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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 11546/2019

SANJAY KAUSHIK

...Petitioner

Through: Mr. Aditya Kaushik, Advocate

versus

UNION OF INDIA & ANR.

.....Respondents

Through: Ms. Shagun S. Chugh, SPC with Mr.
Utsav Mangotra, Advocate.

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Date of Decision: 10th February, 2025

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J.: (ORAL)

1. The petitioner has filed the present writ petition for setting aside the impugned order dated 04.10.2019 passed by the learned Central Administrative Tribunal (for short *CAT*) dismissing the O.A. No. 2947/2019 filed by the petitioner against the order dated 31.07.2019 passed by Respondent no.1, whereby the petitioner's request for withdrawal of voluntary retirement was rejected. Petitioner also seeks direction to the Respondents to accept the Petitioner's request for withdrawal of voluntary retirement and to reinstate the Petitioner.

2. As per the case of the petitioner, the petitioner had joined as an Assistant in Delhi Administration on 21.07.1980. In the month of June, 2011, the



petitioner was promoted to the Entry Grade of DANICS and was transferred to Andaman & Nicobar Islands by the Ministry of Home Affairs (hereinafter referred to as “MHA”), and was relieved in February, 2012. Petitioner claims that due to serious medical condition of his mother, the petitioner remained on leave in Delhi between 16.10.2012 and 03.12.2012. Petitioner also claims that while at Port Blair, he was informed about an immediate and emergent surgery of his mother at Delhi. Pursuant to the said news, the petitioner claims to be depressed and in utter confusion about his next move and requested for voluntary retirement on 12.12.2012 with effect from 13.03.2013. Simultaneously, the petitioner also sought transfer to Delhi so as to ensure that all his post retiral benefits could be easily accessible and availed of in the city of Delhi, of which he was an ordinary resident. On 08.03.2013, the petitioner also submitted an undertaking and an affidavit reiterating his request for voluntary retirement to be effective from 18.03.2013 as a condition precedent for his transfer to Delhi. On 11.03.2013, the petitioner was transferred to Delhi and after acceptance of his resignation by the Competent Authority, the voluntary retirement was made effective from 18.03.2013.

3. After a passage of almost two weeks, the petitioner by the letter dated 01.04.2013 sought permission to withdraw the request for voluntary retirement under certain circumstances. This request was rejected on 04.06.2013 by respondent no.1. Subsequently, the petitioner filed a review representation which too was dismissed on 17.04.2015. The petitioner challenged the said rejection on 06.11.2015 by filing OA No.4219/2015 before the learned CAT, Principal Bench, New Delhi. The said OA was dismissed by the learned Tribunal *vide* order dated 25.04.2019. Aggrieved thereof, the petitioner



preferred a writ petition bearing W.P.(C) No.6040/2019 which was disposed of by the order dated 28.05.2019 by this Court directing respondent no.1 to consider the petitioner's case for grant of relaxation under Rule 88 of the CCS (Pension) Rules, 1972 (for short *Pension Rules*) on its own merits. In pursuance thereof, the petitioner submitted a representation dated 10.06.2019 which too was rejected by respondent no.1 on 31.07.2019. Though the petitioner had preferred an application against the said order dated 31.07.2019 in WP(C) No.6040/2019, this Court had directed the petitioner to agitate the same before the learned CAT as it would constitute a new cause of action. Following the said directions, the petitioner preferred OA No.2947/2019 before the learned CAT, Principal Bench, New Delhi assailing the order dated 31.07.2019 passed by respondent no.1.

4. By the impugned order dated 04.10.2019, the learned CAT had dismissed OA No.2947/2019 on the ground that it was unmerited. The said impugned order is challenged before us in the present writ petition.

5. Mr. Aditya Kaushik, learned counsel appearing for the petitioner submits that the directions passed by this Court in W.P.(C) No.6040/2019 *vide* order dated 28.05.2019 has not been complied with in letter and spirit. According to learned counsel, the order dated 31.07.2019 of respondent no.1 is bereft of any reasons; does not deal with Rule 88 in the correct perspective; and has not considered instances of similarly placed employees who were reinstated in service in exercise of powers under Rule 88 of the Pension Rules. In other words, learned counsel emphasizes that if Rule 88 of the Pension Rules was correctly applied having regard to the previous precedents of other similarly situated employees being reinstated in services, the question of rejecting the



representation of the petitioner on such frivolous grounds would not have arisen.

6. Learned counsel also submits that the petitioner at the relevant time had almost eight years of service left before superannuation. In order to buttress his arguments, learned counsel refers to Rule 88 of the Pension Rules to submit that the Rule confers enough powers upon the Competent Authority to relax any rule which governs the employees of the government including that of employees like the petitioner. He forcefully submits that records relied upon by the petitioner would clearly show that the Competent Authority had in the past and on many previous occasions, exercised the rule of relaxation under Rule 88 and granted similar relief as sought by the petitioner. That apart, he also seeks to premise his relief on the basis of certain file notings entered by the officials of respondent no.1 to canvass that the file notings would also reveal that the officers concerned were disposed in favour of the petitioner being reinstated in service. Thus, according to learned counsel, there was neither any reason nor an occasion for the Under Secretary, Ministry of Home Affairs which is the Competent Authority in such cases, to have rejected his representation. In any case, according to him, the impugned Rejection Order dated 31.07.2019 is bereft of any reasons which itself is sufficient to quash the same with the direction to the respondent no.1 to issue a rejoining letter to the petitioner. Equally, he states that the impugned order of learned CAT also has not considered the aforesaid relevant factors and has dismissed the OA without cogent reasons.

7. *Per contra*, Ms. Shagun S. Chugh, learned Senior Panel counsel appearing for the respondent has refuted the submissions of the learned counsel



for the petitioner and has invited attention of this Court to Rule 48-A of the Pension Rules. In particular, she draws attention of this Court to sub-rule (4) of Rule 48-A to submit that once the government servant elects to retire under this rule, he would be precluded from withdrawing the said notice except with the specific approval of such authority, provided that the request for withdrawal should have been made before the intended date of his retirement. She forcefully contends that once the voluntary retirement has been accepted by the Competent Authority to be effective from a particular date, an employee could have possibly withdrawn the said voluntary retirement before the effective date of retirement. This situation could have been considered by the Competent Authority and the permission could have been granted subject to the aforesaid condition. She states that in the present case, not only did the Competent Authority accept the application seeking voluntary retirement but also confirmed that the same would be effective from 18.03.2013. She states that the application seeking withdrawal of voluntary retirement was submitted by the petitioner on 01.04.2013. This, according to learned counsel, was beyond the date before which the Competent Authority could have exercised its powers under sub rule (4) of Rule 48-A of the Pension Rules. She states that the petitioner thus cannot take shelter of Rule 88 of the Pension Rules to seek relaxation of sub rule (4) of Rule 48-A of the Pension Rules. Learned counsel for the respondents submits that the present petition be dismissed with costs.

8. Having heard learned counsel for the parties, examined the impugned judgement of the learned Tribunal and other records, we are of the firm opinion that the present petition is unmerited.



9. The facts as obtaining in the present case are unambiguous and clear. The petitioner had submitted his application for voluntary retirement under the applicable Pension Rules with the Competent Authority on 12.12.2012. In exercise of power conferred by Rule 48-A of the Pension Rules, the Competent Authority accepted such voluntary retirement and particularly made it effective from a future date, i.e., 18.03.2013 at the specific request of the petitioner. The request of the petitioner for simultaneous transfer to Delhi as sought, too was acceded to. Pursuant thereto, petitioner joined services at Delhi in the month of March, 2013. He retired on 18.03.2013. Upon a change of heart, the petitioner sought withdrawal of his application seeking voluntary retirement by submitting a representation to the Competent Authority on 01.04.2013, a good two weeks after he retired from government service.

10. The question for our consideration upon the aforementioned facts is, whether an individual whose application for voluntary retirement having been accepted by the competent authority and post retirement becomes effective, can be permitted to withdraw the voluntary retirement ?

11. The above question engaging our attention is no more *res integra*. The Supreme Court in a catena of judgements has unequivocally held that an individual whose application for voluntary retirement or resignation has been accepted, may withdraw it, subject to: (a) the application for withdrawal being tendered before the Competent Authority has accepted it; or (b) the application for withdrawal being tendered before the date when such retirement/resignation becomes effective. And not in any other circumstance. It would be profitable to allude to the judgement of the Supreme Court in *Air India Express Ltd. v.*



Gurdarshan Kaur Sandhu reported in (2019) 17 SCC 129. The relevant paragraph is extracted hereunder:

12. It is thus well settled that normally, until the resignation becomes effective, it is open to an employee to withdraw his resignation. *When would the resignation become effective may depend upon the governing service regulations and/or the terms and conditions of the office/post. As stated in paras 41 and 50 in Gopal Chandra Misra [Union of India v. Gopal Chandra Misra, (1978) 2 SCC 301 : 1978 SCC (L&S) 303] , “in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post” or “in the absence of a legal contractual or constitutional bar, a ‘prospective resignation’ can be withdrawn at any time before it becomes effective”. Further,.....”*

(Emphasis Supplied)

However, in the facts of the present case, the petitioner had admittedly filed his notice seeking withdrawal of his voluntary retirement on 01.04.2013 while he retired on 18.03.2013. It is pertinent to note that the jural relationship of master and servant terminated on 18.03.2013 and no relationship existed between the parties.

12. It is clear as crystal that the petitioner had no right or authority, inhering to seek withdrawal of the application seeking voluntary retirement in the circumstances of the present case. That would fall foul of the ratio of the judgement in *Gurdarshan Kaur Sandhu (Supra)*, which cannot be countenanced by us.

13. This would bring us to the next submission of learned counsel for the petitioner that the Competent Authority ought to have exercised power under Rule 88 of Pension Rules to relax the condition in Rule 48-A. This submission does not commend to us and is unmerited. Before we examine the applicability on merits, it would be apposite to examine the provisions of Rule 48-A and Rule 88 of the Pension Rules which read thus:-



“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 this sub-rule shall not apply to a Government servant, including scientist or technical expert who is –

(i) *on assignments under the Indian Technical and Economic Co-operation (ITEC) Programme of the Ministry of External Affairs and other aid programmes.*

(ii) *posted abroad in foreign based offices of the Ministries/Departments,*

(iii) *on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.*

(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.



(5) Omitted.

(6) This rule shall not apply to a Government servant who-

(a) retires under the Special Voluntary Retirement Scheme relating to voluntary retirement of surplus employees, or

(b) retires from Government service for being absorbed permanently in an Autonomous Body or a Public Sector Undertaking to which he is on deputation at the time of seeking voluntary retirement.

EXPLANATION. – For the purpose of this rule, the expression “Appointing Authority” shall mean the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement.”

(Emphasis Supplied)

“88. Power to relax -

Where any Ministry or Department of the Government is satisfied that the operations of any of these rules, causes undue hardship in any particular case, the Ministry or Department, as the case may be, may, by order for reasons to be recorded in writing, dispense with or relax the requirements of that rule to such extent and subject to such exceptions and conditions as it may consider necessary for dealing with the case in a just and equitable manner:

Provided that no such order shall be made except with the concurrence of the Department of Personnel and Administrative Reforms.”

14. Plain reading of Rule 48-A demonstrates the power available with the Competent Authority to permit voluntary retirement by a government servant having completed 20 years of qualifying service subject to certain conditions being fulfilled. Sub rule (2) specifies that the notice of voluntary retirement under sub rule (1) shall require acceptance by the appointing authority, thus making the acceptance *sine qua non* for such voluntary retirement to be effective. We are presently concerned with sub-rule (4) and its proviso. It stipulates that the government servant who elects to retire under this Rule would be precluded from withdrawing the 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. Notwithstanding the ratio of *Gurdarshan Kaur Sandhu (Supra)* the language employed in sub rule (4) and its proviso is simple and clear and brooks no ambiguity. It is trite that the proviso is to be read as carving out an exception to the main statute and has to be read as such. In other words, the petitioner could have submitted a notice for withdrawal of his application for voluntary retirement anytime before 18.03.2013, when the acceptance of his voluntary retirement became effective. The petitioner had retired from government service on 18.03.2013, thus the question of him being reinstated in service does not arise at all.

15. That said, we would examine the effect and impact of Rule 88 of the Pension Rules. Plainly, the provisions of Rule 88 leave no manner of doubt that the same is in the nature of a residuary power of the Competent Authority to relax the operation of any of the Pension Rules, if they cause undue hardship in a particular case. It is also manifest that the power vested is absolutely discretionary and not mandatory. The Competent Authority has been given enough room for movement to exercise administrative power in the interests of the administration and to meet exigencies. Assuming the authorities have indeed exercised such power in some cases, that by itself would not confer any right upon the petitioner to seek similar treatment. Clearly, Rule 88 does not envisage any equal rights to the government servants and has to be applied on a case to case basis. The petitioner can neither allege discrimination nor can seek parity on that basis at all. Moreover, having due regard to the facts of the present case and the proper exercise of Rule 48-A by the Competent Authority,



we do not consider it appropriate to direct the respondent to re-examine the case of the petitioner in the light of Rule 88 of the Pension Rules.

16. Though learned counsel for the petitioner sought to rely upon what was submitted as “*similarly situated cases*” and the file notings related thereto, the same is unpersuasive. As held above, exercise of power under Rule 88 is discretionary, coupled with the fact that file notings are not statutory rules or regulations to be enforced in a court of law.

17. Thus, looked at any which way, we are not persuaded to interfere with the reasons in the impugned judgement of the learned Tribunal.

18. Accordingly, the petition is unmerited and dismissed with no order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

FEBRUARY 10, 2025/rl