



2023/KER/48369

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE ALEXANDER THOMAS

&

THE HONOURABLE MR. JUSTICE C. JAYACHANDRAN

FRIDAY, THE 11TH DAY OF AUGUST 2023 / 20TH SRAVANA, 1945

OP (CAT) NO. 22 OF 2023

AGAINST THE ORDER DATED 25.11.2022 IN OA.No.180/95/2022 OF

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONER/APPLICANT IN O.A.:

FAZILUDEEN,
AGED 48 YEARS, S/O. ABDUL VAHAB,
T.C 48/1205, PUTHUKKADU HOUSE, POONTHURA P.O,
THIRUVANANTHAPURAM, PIN - 695026.

BY ADVS.

S.JATHIN DAS

SUMODH MADHAVAN NAIR

T.A.PRAKASH

G.S.SANAL KUMAR

ARUN S.

RESPONDENTS/RESPONDENTS IN O.A.:

- 1 UNION OF INDIA,
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF POST, DAK BHAVAN,
NEW DELHI, PIN - 110001.
- 2 THE DIRECTOR OF ACCOUNTS (POSTAL),
OFFICE OF THE DIRECTOR OF ACCOUNTS (POSTAL),
KERALA CIRCLE, THIRUVANANTHAPURAM, PIN - 695001.
- 3 THE DEPUTY DIRECTOR OF ACCOUNTS (POSTAL),
OFFICE OF THE ACCOUNTS (POSTAL), KERALA CIRCLE,
THIRUVANANTHAPURAM, PIN - 695001.

OTHER PRESENT:

SRI.S.MANU-DSGI

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 02.08.2023,
THE COURT ON 11.08.2023 DELIVERED THE FOLLOWING:



ALEXANDER THOMAS & C. JAYACHANDRAN, JJ.

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Dated this the 11th day of August, 2023

JUDGMENT

C. Jayachandran, J.

An application for voluntary retirement tendered by an employee is claimed to have been accepted in a lightning speed by the employer, so that withdrawal of the same tendered on the very next day could not be acted upon. The nuances of withdrawing an application for voluntary retirement before acceptance, in the backdrop of the relevant rules is the issue involved in this Original Petition.

2. Under challenge in this original petition is the Order of the Central Administrative Tribunal, Ernakulam Bench dated 25.11.2022 in O.A.No.95/2022, as per which, the Tribunal confirmed Annexure-A6 order, which accepted the applicant's request for



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voluntary retirement, thus compelling him to retire from service with effect from the date of application.

3. The facts:-

Petitioner/applicant was working as Senior Accountant under the 2nd respondent/Director of Accounts (Postal). While so, he submitted Annexure-A1 application seeking voluntary retirement on medical grounds on 07.10.2021. On the very next day, the applicant submitted a request before the 3rd respondent Deputy Director seeking withdrawal of Annexure-A1 application, which was tendered in person. However, the 3rd respondent did not accept the same. Therefore, on 11.10.2021, the applicant sent Annexure-A2 letter by post to the 2nd respondent to withdraw Annexure-A1 application, which was received by the 2nd



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respondent on 12.10.2021, as could be seen from Annexures-A3 and A4 postal receipt and acknowledgment card. The applicant also sent Annexure-A5 email to his superior authorities, including respondents 2 and 3, seeking to withdraw Annexure-A1 application for voluntary retirement. However, the applicant was served through mail Annexure-A6(a) order dated 8.10.2021 issued by the 3rd respondent, intimating that his application for voluntary retirement was accepted with retrospective effect from 8.10.2021. The same order was received through registered post by the applicant on 21.10.2021, produced in the O.A. as Annexure-A6(b). On 22.10.2021, Annexure-A7(a) mail was sent to the applicant, intimating that his request for withdrawal of voluntary retirement cannot be considered. The same communication was received by registered post on 25.10.2021. The



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applicant preferred the subject O.A. in the afore-referred facts and circumstances, seeking a declaration that rejection of Annexure-A2 request for withdrawal was in violation of Rules 48 and 48-A of the Central Civil Service (Pension) Rules, 1972. He also sought for quashment of Annexure-A6 order and for a direction to reinstate the applicant in service with effect from 8.10.2021, together with all service benefits thereto.

4. The respondents filed a reply/counter statement contending *inter alia* as follows: The applicant in Annexure-A1 application for voluntary retirement requested to waive the three months notice period for voluntary retirement and that he was accordingly permitted to retire from service with effect from 8.10.2021 under Rule 48 of the CCS (Pension) Rules, 1972. Consequently, his name was



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also struck off from the staff strength of the office. It was further contended that Annexure-A6 order was not issued with retrospective effect. Annexure-A2 representation was received in the office of the 2nd respondent only on 12.10.2021, whereas Annexure-A6 order was issued on 08.10.2021 itself. The entries in Annexure-R2(a) transit register would belie the applicant's claim that Annexure-A6 order was issued on 18.10.2021. All the addressees in Annexure-A6, except the applicant, received copies of the said order on 08.10.2021 itself. The applicant's claim that he met the 3rd respondent Deputy Director with a request to withdraw Annexure-A1 application is not correct. The applicant had not attended the office ever since he tendered Annexure-A1 application for voluntary retirement. Since the Rule does not permit withdrawal of the request for voluntary



retirement after the retirement had taken effect, Annexure-A7 orders were sent rejecting Annexure-A2 request for withdrawal. On such premise, the respondents sought for dismissal of the O.A.

5. The Tribunal took note of the legal position that the applicant can withdraw Annexure-A1 request for voluntary retirement only before it is accepted by the competent authority and therefore called for the records, to find that the applicant's request for withdrawal was received, after Annexure-A1 application was duly accepted by the respondents. The O.A. was accordingly dismissed.

6. Heard Sri.S.Jathin Das, learned counsel for the petitioner and Sri.S.Manu, Deputy Solicitor General of India on behalf of the respondents.



7. Having heard the respective learned counsel, we find it difficult to sustain Ext.P3 impugned order of the Tribunal. We may straight away refer to Rule 48-A of the CCS (Pension) Rules, since the petitioner/applicant had sought for retirement upon completion of 20 years of qualifying service. (see in this regard the Voluntary Retirement File - Vol.V - Notes at page N/51). Rule 48-A of the CCS (Pension) Rules, to the extent it is relevant for the present facts, is extracted here below:-

"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.

Provided that xxx xxx

(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.

(3) Deleted

(3-A) (a) A Government servant referred to in sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of voluntary retirement of less than three months giving reasons therefor;

(b) On receipt of a request under Clause (a), the Appointing Authority subject to the provisions of sub-rule (2), may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, the Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months.

(4) A Government servant, who has elected to retire under this rule and has given the necessary notice to that effect to the Appointing Authority, shall be precluded from withdrawing his notice except with the specific approval of such authority:

Provided that the request for withdrawal shall be made before the intended date of his retirement."



8. It could be seen from the above that as per Rule 48-A(1), a notice period of not less than three months is a statutory requirement to seek voluntary retirement. The proviso to Rule 48-A(2) stipulates the date from which such retirement shall be effective, that is to say, from the date of expiry of the notice period of three months, unless, of course, the appointing authority refuse to grant permission for retirement before the expiry of the said period. Sub-rule (3-A) is quite significant in the instant facts. Sub-rule (3-A) (a) contemplates a request for acceptance of the notice of voluntary retirement for a period of less than three months, subject to the condition that the applicant has to give reasons therefor. Rule (3-A) (b) contemplates consideration of such request for curtailment of the notice period on merits. If the appointing authority is satisfied that such



curtailment will not cause any administrative inconvenience, the three months notice period can be relaxed. Although sub-rule (4) prohibits withdrawal of a notice seeking voluntary retirement, except with the specific approval of the appointing authority, the proviso to sub-rule (4) permits such withdrawal before the intended date of his retirement.

9. It could thus be seen that Rule 48-A envisages the satisfaction of the appointing authority in respect of various factual parameters, namely, (1) the applicant had completed 20 years of qualifying service; (2) he has given not less than three months notice period; (3) his application is not liable to be refused within the notice period (4) in case the applicant seeks for a notice period less than three months, he had stated reasons



therefor; (5) the appointing authority has to consider such a request for a notice period less than three months on merits; (6) the appointing authority has to satisfy itself that the curtailment of the period of notice will not cause any administrative inconvenience; and (7) upon such satisfaction the notice period can be relaxed subject to such further condition as contained in sub-rule (3-A) (b) regarding commutation of part of his pension.

10. Going by the pleadings and materials placed on record, the entire exercise afore-referred is claimed to have been completed by the 3rd respondent herein in one day's time, that is on the very next day of Annexure-A1 application dated 7.10.2021. The relevant pleadings in this regard as contained in paragraph no.7 of the reply/counter statement is



extracted here below:-

"7. It is humbly submitted that the contents of para-3 is denied. The statement of the applicant that in Annexure A6 Order was issued with retrospective effect from 8.10.2021 is absolutely wrong and denied. It is submitted that on 07.10.2021, the applicant had submitted an application requesting the 2nd respondent to permit him to voluntarily retire from service with effect from 08.10.2021 considering his bad health. He also requested to waive the three months' notice period for voluntary retirement. Taking into consideration of the request of the applicant for voluntary retirement sympathetically, as the request was made by him taking into account of his bad health and also considering the request for waiver of three months' notice, he was permitted to retire voluntarily from service with effect from 08.10.2021 (F/N) under Rule 48 of CCS (pension) Rules 1972. Annexure A2 representation of the applicant dated : 11.10.2021 was received at the Office of the Director of Accounts (Postal), Thiruvananthapuram only on 12.10.2021 whereas the Annexure A6 order was issued on 08.10.2021. It is evident from the entries in the Transit Register that the applicant is making unjustifiable claim that the Order dated 08.10.2021 is issued on 18.10.2021. It is obvious that all the addressees except the applicant had accepted the copies of the Order dated 08.10.2021 with signature & date on 08.10.2021 itself. A true copy of the relevant page of the Transit Register is produced herewith and marked as Annexure-R2(a)."

(underlined by us for emphasis)



11. We notice that the alleged sympathetic consideration of the applicant's request vide Annexure-A1 is an impossibility in itself, if all the relevant criteria emanating from Rule 48-A, as culled out in the preceding paragraph of this judgment, is to be satisfied by the appointing authority, at least subjectively.

12. We profitably recall that going by the applicant's claim, he tendered Annexure-A2 request seeking to withdraw Annexure-A1 application for voluntary retirement on the very next day of his application, that is to say, 8.10.2021. This, of course, was claimed to be tendered by hand, which was allegedly refused by the 3rd respondent. The applicant sent his withdrawal request by registered post on 11.10.2021, vide Annexure-A2. This was received by the 2nd respondent admittedly on



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12.10.2021, besides being established from Annexures-A3 and A4 postal receipt and acknowledgment card. We notice that only five days have expired by that time, reckoned from the date of Annexure-A1 application, 7.10.2021, as against a statutory notice period of three months. True that there was a request to waive the notice period. However, it is axiomatic that the respondents/authorities have acted with undue haste, without arriving at a proper satisfaction required as per statute, to waive the notice period of three months. There is nothing on record indicating that the application for a notice period less than three months was considered on merits. Nor is there anything to show that the curtailment of the notice period will not cause any administrative inconvenience. On the top of all, if a request for withdrawal of voluntary retirement



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is made within five days, as enabled by the proviso to Rule 48-A(4) of the Rules, we cannot justify the refusal of such a request on any count/premise, whatsoever. We are fortified in our view by two pronouncements of the Apex Court in (1) **J.N.Srivastava v. Union of India and another** [(1998) 9 SCC 559] and (2) **Balram Gupta v. Union of India and another** [1987 (Supp.) SCC 228]. The relevant findings in **J.N.Srivastava** are extracted here below:

"It is now well settled that even if the voluntary retirement notice is moved by an employee and gets accepted by the authority within the time fixed, before the date of retirement is reached, the employee has locus poenitentiae to withdraw the proposal for voluntary retirement. The said view has been taken by a Bench of this Court in the case of Balram Gupta v. Union of India."

13. We also notice that the very purpose of affording a notice period in the statute itself is



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to enable the applicant to take a well considered decision about his career and reiterate his decision to take voluntary retirement, so that the same is not actuated by any extraneous feelings or emotions, at the spur of a moment. That precisely should be the reason for an enabling provision to withdraw a request for voluntary retirement, before the retirement is to take effect in accord with the statute. In the given facts, we are not in the least hesitant to observe that the purpose of notice period is frustrated. We are of the view that the respondents, being representatives of an entity under the Union Government, ought to have acted with all fairness, as a model employer, guided not merely by the letter of the Rules but by its spirit as well, with a topping of compassion and humane considerations, wherever it deserves.



14. In the result, the impugned Ext.P3 order of the Tribunal cannot be sustained and the same is hereby set aside. O.A.No.95/2022 is allowed and Annexure-A6 order is quashed. We direct the competent authority among the respondents to reinstate the applicant (petitioner) in service with effect from 8.10.2021. However, the applicant will not be entitled to any salary for the period over which he had not worked, since we do not find any wrongful denial of employment in the given facts. However, we direct that the said period shall be counted for all other purposes including pensionary and other retiral benefits. The above direction regarding reinstatement shall be complied within a period of one month from the date of receipt of a copy of this judgment, failing which the petitioner will be entitled to salary and all other emoluments from the date on which the said



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period of one month expires.

This Original Petition is allowed with the
aforesaid directions.

Sd/-

ALEXANDER THOMAS, JUDGE

Sd/-

C. JAYACHANDRAN, JUDGE

skj

**APPENDIX IN OP (CAT) 22/2023**

PETITIONER'S ANNEXURES

Exhibit P1 TRUE COPY OF THE O.A.No.95/2022 FILED BY THE PETITIONER BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL DATED 7.2.2022.

Annexure A1 TRUE COPY OF PETITIONER'S APPLICATION DATED 7.10.2021 SUBMITTED BEFORE 2ND RESPONDENT

Annexure A2 TRUE COPY OF LETTER DATED 11.10.2021, POSTED BY THE APPLICANT TO WITHDRAW ANNEXURE A1

Annexure A3 TRUE COPY OF THE POSTAL RECEIPT DATED 11.10.2021

Annexure A4 TRUE COPY OF THE ACKNOWLEDGEMENT CARD SIGNED BY 2ND RESPONDENT DATED 12.10.2021

Annexure A5 TRUE COPY OF EMAIL SENT BY THE APPLICANT THROUGH EMAIL DATED 17.10.2021

Annexure A6(a) TRUE COPY OF THE ORDER UNDER REFERENCE NO. O.O. NO. 162/ADMN.I/E.I/C-53B/VOL-V 2021-22 DATED 8.10.2021 SENT BY THE 3RD RESPONDENT THROUGH EMAIL ON 18.10.2021 WITH TYPED COPY

Annexure A6(b) TRUE COPY OF THE ORDER UNDER REFERENCE NO. O.O.NO.162/ADMN.I/E.I/C-53B/VOL-V 2021-22 DATED 8.10.2021 SENT BY THE 3RD RESPONDENT THROUGH REGISTERED POST ON 18.10.2021

Annexure A7(a) TRUE COPY OF THE LETTER UNDER REFERENCE NO. 914/ADMN.I/EI/C-53B/ 2021-22 DATED 22.10.2021 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER THROUGH EMAIL ON 22.10.2021

Annexure A7(b) TRUE COPY OF THE LETTER UNDER REFERENCE NO. 914/ADMN.I/EI/C-53B/ 2021-22 DATED 22.10.2021 ISSUED BY THE 3RD RESPONDENT TO THE PETITIONER THROUGH REGISTERED POST ON 22.10.2021 WITH TYPED COPY

Exhibit P2 TRUE COPY OF THE REPLY STATEMENT FILED ON BEHALF OF THE CONTESTING RESPONDENTS DATED 16.05.2022

Annexure R2(a) TRUE COPY OF THE RELEVANT PAGE OF THE TRANSIT REGISTER WITH TYPED COPY

Annexure R2(b) TRUE COPY OF THE RULE 48 & 48A UNDER CCS (PENSION) RULES

Exhibit P3 TRUE COPY OF THE ORDER DATED 25.11.2022 IN O.A.NO.180/00095/2022 OF THE CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH



RESPONDENTS' ANNEXURES

- Annexure R3(a) A true copy of the proceedings No. 60/Admn.I/E.II/DISC/AFA2/15 dated 10.04.2015 issued by the Accounts Officer
- Annexure R3(b) A true copy of the proceedings No. 509-511/Admn.I/E.II/Disc/PK dated 19.06.2017 issued by the Director of Accounts (Postal)
- Annexure R3(c) A true copy of the memo No. 2650/Admn.I/E.II/DISC/AF/2019 dated 01.01.2020 issued by the Deputy Director (Administration-I)
- Annexure R3(d) A true copy of the proceedings No. Admn.I/E.II/Disc/AF/2019 dated 28.12.2020 issued by the Director of Postal Service (HQ)
- Annexure R3(e) A true copy of the memo No. 1696-1698/Admn.I/E.II/Disc/AF/2020 dated 05.11.2020 issued by the Deputy Director (Admn.I)
- Annexure R3(f) A true copy of the proceedings No. 154-156/Admn.I/E.II/Disc/Rule-16/AF/2020 dated 16.04.2021 issued by the Director of Accounts