



सही पन्ना प्रतिलिपि आवरण
पत्र सं. 15275 में काम आया
दिनांक 14/5/24
M 2 16-5-24
प्रशासनिक अधिकारी न्यायिक
प्रतिलिपि विभाग
राजस्थान उच्च न्यायालय, जयपुर

C 2024 00001

4-4-24

राजस्थान उच्च न्यायालय पीठ, जयपुर

Certified Copy of Order Date.....10/05/24

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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR

DB. CIVIL WRIT PETITION NO. 5643 /2024

1. Director, Sports Authority of India , J.N Stadium Complex (East Gate) , Gate No.10, Lodhi Road , New Delhi .
2. Dy. Director (Pers. & Cg), Sports Authority of India, Netaji Subhas Eastern Centre, Salt lake City , Kolkata.

.....Humble Petitioners/ Non-Applicants

VERSUS

Somnath Prabhakar S/o Sh. Inderjit Singh, Aged about 55 years ,R/o A-102 ,First floor ,ARG Flats , Old Station Road , Alwar, Rajasthan (Now Deceased) :-

1.1 Smt. Manju Prabhakar W/o Late Sh. Somnath Prabhakar , aged about 55 years,

1.2 Karan Prabhakar S/o Late Shri Somnath Prabhakar,aged 29 years,

1.3 Miss. Chayal Prabhakar D/o Late Shri Somnath Prabhakar, aged 28 years,

1.4 Miss. Mahima Prabhakar D/o Late Shri Somnath Prabhakar , aged about 20 years

All are resident of A-102 Royal , Ensign , Old Station Road , Alwar - 301001.

..... Respondents/Applicant

Kagya Jaini

आसिस्टंट डायरेक्टर / Assistant Director
के.ए.ए. सेंट्रल / Sports Authority of India
आई.टी.सी. केंद्र / SAI Training Centre
विद्यधर स्टेडियम / Vidhyadhar Nagar Stadium
जयपुर / Jaipur

SUNDREE DEVI SHARMA
OATH COMMISSIONER
RAJ. HIGH COURT
JAIPUR BENCH, JAIPUR

①

2. Union of India through its Secretary, Ministry of Human Resource Development, Department of Youth Affairs and Sports, Shastri Bhawan, New Delhi.

..... Proforma Respondent /Non Applicant

**DB. CIVIL WRIT PETITION UNDER ARTICLE
227 OF THE CONSTITUTION OF INDIA**

AND

**IN THE MATTER OF ORDER DATED
05.05.2022 (ANNEXURE-1) PASSED BY
LEARNED CENTRAL ADMINISTRATIVE
TRIBUNAL JAIPUR BENCH, JAIPUR IN
ORIGINAL APPLICATION NO. 295/2016 BY
THE CORAM OF HON'BLE MR. DINESH
SHARMA, MEMBER (A) WHEREIN THE
ORIGINAL APPLICATION TITLED AS
"SOMNATH PRABHAKAR (NOW DECEASED)
VS UNION OF INDIA & ANR." PREFERRED
BY RESPONDENT/APPLICANT HAS BEEN
DISPOSED OF WITH DIRECTION TO
REVISE THE ORDER OF VOLUNTARY
RETIREMENT OF THE APPLICANT.**



सही - प्रतिलिपि
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

**SUNDREE DEVI SHARMA
OATH COMMISSIONER
Rajasthan High Court, Bench
JAIPUR**

Pooja Jain
सहायक निदेशक / Assistant Director
भारतीय खेल प्राधिकरण / Sports Authority of India
आई एलएन सेन्टर / SAI Training Centre
विद्युत नगर स्टेडियम / Vidya Nagar Stadium

**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

D.B. Civil Writ Petition No.5643/2024

1. Director, Sports Authority Of India, J.N Stadium Complex (East Gate), Gate No.10, Lodhi Road, New Delhi.
2. Dy. Director (Pers. And Cg), Sports Authority Of India, Netaji Subhas Eastern Centre, Salt Lake City, Kolkata.

----Petitioners

Versus

1. Somnath Prabhakar S/o Sh. Inderjit Singh, Aged About 55 Years, R/o A-102, First Floor, Arg Flats, Old Station Road, Alwar, Rajasthan (Now Deceased)-
- 1/1. Smt. Manju Prabhakar W/o Late Sh. Somnath Prabhakar, Aged About 55 Years, Resident Of A-102 Royal Ensign, Old Station Road, Alwar- 301001.
- 1/2. Karan Prabhakar S/o Late Shri Somnath Prabhakar, Aged About 29 Years, Resident Of A-102 Royal Ensign, Old Station Road, Alwar- 301001.
- 1/3. Miss. Chayal Prabhakar D/o Late Shri Somnath Prabhakar, Aged About 28 Years, Resident Of A-102 Royal Ensign, Old Station Road, Alwar- 301001.
- 1/4. Miss. Mahima Prabhakar D/o Late Shri Somnath Prabhakar, Aged About 20 Years, Resident Of A-102 Royal Ensign, Old Station Road, Alwar- 301001.
2. Union Of India, Through Its Secretary, Ministry Of Human Resource Development, Department Of Youth Affairs And Sports, Shastri Bhawan, New Delhi.

----Respondents

For Petitioner(s) : Mr.Aruneshwar Gupta, Senior Counsel assisted by Dr.Saugath Roy, Adv.
For Respondent(s) : Mr.C.P. Sharma, Adv.
Mr.Abhi Goyal, Adv.

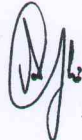
**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MR. JUSTICE BHUWAN GOYAL**

Order

10/05/2024

AVNEESH JHINGAN, J:-

1. This petition is filed seeking quashing of order of Central Administrative Tribunal, Jaipur Bench, Jaipur (for short 'the Tribunal'), dated 05.05.2022.







सही - प्रतिलिपि

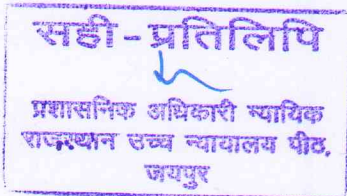
प्रशासनिक अधिकारी न्यायिक
राजस्थान उच्च न्यायालय पीठ,
जयपुर

2. Brief facts are that Mr. Somnath Prabhakar (hereinafter referred to as employee) was appointed as Grade-II Hockey Coach on 10.05.1988. On transfer to Kolkata on 28.09.2015 employee was relieved on 30.09.2015. The employee after two days of joining at Kolkata on 05.11.2015 filed an application for transfer back to the native zone or in case of non acceptance, the voluntary retirement was sought with effect from 01.02.2016 and he proceeded on leave. The request for voluntarily retirement was accepted vide order dated 24.11.2015. However, condition was imposed that in case the employee reports back at Kolkata then the voluntary retirement shall be effective from 01.02.2016 otherwise from 01.12.2015. The request made by the employee on 29.11.2015 for withdrawal of voluntary retirement was rejected on 15.12.2015. Aggrieved of order dated 24.11.2015, original application (OA) was filed but the employee expired during pendency of the OA.

3. The Tribunal dealt with following two issues:-

- i. "The first issue is whether the respondents were right in issuing letter dated 24.11.2015 (Annexure-A/1) accepting the VRS request from a date before the date (01.02.2016) indicated by the applicant in his notice.
- ii. The second issue is whether the respondents were right in rejecting the request for withdrawing the VRS request, by their letter dated 15.12.2015 (Annexure-A/2)."

The first issue was decided in favour of the employee and the second issue in favour of the petitioners. Due to death of the



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employee during the pendency of the OA, the second issue before the Tribunal is not being pressed by either of the parties.

4. The pin-pointed issue that arises is as to whether while accepting the request of voluntary retirement from a date short of three month notice period, the petitioners of their own could have further shortened the period.

5. Learned counsel for the petitioners submits that under Rule 48-A, the petitioners have power to curtail or reduce the prerequisite three month notice period for seeking voluntary retirement.

6. Learned counsel for the respondents defends the impugned order.

7. Before proceeding further, it would be relevant to reproduce Rule 48-A of the Central Civil Services (Pension) Rules, 1972 (for short 'the Rules'):-

"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 Cooperation (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.



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जयपुर

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(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)-Omitted

(3-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) 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 :

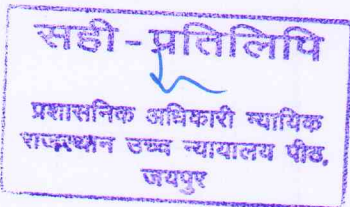
Provided that the request for withdrawal shall be made before the intended date of his retirement.

(5) Omitted vide notification GSR No.928 (E), dated 21st December, 2012 [F.No.38/80/08-P&PW(A)]

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

- (a) retires under Rule 29, or
- (b) retires from Government service for being absorbed permanently in an autonomous body of 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.



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8. Rule 48-A deals with retirement on completion of twenty years of qualifying service. Sub-Rule (1) stipulates that on completion of twenty years of qualifying service, a Government servant may retire, by giving a notice in writing to the Appointing Authority of not less than three month. The exceptions are provided in proviso. As per Sub-Rule (2), the notice under Sub-Rule (1) shall require the acceptance of the appointing authority. Proviso to Sub-Rule (2) provides in case of non-refusal of permission to retire before expiry of the period specified in the notice, the Government servant shall retire from the date of expiry of the notice period.

9. Under Clause (a) of Sub-Rule 3(A), the Government servant can request in writing for accepting a notice of less than three months for seeking voluntary retirement but shall give reasons for it. Clause (b) stipulates that the Appointing Authority after considering the request for curtailing notice period on merits may relax the condition, on being satisfied that it shall not cause administrative inconvenience. The relaxation shall be subject to Government Servant not applying for commutation of part of pension before expiry of the notice period.

10. In the case in hand, the request for voluntary retirement was made on 05.11.2015. Three months period expired on 04.02.2016. However, the employee made a request seeking voluntary retirement from 01.02.2016 i.e. four days prior to required period of three month. The petitioners neither rejected the request for voluntary retirement on the ground that clear three month notice was not given nor the waiver for curtailing the period. However, Suo Moto the effective date of retirement was



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(7)

preponed, in case of non joining of employee at Kolkata. A condition was imposed that in case the employee failed to report back at Kolkata, he shall retire with effect from 01.12.2015, otherwise from 01.02.2016. In other words respondents curtailed the period of notice from 01.02.2016 to 01.12.2015 in case of non fulfillment of the condition.

11. The reliance on Rule 48-A by the learned counsel for petitioner is of no avail. Rule 48-A(3A) does not bestow the power to appointing authority of self fixing the effective date of voluntary retirement of Government servant.

12. There cannot be quarrel with the proposition that under Sub-Rule (3A), on a written application of by Government servant for reducing/curtailing the notice period, the request can be accepted on being satisfied with the reasons furnished. The Rule does not confer *suo-moto* power with Appointing Authority to fix a date of its own from which the request for voluntary retirement shall be effective.

13. Before parting it would be appropriate to note that we are concurring with the conclusion arrived at by the Tribunal on issue No.1 but for reasons mentioned hereinabove.

14. The writ petition is accordingly dismissed.

- Sd -
(~~BHUWAN GOYAL~~), J

- Sd -
(AVNEESH JHINGAN), J

Monika/Sudeepak/110-S

Reportable :- Yes

