

(2008) 05 RAJ CK 0109
In the Rajasthan High Court

Union of India (UOI) and Others

APPELLANT

Vs

Ex. Group Capt. M.S. Bhatnagar

RESPONDENT

Date of Decision : 01-05-2008

Acts Referred:

Army Rules, 1954 — Rule 16

Citation : (2008) 3 RLW 2017 : (2009) 3 SLR 353

Hon'ble Judges : Narayan Roy, C.J; Mohammad Rafiq, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J.—Union of India has come up in appeal against the judgment of the Single Bench of this Court dated July 2 2007 whereby and whereunder, the writ petition filed by the respondent-Group Capt. M.S. Bhatnagar was dismissed wherein he had challenged the orders dated 19/5/1998 and 21/5/1998 asking him to proceed on premature retirement by 15/6/1998. These two orders were passed on the basis of application submitted by the respondent to the appellants on 26/8/1997. Respondent was commissioned in the Army Medical Corps on 8/9/1963 and was seconded to Indian Air Force on 23/3/1988. He was posted as Commanding Officer in the Air Force Hospital, Kanpur Cant on 23/1/1995. When superseded by his juniors, the respondent in such state of mind requested the authorities to release him on premature retirement w.e.f. 1/4/1998. In fact, prior to making that application, he had filed writ petition before the Allahabad High Court raising the grievance that inspite of his possessing meritorious record throughout, he was over looked for promotion to the post of Brigadier in the Army Medical Corps, which was equivalent to Air Commander in Air Force, consecutively for the years 1994, 1995 and 1996. Many of his juniors were however in the meantime promoted. The said writ petition was disposed off by the Allahabad High Court vide judgment dated 16/4/1998 with a direction to the authorities to consider and decide his representation within two months. Such representation was dismissed by the authorities which appears to have prompted the respondent to request for his premature retirement. The appellants however

did not accede to his request for premature retirement from 1/4/1998. They instead permitted him to proceed on premature retirement w.e.f. 15/6/1998. An order to this effect was communicated to him by the Director General, Medical Services (Air) vide communication dated 19/5/1998 followed by the order of the Army Headquarters dated 21/5/1998 to the same effect. But the respondent in the meantime had a change of mind and submitted an application to the Air Officer Commanding-in- Chief, Headquarters Central Air Command, Bamrauli, Allahabad on 28/5/1998 that the orders dated 19/5/1998 & 21/5/1998 be cancelled and that he may be permitted to continue in service till the age of superannuation so as to enable him to get his NE benefits in time upto 31/8/1998. In the meantime, Government of India, Ministry of Defence vide Circular dated 13/5/1998 announced a new policy on the retirement age of the Air Force Officers. Writ petitioner-respondent thereafter immediately again requested the above referred to authorities vide application dated 9/6/1998 that the order dated 21/5/1998 permitting him to proceed on premature retirement w.e.f. 15/6/1998 be cancelled and that he may be given a chance to serve as per the new policy of the government.

2. The writ petition has been allowed by the learned Single Judge by the impugned-order quashing thereby the order dated 19/5/1998 and 21/5/1998 with a further direction that the respondent shall be deemed to have continued in service and retired thereafter on 31/5/2000 when he superannuated as per the new policy of the government. Hence, this special appeal.

3. We have heard Shri Ramgopal Choudhary, learned Counsel for the appellants and Shri A.K. Bhandari, learned Senior Advocate assisted by Shri Rizwan Ahmed for the respondent writ petitioner-respondent.

4. Shri Ramgopal Choudhary, learned Counsel for the appellants argued that writ petitioner-respondent after completing the qualifying period of service on his own submitted an application seeking premature retirement on 26/8/1997. Once the application for premature retirement was accepted and requisite order passed, option exercised by the respondent for premature retirement became absolute. Respondent then after the lapse of seven months had no legal right to request for cancellation of the order of his premature retirement. It was argued that the fact that date with effect from which the respondent was permitted to proceed on premature retirement was yet to reach, would not make any difference because the option exercised by the respondent had already been accepted by the appellants and it was not obligatory for the appellants thereafter to accept the request of the respondent revoking such an option and permit him to continue in service. Learned Counsel argued that the learned Single Judge has failed to appreciate that the respondent in his application dated 28/5/1998 had requested for permitting him to continue in service only for 21/2 months till 31/8/1998, the date on which he would superannuate as per the extant policy. He could not thereafter avail of the benefits of the changed policy enhancing the date of retirement. The learned Counsel argued that the policy contained in the circular

dated 13/5/1998 itself made an exception for such of the employees who were proceeding on voluntary retirement. He in this connection referred to the circular dated 13/5/1998 which inter-alia provides that the President has been pleased to defer the retirement of all air force personnel who are to retire on 31/5/1998 and thereafter till final orders are issued except those proceeding on voluntary retirement. This aspect of the matter has not at all been considered by the learned Single Judge. Learned Counsel produced for perusal of the court copy of the order dated 11/6/1998 whereby prayer of the petitioner for cancellation of his order of premature retirement was considered and not agreed to.

5. It was argued that immediately on acceptance of the request of the respondent permitting him to proceed on premature retirement by 15/6/1998, relationship of the master and servant between him and the appellants got snapped and, therefore, he thereafter had no locus to withdraw the application for premature retirement as the appointing authority acting upon such application had already passed the positive order permitting him to proceed on premature retirement.

6. On the other hand, Shri A.K. Bhandari, learned Senior Counsel appearing for the respondent/original writ petitioner opposed the appeal and argued that the impugned judgment is perfectly valid in law and does not call for any interference. He argued that according to para 105(b) of the Regulation for the Army and Clause 23 of the relevant Army Instructions, the respondent had the right to request for cancellation of the order of his premature retirement. The authorities acted arbitrarily in refusing the request and have not assigned any reason whatsoever in the order dated 11/6/1998 cited before the court. It was argued that the application for revoking the request of premature retirement was submitted on 28/5/1998 and 9/6/1998 well before the date on which the respondent was directed to proceed on premature retirement i.e. 15/6/1998. The respondent could not arbitrarily refuse the request of the respondent without assigning any reason. It was argued that the aforesaid provisions provide that if an officer seeks withdrawal of his application due to unforeseen circumstances, his request shall have to be considered and decided by the Central Government on merits. There is no reason why when the date with effect from which the respondent was to proceed on premature retirement has yet not arrived, the prayer for withdrawing application for premature retirement should not be accepted. Shri A.K. Bhandari, learned Senior Counsel in support of his arguments cited the judgments of Supreme Court in *Union of India and Anr. v. Wing Commander T.Parthasarathy* (2001) 1 SCC 158, *Shambhu Murari Sinha Vs. Project and Development India and Another*, and judgment of this Court in *Board of Secondary Education, Ajmer and Ors. v. Smt.Sharda Pareek* 2005 (10) RDD 4092 (Raj.).

7. We have given our anxious consideration to the rival submissions and perused the material on record and the judgments cited at the bar.

8. Few facts that need to be noticed at the outset are that application for

premature retirement was made by the respondent on 26/8/1997 with the prayer that he should be permitted to proceed on premature retirement w.e.f. 1/4/1998. This application however remained pending with the appellants and was belatedly accepted on 19/5/1998 permitting the respondent to proceed on premature retirement w.e.f. 15/6/1998. The respondent submitted an application for revoking the said request and for cancellation of the order dated 19/5/1998 and consequential order dated 21/5/1998 well before 15/6/1998. Such request was made by two applications, first of which was submitted on 28/5/1998 and in the meantime when the new policy on retirement age of Air Force Officers was promulgated by the Central Government, second application was submitted on 9/6/1998.

9. Provisions of law which govern the case of present nature in the services of the appellants also need to be noticed. Rule 16 of the Army Rules, 1954 provides as under:

a person subject to the Act may be released from the service in accordance with the Releasing Regulations for the Army or such other regulations as may be made from time to time.

Para 105(h) of the Regulations of Army provides as under:

if an officer is forced to seek withdrawal of his application due to unforeseen reasons after his request for premature retirement/ resignation but before he is retired he may apply to the Central Government and his request may be granted at the discretion of the Central Government.

The Army Instructions, of which, reference has been made by the respondent (writ petitioner) in his writ petition and which has not been denied by the respondent, particularly Clause 23 thereof, inter-alia provides as under:

23. Government decision on a request for premature retirement, resignation is final. However, if an officer whose application for premature retirement / resignation from the Army has been accepted, wishes to withdraw his application due to unforeseen circumstances, he may apply to the Central Government through proper channel and his request will be decided on merits.

10. A somewhat similar controversy came up before the Supreme Court in Balram Gupta Vs. Union of India (UOI) and Anr, where, the appellant requested the appointing authority vide letter dated 24/12/1980 for voluntary retirement w.e.f. 31/3/1981. The appointing authority vide order dated 20/1/1981 allowed him to retire voluntarily from service prospectively w.e.f. afternoon of 31/3/1981. In the meantime, appellant on 31/1/1981, withdrew his notice on the ground that he has changed his mind due to persuasion made by his friends and staff members. The request however was not accepted and he was relieved vide order dated 31/3/1981. In those facts, their lordships held that there was no valid reason for withholding the permission by the government. Further, it was held that in the modern and uncertain age, it is very difficult to arrange one's future

with any certainty, a certain amount of flexibility is required to be given to the employees, and if such flexibility does not jeopardize Government or administration, administration should be graceful enough to respond and acknowledge the flexibility of human mind and attitude and allow the appellant to withdraw his letter of retirement.

11. Supreme Court in *Power Finance Corporation Ltd. Vs. Pramod Kumar Bhatia*, , negated the argument similar to the one raised before us by the appellants holding that unless the employee is relieved of his duty, after acceptance of the offer of voluntary retirement or resignation, jural relationship of the employee and the employer does not come to an end.

12. Somewhat similar controversy arose before the Supreme Court in *J.N. Srivastava Vs. Union of India (UOI)* and *Another*, where an argument was raised on behalf of Union of India that the appellant had no locus-standi to withdraw the request for voluntary retirement after it has been accepted and he had relinquished the charge of the post. In that case, notice of three months submitted by him on 3/10/1989 which was to come into effect from 31/1/1990 and the appellant wrote a letter on 11/12/1989 withdrawing his request for voluntary retirement. Their lordships negated the argument observing that when the request of withdrawal was rejected by the authorities on 26/12/1989, appellant had no option but to give up the charge of the office on 31/1/1990. It was further held that appellant would be treated to be continued in service and could withdraw the application for voluntary retirement since the date 31/1/1990 had yet not reached.

13. In *Shambhu Murari Sinha*, supra, the appellant submitted application to the appointing authority on 18/10/1995 for voluntary retirement which was accepted vide letter dated 30/7/1997 with a further condition that the release memo along with detailed particulars would follow. The appellant had however submitted an application on 7/8/1997 withdrawing his request for voluntary retirement. That request however was not accepted and he was relieved on 26/9/1997. It was held by the Supreme Court that the appellant had the right to withdraw his request for voluntary retirement before the effective date of voluntary retirement approached.

14. In *Union of India v. Wing Commander T.Parthasarathy* supra also it was held by the Supreme Court that where resignation was to have effect from a future date, it can be withdrawn at any time before that date. Right to withdraw cannot be denied merely on the basis of any policy decision of government or certificate issued by the resigner himself at the time of tendering the resignation stating that he was aware that he could not later seek cancellation of his application for resignation.

15. Facts of the present case speak for themselves and they are that the respondent requested for permission to proceed on premature retirement exasperated by circumstances in which, he felt aggrieved because of his

supersession by number of his juniors continuously in the years 1994, 1995 and 1996. He also approached the Allahabad High Court for redressal of his grievances. Subsequently, he changed his mind and requested for permission to withdraw the application dated 26/8/1997 vide letter dated 21/5/1998. He requested that he should be permitted to continue in service till he otherwise superannuated on 31/8/1998 to enable him to get full NE benefits in time. But that would have made a difference of only 21/2 months. In the meantime, however, a new policy was promulgated by the Central Government vide Circular dated 13/5/1998 as regards the retirement age of the air force officers and then the respondent submitted another application of withdrawal on 9/6/1998 requesting that under the changed circumstances, his request of premature retirement submitted earlier should be allowed to be withdrawn and the order of premature retirement should be cancelled and he should be given chance to serve as per the new policy.

16. Para 105(h) of the regulations clearly provides that if an officer is forced to withdraw his application for premature retirement due to unforeseen reasons after his request for premature retirement has been accepted but before he has retired, he may apply to the Central Government and his request may be granted at the discretion of the Central Government. Clause 23 of the Army Instructions referred to above also provides that if an officer whose application for premature retirement/resignation has been accepted, wishes to withdraw his application due to unforeseen circumstances, he may apply to the Central Government through proper channel and his request will be decided on merits. Even if the first application as submitted by the petitioner on 28/5/1998 is ignored, the fact remains that second application dated 9/6/1998 had been submitted by him well before the date of his premature retirement arrived on 15/6/1998. Not only such an application was submitted well within time but even the same had also been rejected by the competent authority vide its order dated 11/6/1998 before that date. Para 105(h) of the Regulations of the Army inter-alia provides that such request "may be granted at the discretion of the Central Government" and Clause 23 of the Army Regulations supra provides that "his request will be decided on merits" by the Central Government. Surprisingly enough, the order by which request of the respondent was rejected does not at all indicate any reason. The said order for the facility of reference is reproduced hereinbelow:

947/PR/DGAFMS/DG-1(x) 11 June 98

MINISTRY OF DEFENCE

(Office of the DGAFMS/DG-1(x))

REQUEST FOR CANCELLATION OF PR:

GP CAPT.MS.BHATNAGAR (AP19578) (MR-1947)

1. Reference your note No. Air HQ/26304/19578/Med-I dated 08 June 98.
2. The request of the officer for cancellation of his order of premature retirement

has been considered and not agreed to.

Sd/-

(A Kaushik)

Lt.Col.

GPO/DH-1(x)

17. It would be evident from the aforequoted order that the competent authority has not at all assigned any reason why it decided to decline the request. No such justification is coming forth from the counter affidavit filed by the respondents even before this Court. Enhancement of the age of retirement pursuant to the new policy promulgated by the Central Government was valid reason and provided sufficient justification to the respondent to apply for withdrawal of his application of premature retirement. And this certainly was an unforeseen circumstance which could not be visualised by the respondent when he requested for premature retirement. The Central Government could not have rejected such an application without any valid reason. Law enunciated by the Supreme Court on the subject is settled on this proposition as would be evident from the precedents referred to supra, that an employee has a right to withdraw resignation/the request of premature/voluntary retirement even after its acceptance by the competent authority before the date with effect from which he is permitted to proceed on voluntary/premature retirement.

18. Contention of the appellants that on acceptance of the request of the respondent, the relationship of master and servant ceased to exist, does not merit acceptance because the respondent undisputably in the present case, was still in services of the appellants when he revoked his request for premature retirement by applications dated 28/5/1998 and 9/6/1998 as the date with effect from which he was to proceed on premature retirement was yet to arrive on 15/6/1998.

19. We are also not inclined to uphold the argument that the cases of employees proceeding on voluntary retirement would fall in the excluded categories as per the government circular dated 13/5/1998. The aforesaid circular clearly provides that the President has been pleased to defer the retirement of personnel who would retire on 31/5/1998 and thereafter till final orders are issued except those proceeding on voluntary retirement etc. But this exception is meant to apply only in such cases where officers do not on their own intend to continue in service and rightly so because no officer except for valid and compelling reasons can be forced to continue in service against his wishes if he desires to proceed on voluntary retirement according to relevant rules. In the present fact situation, however, the writ petitioner-respondent having revoked his request for premature retirement, his case would certainly not fall in such excepted category.

20. We therefore do not find any infirmity in the view taken by the learned Single Judge therefore, concur with him by upholding the impugned judgment in its

entirety.

This special appeal is accordingly dismissed however with no order as to costs.