



2025:DHC:7487-DB



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

+ W.P.(C) 2320/2025, CM APPL. 10980/2025

KANDE MAHENDERPetitioner

Through: Mr. Himanshu Gautam, Adv.

versus

UNION OF INDIA & ORS.Respondents

Through: Ms. Theepa Murugesan, Sr. PC
with Mr. Yogesh Dubey, Adv. for UOI

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT (ORAL)

27.08.2025

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C. HARI SHANKAR, J.

[Statutory provisions have been reproduced to the extent relevant.]

1. The petitioner assails order dated 24 January 2025, whereby his request for cancellation of his earlier request for being permitted to voluntarily retire from service was rejected by the competent authority, as communicated by the Commandant (JG), Indian Coast Guard.

Facts



2. The petitioner joined the Indian Coast Guard in the year 2002 and has, to his credit, service of around 22 years. On 12 June 2024 the petitioner applied for voluntary retirement, under Rule 43¹ of the Central Civil Service (Pension) Rules, 2021², due to personal and health reasons with effect from 31 January 2025. The Petitioner's recommended case was received at the Bureau through Coast Guard Headquarters, Regional Headquarters (North-East), *vide* communication dated 27 August 2024 recommending its consideration by the Competent Authority.

3. *Vide* letter dated 9 December 2024 the request of petitioner for voluntary retirement was accepted by the respondents under Rule 27³

¹ 43. **Retirement on completion of twenty 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 and in the case of such retirement the Government servant shall be entitled to a retiring pension calculated in accordance with rule 44:

(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.

(6) 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 not less than fifteen days before the intended date of voluntary retirement.

² "CCS (Pension) Rules" hereinafter

³ 27. **Procedure for discharge/release or retirement on own request. –**

(1) A member of the Coast Guard may, in exceptional cases, obtain his discharge, release or retirement from the service on extreme compassionate grounds, i.e. in cases where it is clear that undoubted material hardship will be caused to the member of the Coast Guard or his family members by his retention in the service.

(2) The Central Government or the Additional Director General may, having regard to the circumstances of any case, permit discharge, release or retirement of an officer from the service before attaining the age of retirement. The question of discharge, release or retirement shall be a matter within the discretion of the Central Government or Deputy Director General as the case may be.

(3) The Additional Director General in the Coast Guard Headquarters may discharge, release or retire a member of the Coast Guard other than an officer on compassionate grounds.

(4) Application for discharge, release or retirement on compassionate grounds shall be forwarded by the Commanding Officer through the Regional Commander, to Coast Guard Headquarters for further necessary action.



of the Coast Guard (General) Rules,1986⁴ with effect from 31 January 2025. He was also held entitled for pensionary benefits as he had completed the requisite years of service in accordance with Rule 43 of the CCS (Pension) Rules.

4. *Vide* communication dated 16 December 2024 addressed to the Commanding Officer, the petitioner sought to withdraw his request for voluntary retirement, as he had undergone an open heart bypass surgery on 4 December 2024, following which he had undergone recovery at the hospital and been discharged on 13 December 2024. In view of his changed health condition, the petitioner sought to withdraw his request for voluntary retirement.

5. The petitioner's request for withdrawing his request for voluntary retirement was rejected by the Commanding Officer *vide* letter dated 23 December 2024 which, however, allowed the petitioner to take up the case with the Competent Authority for grant of one month's extension for completing release requirements as he was on sick leave.

6. Consequently, by letter dated 7 January 2025, the petitioner was granted extension till 28 February 2025 to complete administrative formalities.

7. By the impugned communication dated 24 January 2025, the petitioner was informed that the Competent Authority had not

⁴ "the Coast Guard Rules" hereinafter



approved his request for permission to withdraw his request for voluntary retirement.

8. Aggrieved thereby, the petitioner has instituted the present writ petition before this Court, praying that the communication dated 24 January 2025 be quashed and set aside, and that the respondents be directed to permit the petitioner to withdraw his request for voluntary retirement, thereby permitting the petitioner to continue in service till superannuation.

Rival Contentions

9. We have heard Mr. Himanshu Gautam, learned Counsel for the petitioner and Ms. Theepa Murugesan, learned SPC for the respondents, at length.

10. Mr. Himanshu Gautam submits that the dispute stands covered by the judgment of the Supreme Court in *J.N. Srivastava v. UOI*⁵, from which he cites para 3:

“3. 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*⁶. In view of the aforesaid decision of this Court it cannot be said that the appellant had no locus standi to withdraw his proposal for voluntary retirement before 31-1-1990.”

⁵ (1998) 9 SCC 559

⁶ 1987 Supp SCC 228



11. Mr. Gautam contradistinguishes Rule 27 of the Coast Guard Rules with Rule 27A⁷, which deals with “resignation” and contains an express embargo against withdrawal of an application for resignation once made, after its acceptance. Mr Himanshu Gautam submits that Rule 27 does not contain any such bar.

12. Ms. Theepa Murugesan, in response, initially placed reliance on Rule 43(6) of the CCS (Pension) Rules, which proscribes withdrawal of an application for voluntary retirement once allowed. She further places reliance on paras 5 and 8 of Circular dated 20 April 2020 issued by the Coast Guard Headquarters titled “Procedure for Seeking Voluntary Retirement/Resignation from Service”, which read thus:

“5. Rule 27A (2) of the Coast Guard (General) Rules, 1986, provides that Coast Guard personnel may withdraw their application to resign before the same is accepted by the Competent Authority. The Central Govt. or the prescribed authority, at its discretion, may permit withdrawal of such application before its acceptance. It is therefore imperative that any withdrawal of VR application should be made prior to its acceptance and subject to the discretion of the authority. Hence, all such applications of VR/resignation/withdrawal of VR application need to be scrutinised thoroughly prior recommending for approval by the Competent Authority.

8. The request of VR/resignation, will neither be revoked nor will the date of release be advanced or postponed, unless the case is supported by valid reasons/unforeseen circumstances and the same is

⁷ 27A. **Resignation –**

(1) No person subject to the Act shall have a right to resign his appointment or withdraw himself from the duties of his appointment. But in this regard, he may submit an application through proper channel to the Deputy Director General or the Director General at Coast Guard Headquarters or to the Central Government, as the case may be. He shall not be relieved of his duties until the Central Government or the authority empowered by the Central Government has accepted his resignation.

(2) A member of the Coast Guard before his application to resign being accepted by the prescribed authority may apply for withdrawal of his application. The Central Government or the authority empowered by Central Government may at its discretion, grant withdrawal of such application.



submitted to the concerned Directorate at CGHQ **prior acceptance/approval** of we are requesting communicated. Undue interference by the Applicants or their family members through VVIP/VIP reference will also be taken as misconduct on the part of the applicant and shall be subjected for disciplinary action as per rules.”

Ms. Murugesan submits that, as per the afore-extracted clauses of the Circular dated 20 April 2020, the request for revocation of voluntary retirement not be entertained unless valid reasons/unforeseen circumstances are submitted to the concerned Directorate at Coast Guard Head Quarters *prior to communication of the acceptance of the voluntary retirement request*. Inasmuch as the petitioner’s application for voluntary retirement stood accepted by the Competent Authority on 9 December 2024 before he sought to withdraw the request on 16 December 2024, Ms. Murugesan submits that the request was rightly rejected. Besides, she submits that there was no change in circumstances justifying the withdrawal of the application for voluntary retirement, either.

13. Ms. Murugesan further relies on *UOI v Wg Cdr Subrata Das*⁸, which considers both *Balram Gupta* and *J.N. Srivastava* and holds, in the following paragraph, that right to withdraw from an approved premature retirement application is neither absolute nor unqualified:

“52. The right to withdraw from an approved PSS application is neither absolute nor unqualified. We are firmly of the view that the decisions to reject the applications to withdraw from PSS in the present cases were made bona fide. The authorities had applied their minds to the question of whether the grounds which were urged fulfilled the “extreme compassionate grounds” criterion. The authorities were also entitled to make a final determination based on the needs and exigencies of service. The Tribunal has erroneously

⁸ (2020) 12 SCC 784



interfered with the exercise of the administrative judgment by the authorities of the Air Force. We, therefore, disapprove of the view which has been taken by the Tribunal in the cases involving Wing Commanders Subrata Das, P.K. Sen and Group Captain Rajeev Moitra. The decision of the Tribunal in the case of Wing Commander Rachit Bhatnagar does not merit our interference for the reasons which we have indicated earlier.”

Ms. Murugesan submits, therefore, that it would be *Subrata Das* which applies; not *Balram Gupta* or *J.N. Srivastava*.

Analysis

14. Having heard learned Counsels and applied ourselves to the material on record, we are unable to sustain the impugned decision, rejecting the petitioner’s request for permission to withdraw his earlier request for being permitted to voluntarily retire.

15. We may note, at the very outset, that Rule 43(6) of the CCS (Pension) Rules is obviously not applicable, as it applies to voluntary retirement under Rule 43, whereas the provision for voluntary retirement, applicable to the petitioner, was not Rule 43 of the CCS (Pension) Rules, but Rule 27 of the Coast Guard Rules.

16. The applicable Rules clearly support the case of the petitioner. While Rule 27A of the Coast Guard Rules, which deals with “resignation” contains an express proscription against withdrawal of an application for resignation, once it is accepted by the competent authority, there is a conspicuous absence, in Rule 27, of any such proscription. These provisions being allied and cognate provisions of one subordinate statute, the omission, by the framers of the Rules, to



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include, in Rule 27, a proscription against withdrawal, as contained in Rule 27A, has obviously to be regarded as deliberate.

17. In the absence of any such proscription against withdrawal of an application for voluntary retirement, before the period of voluntary retirement is to expire, even if the request stands accepted in the interregnum, the law that applies would be that declared in **Balram Gupta** and **J.N. Srivastava**. These decisions clearly permit withdrawal of an application for voluntary retirement even after it is accepted by the competent authority, provided that the request for withdrawal is made before the voluntary retirement is to take effect.

18. In the present case, the order dated 9 December 2024, of the Competent Authority, accepting the petitioner's request for voluntary retirement, specifically stipulated that the petitioner would stand voluntarily retired with effect from 31 January 2025. The application for withdrawal of the request for voluntary retirement was, therefore, moved before the voluntary retirement was to take effect, on 16 December 2024.

19. No doubt, in **Balram Gupta**, the Supreme Court further held that the application for voluntary retirement could be permitted to be withdrawn only if there was a material change in circumstances. The expression "material change in circumstances", is one which is incapable of precise definition. An indicator to its scope and ambit is, however, we found in the following passage from **Balram Gupta** itself:



“12. In this case the guidelines are that ordinarily permission should not be granted unless the officer concerned is in a position to show that there has been a material change in the circumstances in consideration of which the notice was originally given. In the facts of the instant case such indication has been given. *The appellant has stated that on the persistent and personal requests of the staff members he had dropped the idea of seeking voluntary retirement. We do not see how this could not be a good and valid reason. It is true that he was resigning and in the notice for resignation he had not given any reason except to state that he sought voluntary retirement. We see nothing wrong in this. In the modern age we should not put embargo upon people's choice or freedom.* If, however, the administration had made arrangements acting on his resignation or letter of retirement to make other employee available for his job, that would be another matter but *the appellant's offer to retire and withdrawal of the same happened in such quick succession that it cannot be said that any administrative set-up or arrangement was affected.* The administration has now taken a long time by its own attitude to communicate the matter. For this the respondent is to blame and not the appellant.”

(Emphasis supplied)

In ***Balram Gupta***, therefore, the mere fact that some of the colleagues of the employee concerned had dissuaded him from voluntary retiring was itself treated as sufficient change in circumstances to justify withdrawal of the request for voluntary retirement. The Supreme Court has, in the said decision, clearly advocated an expansive approach, in which there should be no “embargo on people’s choice”. The administration cannot, therefore, be rigid in its approach while examining whether the request for withdrawing the earlier application for voluntary retirement was, or was not, for good and valid reasons and based on a change in circumstances. The emphasis must be to prioritise the employee’s wish, provided the application is not made long after the request for voluntary retirement and, in the interregnum, the administration has not taken steps to change the administrative setup.



20. In the present case, the withdrawal of the request for voluntary retirement was motivated by the fact that, one week prior thereto i.e. on 4 December 2024, the petitioner had undergone an open heart surgery and had recovered therefrom. There was, therefore, a change in his health condition. Clearly, this constitutes “material change of circumstances” within the meaning of the law laid down in ***Balram Gupta***.

21. Insofar as the Coast Guard Circular dated 20 April 2020 is concerned, it cannot apply for two reasons.

22. The first is that para 5 of the Circular apparently conflates the concepts of voluntary retirement and resignation. While the first two sentences of the paragraph correctly record the legal position as it emerges from Rule 27A of the Coast Guard Rules, which applies to resignation, the subsequent sentences in the paragraph have erroneously applied these principles to voluntary retirement, and have treated the Rule position with respect to voluntary retirement and resignation as identical.

23. This is a fundamental misconception by the authority issuing the Circular, which initiates it in its entirety, insofar as it deals with the aspect of withdrawal of an application for voluntary retirement. The authority appears to have failed to notice that voluntary retirement and resignation are governed by two different Rules in the Coast Guard Rules. This, in fact, appears to be the position, as Para 5 of the Circular refers only to Rule 27A. The authority appears, therefore, to have completely overlooked Rule 27, while issuing the aforesaid Circular



dated 20 April 2020, or the fact that Rule 27 did not contain any embargo against withdrawal of an application for voluntary retirement, once made and accepted, as was contained in Rule 27A (2), which applies to resignation.

24. Secondly, even if it were to be assumed that the said communication incorporates a requirement that the request for withdrawal of the application for voluntary retirement has to be made before its acceptance, such a condition could not have been incorporated by an executive decision, where it does not find place in the Rule itself. It is well settled that executive instructions can only supplement, and not supplant, Rules. A limitation which is conspicuously absent in Rule cannot, therefore, be imposed, much less enforced, by an executive instruction.

25. The decision in *Subrata Das* merely states that there is no absolute right to withdraw an application for voluntary retirement. It does not, therefore, dilutes the legal position which emerges from *Balram Gupta* and *J.N. Srivastava*.

26. Insofar as the decision of the respondents to reject the application of the petitioner to withdraw his application for voluntary retirement is concerned, it is a single line decision which is completely unreasoned. Even on that ground, it cannot be sustained.

27. Having considered all these aspects, we are of the view that the petitioner had cited valid grounds for withdrawing his application for voluntary retirement. Inasmuch as the application was moved before



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the expiry of the period of voluntary retirement, the petitioner would be entitled to withdraw the request, the impugned decision dated 24 January 2025 rejecting the petitioner's application for withdrawal of his voluntary retirement is quashed and set aside.

28. The respondents are, therefore, directed to permit the petitioner to rejoin service. He shall also be entitled to all consequential benefits including continuity of service, but would not be entitled to any arrears of salary.

29. The writ petition stands allowed in the aforesaid terms.

30. We deem it appropriate to record our appreciation of the manner in which the case was argued by Ms. Theepa Murugesan, who was crisp and, at the same time, extremely fair in her approach.

C. HARI SHANKAR, J.

OM PRAKASH SHUKLA, J.

AUGUST 27, 2025

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