioned that since the suspension "order had been issued, it was not possible for the petitioner to apply for voluntary retirement unless the suspension order was first cancelled. The State Government by letter dated March 15, 1979 informed the petitioner that it was competent to seek retirement from service according to Rule 16(2A) of the All India Services (Death- cum-Retirement Benefits) Rules, 1958 (hereinafter referred to as the Rules) and it was not necessary to revoke suspension. The petitioner again wrote to the State Government expressing his apprehension and also stating that the Government should appreciate that it was hardly possible for the petitioner to retire under the stigma of suspension. It appears that there was some talk between the petitioner and the Chief Secretary

of the Government of Assam.

(6) The petitioner by letter dated April 3, 1979 referred to the gist of his conversation with the Chief Secretary. One of the points discussed was that immediately on receipt of the letter of the petitioner asking for voluntary retirement, the Government would vacate the order of suspension by simple cancellation. Secondly, the effect of that would be that there would be no suspension at all and the petitioner's pension and gratuity calculations would not be affected in any way. The petitioner then categorically applied for permission to proceed on voluntary retirement under Rule 16(2A) of the Rules on expiry of three months from that day (April 3, 1979).

(7) The Government of Assam by notification dated April 6, 1979 cancelled the earlier notification dated February 27, 1979 placing the petitioner under suspension. The petitioner was communicated the decision of the Joint Cadre Authority in the memorandum dated May 22, 1979 by which the request of the petitioner seeking retirement from the I.A.S. under Rule 16(2A) was accepted.

(8) The petitioner then changed his mind for various reasons and wrote a letter dated June 19, 1979 inter alias :

"I am consequently left with no option but to withdraw my letter dated 3rd April 1979, and specifically my request for permission for voluntary retirement from service contained in that letter, and I, hereby, do so withdraw that request. Consequently, I am not seeking retirement under Rule 16(2A) of the A.I.S. (DCRB) Rule, 1958.

(9) The Government of Assam by letter dated June 23, 1979 informed the petitioner that as the Joint Cadre Authority of Assam and Meghalaya had already accepted the petitioner's request seeking retirement from the Indian Administrative Service, the State Government regret their inability to accept the petitioner's request for withdrawal of his letter seeking retirement from the All India Administrative Service. The petitioner filed an appeal against the order dated June 23, 1979. However, by the impugned notification dated July 2, 1979 the voluntary retirement of the petitioner, a member of the Indian Administrative Service was notified with effect from July 2, 1979 (afternoon). The petitioner submitted an appeal dated September 4, 1979 to the Central Government for quashing the decision of the Government of Assam. The Central Government dismissed the two appeals dated June 26, 1979 and September 4, 1979 by the second impugned order dated October 27, 1980.

(10) The submission of Shri Rakesh Tikku, the learned counsel for the petitioner is that there is no prohibition in Rule 16(2A) or any restriction from withdrawing the letter of request dated April 3, 1979. The petitioner, according to the counsel, withdrew his option of seeking voluntary retirement before the intended date i.e. July 2, 1979. The petitioner was still in service on June 19, 1979 when the petitioner withdrew the request for permission for voluntary retirement from

service contained in the letter dated April 3, 1979. The submission is that the petitioner can be allowed to do so long as he continues in service. On the other hand, the submission of Shri D.K. Kapur, the learned counsel for the Central Government and Shri S.K. Nandi, the learned counsel for the State of Assam is that after acceptance of request for retirement by the Joint Cadre Authority, there was no power to withdraw the request seeking retirement under Rule 16(2A).

(11) In order to appreciate the rival contentions it is apposite to reproduce Rule 16(2A):

"(2A) A member of the service may, after giving three months" notice in writing to the State Government concerned, retire from service on the date on which he completes 20 years of qualifying service or any date thereafter to be specified in the notice : Provided that a notice of retirement given by a member of the service shall require acceptance by the State Government concerned if the date of retirement on the expiry of the period of notice would be earlier than the date on which the member of the service could have retired from survive under sub rule (2) :....."

The Rules have been made for the purpose of determining the death-semiretirement benefits in the case of a member of the All India Service or his family. It also defines the emoluments which a member of the Service was receiving immediately before his retirement or death and the manner of calculating the quantum of the death-cum-retirement gratuity or retiring pension and gratuity. Rule 16 provides for superannuation gratuity or pension. A member of Service is required compulsorily to retire from the service with effect from the afternoon of the last day of the month in which he attains the age of retirement. Sub-rule (2) of the Rule 16 given an option to a member of the Service who may, after giving at least three months" notice in writing to the State Government concerned, retire from service on the date on which such member completes 30 years of qualifying service or the date on which such member attains 50 years of age or any date thereafter to be specified in writing. The acceptance by the State Government is not required in this case. However, if a member of the Service is under suspension, he cannot retire from service except with the specific consent of the State Government concerned. It is thereafter that Rule 16(2A) comes. It gives a right to a member of the Service to retire from service on the date on which he completes 20 years of qualifying service or any date thereafter specified in the previous notice in writing of a period of three months. In the case if the date of retirement on the expiry of the period of notice is before completion of 30 years of qualifying service, then the notice of retirement requires acceptance by the State Government concerned, and not in other cases. The provision does not say that it is the discretion of the State Government concerned to dispense with the three month" previous notice or to reduce the period of three months" notice. A person who has given a notice under Rule 16(2A) would continue to remain in employment for the period of notice. The

notice may be of three months or even more. The only hurdle in the way of retirement is that it requires acceptance by the State Government. In case the State Government accepts the notice of retirement, then the member of Service would retire according to the date specified in the notice. In that case he would be entitled to the superannuation gratuity or person as provided in the Rules.

(12) There is no provision in the Rules that a member of Service who has given a notice in writing opting to retire from service under Rule 16(2A) is precluded from withdrawing his option either before or after the acceptance by the State Government concerned. The general principle is that in the absence of a provision prohibiting withdrawal, an intimation to retire from a future date, say after three months previous notice in writing, can be withdrawn at any time before it operates to terminate the service. This principle has been laid down by the Supreme Court in *Jai Ram Vs. Union of India (UOI)*, . In that case, the plaintiff entered the service of the Government of India as a clerk in the Central "Research Institute at Kasauli. Rule 56(b) of the Fundamental Rules, which regulated the civil services, provided that a ministerial servant may be required to retire at the age of 55 but should ordinarily be retained in service if he continues till the age of 60 years. The plaintiff was to complete 55 years on November 26, 1946. On May 2, 1945 he wrote a letter to the Director of the Institute to the following effect:

Sir, Having completed 33 years" ""service on the 6th instant I beg permission to retire and shall feel grateful if allowed to have the leave admissible."

This request was declined as also his two subsequent requests. The plaintiff on May 28, 1946 made a fourth application repeating his request. The plaintiff was granted leave preparatory to retirement for the period ending May 25, 1947. The plaintiff on May 16, 1947 sent intimation application that he had not retired and asked for permission to resume his duties immediately. On the Government's refusal the plaintiff brought the suit which went up to the Supreme Court. It was held :

".....IT may be conceded that it is open to a servant, who has expressed a desire to retire from service and applied to his superior officer to give him the requisite permission, to change his mind subsequently and ask for cancellation of the permission thus obtained ; but he can be allowed to do so long as he continues in service and not after it has terminated."

The view was affirmed by the Supreme Court in *Union of India (UOI) and Others Vs. Gopal Chandra Misra and Others*, . It was reiterated that the general principle regarding resignation is that in the absence of a legal, contractual or constitutional bar, a prospective resignation can be withdrawn at any time before it becomes effective, and it becomes effective when it operates to terminate the employment or the office tenure of the resign or .This principle was held to be applicable to the constitutional functionary, namely, a Judge of a High Court. In *Y.K. Mathur and Another Vs. The Commissioner Municipal Corporation of Delhi*, , a similar view was taken by this Court in the case of two Municipal Councillors of

the Municipal Corporation of Delhi who sent their resignation letters to the Mayor of the Municipal Corporation of Delhi resigning their seats. It was reiterated that the statute does not in any way limit the authority of the Councillor who has sent his resignation from a prospective date to withdraw it before that date is reached. The resignation which is to be effective from a future date necessarily implied that if that date has not reached, it would be open to the Councillor concerned to withdraw it. In C.W.P 1176/80. "Dr. Bhim Singh Jain v. Union of India." decided on March 27, 1981, S.B, Wad, J. allowed the writ petition against the order of Union of India refusing the petitioner to withdraw his notice of retirement. In that case the petitioner's request for voluntary retirement was made on March 1, 1980 and was accepted by the Government on May 5, 1980. The letter of acceptance/permission made it clear that the petitioner would retire on September 30, 1980. The letter of withdrawal of the notice of retirement was sent by the petitioner on July 10, 1980. It was held that the Government has no authority or power to retire the petitioner on September 30, 1980 and that he ought to have been permitted to retire on his normal and due date of retirement.

(13) The case cited by Shri D.K. Kapur, namely C.W.P. 624/84- "Sqn. Ldr.R.P.Karanwal v. Union of India and Others" dismissing a writ petition in limine by a Division Bench of this Court is clearly distinguishable. That was a case of an officer in the Armed Forces and he could not seek retirement as of right under defense Service Regulation 215. The resignation or the request had to be accepted. The resignation was accepted and there came an end of the contract of employment. Sqn. Ldr. Karanwal ceased to be in service as his services stood terminated on the acceptance of the letter of resignation. Therefore could not withdraw the letter of resignation after acceptance. In the case before me, the petitioner had given a notice date April 3, 1979 seeking retirement on the expiry of the period of three months Three months were due to expire on July 2, 1979. The petitioner in this case can be allowed to withdraw his resignation as he continued in service up to July 2, 1979. The acceptance of the request of voluntary retirement was only a formality for the purposes of granting benefits to the petitioner of retirement pension and gratuity. It had no effect of the termination of the contract of employment before July 2, 1979.

(14) A submission is made by the counsel for the respondents that the petitioner is estopped by his conduct from submitting the letter dated June 19, 1979 withdrawing his letter dated April 3, 1979 of voluntary retirement. It is urged that on the receipt of the petitioner's request dated April 3, 1979, the Government cancelled the suspension order on April 6, 1979 and dropped the disciplinary proceedings. The Government, says the counsel, acted upon the letter dated April 3, 1979 to their prejudice. This plea stated at the Bar is rejected for the simple reason that the plea of estoppel is mixed question of fact and law and has not been raised either in the preliminary objections in the counter-affidavit or on the merits.

(15) Another submission made is that the consequences of allowing this writ

petition would place heavy burden on the exchequer as the petitioner would be entitled in that event to all the benefits of pay and allowances including his seniority and it would be difficult for the respondents to place the petitioner in his position. Such a plea is of no consideration as this is the resultant effect of my quashing the impugned orders.

(16) In all fairness to Mr. Tikku, I may note two arguments without expressing any opinion as it is unnecessary. He urges that permission to retire was granted by the Joint Cadre Authority and hence the letter dated June 19, 1979, if it was treated as a request for withdrawal, had also to be considered by the said authority alone. The Chief Secretary of Assam Government had no power of taking the decision as communicated in the letter dated June 23, 1979. The second submission is that if the petitioner was obliged to ask for the permission for the withdrawal of notice to retire and the Government had legal right to refuse, then the petitioner was entitled to an opportunity of being heard.

(17) In the light of the above discussion, the conclusion is inevitable that Rule 16(2A) only provides that the permission is sought while a member of the Service seeks to retire voluntarily on completing twenty years of service with a view to obtain superannuation gratuity or pension as provided in the Rules. The acceptance by the State Government would enable him to receive those benefits. Rule 16(2A) does not lay down that a member of Service who has elected to retire under the said Rule and has given the necessary intimation to that effect is precluded from withdrawing his election subsequently either before or after its acceptance. The Rule does not say that any approval of the competent authority is required for withdrawal of the election to retire. In the absence of anything to the contrary in the Rules, an election to retire from a future date can be withdrawn by a member of the Service at any time before it becomes effective. He can be allowed to do so as long as he continues in Service and not after it has terminated. The petitioner was in service and was due to retire as per his election on July 2, 1979 (A.N.) before which date he withdrew that request. Consequently he was not seeking the retirement under Rule 16(2A) and could not be sent out on voluntary retirement.

(18) For the above reasons, the writ petition succeeds and is hereby allowed. The impugned order dated July 2, 1979 notifying the retirement of the petitioner with effect from July 2, 1979 and the Government's order dated October 27, 1980 rejecting the representation is hereby quashed. The resultant effect would be that it is declared that the petitioner continues to remain a member of the All India Service with all benefits of pay and allowances, seniority and the promotions as would be due to the petitioner as if he had continued in the service from July 2, 1979 till date. The respondents are directed to pay the arrears of financial dues that would have accrued to the petitioner had he been allowed to continue in service, within six months from today. The grant of the writ will in any way stand in the right of the respondents, if so advised, in initiating disciplinary proceedings against the petitioner for the alleged

misconduct of using intemperate language in the representation dated October 26, 1978. On the facts and circumstances of the case, I make no order as to costs.