

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

This, the 17th day of *February, 2020*.

ORIGINAL APPLICATION NO. 330/01079/2019

HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J).
HON'BLE MR PRADEEP KUMAR, MEMBER (A).

1. Neerja Madhhav, aged abou 57 ½ years, wife of , Sri Beni Madav, resident of, Madhuban Sa, 14/96, N-5, Sarangnath Colony, Sarnath, Varanasi - 221007, (U.P.) Was posted as Assistant Director (Programmes), at Akashwani, Rewa, Madhya Pradesh, but has since been directed to be retired voluntarily from service vide the impugned orders dated 23.02.2018 and 09.03.2018.

-Applicant.

VERSUS

1. The Union of India, through the Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi.
2. Prasar Bharti (India's Public Service Broadcastor), through the Director General, All India Radio, New Delhi.
3. The Director General, All India Radio/Prasad Bharti, New Delhi.
4. Sri F. Sheheryar, Director General, All India Radio/Prasar Bharti, New Delhi
5. The Station Head Akashwani, Rewa, Madhya Pradesh.

-Respondents

Advocate for the Applicant : Shri Shyamal Narain

Advocate for the Respondents : Shri L P Tiwari

O R D E R

(Delivered by Hon'ble Mr. Pradeep Kumar, Member-A)

The present Original Application (OA) has been filed by the applicant seeking, primarily, the following reliefs:-

- "(a) allow this O.A. and quash the impugned orders dated 23.02.2018 and 09.03.2018 (Annexure Nos. A-1) and A-2 to Compilation No. I respectively), and issue a time-bound direction to the Respondents to reinstate the applicant in service w.e.f., 10.03.2018, with all consequential benefits, including continuity of service and payment of arrears of salary and all other emoluments, along with penal interest, treating the impugned orders as void ab initio or as having never been passed.
- (b) Issue such other suitable orders or directions as might be found just and proper in the facts and circumstances of the present case.
- (c) Award the costs of this Original Application in favour of the applicant, throughout."

2. The brief facts of the case are that the applicant herein was working as Assistant Director (Programmes) in All India Radio and was posted at Akashwani Station Rewa, Madhya Pradesh. In reference to her application dated 21.12.2017, she applied for voluntary retirement from service due to certain unavoidable reasons. In this letter, she also indicated that she was already on earned leave w.e.f., 11.12.2017. Accordingly, three months advance notice period may be counted from 11.12.2017. It was also indicated in this letter that in case her earned leaves are

exhausted, the balance towards the three month advance notice period, may be recovered from her salary.

It was pleaded during arguments that with this, the three month notice period ends on 10.03.2018.

The respondents vide their letter dated 23.02.2018 accepted the VRS request and indicated that this will take effect w.e.f., 10.03.2018 afternoon.

The applicant pleads that this letter was dispatched from the Office on 27.02.2018 and was received by her only on 12.03.2018. However, prior to this, she received a whatsapp message from her Rewa Station Director wherein a copy of the letter dated 23.02.2018 was forwarded to her and it was mentioned that she came to know only on 06.03.2018 that her request for VRS has already been accepted.

3. The applicant pleads that even before receipt of this information on whatsapp or through Dak, she had already represented on 26.02.2018 to Director General, All India Radio, New Delhi pleading for withdrawal of her VRS request. This was received by the respondents as seen from the letter issued by respondents on 09.03.2018 wherein her request for withdrawal was not agreed to in terms of Rule

48 (a) (4) and accordingly it was advised that her VRS shall come into force w.e.f., 10.03.2018 afternoon.

The applicant pleads that another letter was issued on 09.03.2018 by the local office at Rewa to indicate that the applicant be relieved from duties on 10.03.2018 afternoon on the basis of her VRS request which was approved vide order dated 23.02.2018 and she was advised that all the Government materials i.e., ID Cards etc may be returned to the Office and no dues certificate be obtained.

The applicant pleads that the question, in respect of voluntary retirement request and withdrawal of the same and action to be taken in this regard, has been gone into by

Hon'ble High Court of Delhi in WP (c) 9304/2019 & C.M. No. 38360/2019) - Poonam Garg vs IFCI Venture Capital Funds Ltd Through its Managing Director & Ors., and was decided on 27.09.2019. While pronouncing this judgment, the Hon'ble High Court relied upon several judgments by Hon'ble Apex which are as under:-

- (i) **Balram Gupta Vs Union of India & Anr** on 01.09.1987 1987 AIR 2354, 1987 SCR (3) 1173 delivered on 01.09.1987;

- (ii) **J.N. Srivastava vs Union of India (UOI) and Anr** delivered on 22.09.1997 AIR 1999 SC 1571, (1999) ILLJ 546 SC, (1998) 9 SCC 559;
- (iii) **Ashok Kumar Sahu Vs Union of India & Ors** delivered on 08.08.2006 Supreme Court Appeal (civil) 59 of 2004
- (iv) **Greater Mohali Area Development Authority & Another Vs Manju Jain & Ors** – Civil Appeal No. 6791 of 2010 (Arising out of SLP (C) No. 6427 of 2008) – delivered on 19.08.2010;
- (v) **Air India Express Ltd Vs Capt. Gurdarshan Kaur Sandhu** Civil Appeal No. 6567 of 2019 @ SLP (Civil) No. 28182 of 2018 – delivered on 22.08.2019 -

4. Taking reliance on the above judgments, the applicant pleaded that an employee who had submitted request for voluntary retirement scheme, is also required to give three months advance notice. In the instant case, the advance notice period was to end on 10.03.2018. Even if the request for voluntary retirement has already been accepted, the employee concerned has the option to withdraw the request for going on VRS and the competent authority is required to give cogent reasons, in case, the said request for withdrawal is not to be accepted.

It was brought out in the relied upon judgments that the competent authority can deny the acceptance of withdrawal request only in such a condition where

alternative appointment in lieu of the voluntary retirement has already been made. In other cases, withdrawal request is required to be accepted.

5. In view of the foregoing, applicant pleads that her withdrawal request, which was in knowledge of the respondents, could not have been rejected as no alternative arrangement on her vacancy was made and she had made her request for withdrawal on 26.02.2018, i.e., much before voluntary retirement was to come into effect w.e.f. 10.03.2018 AN.

6. It was pleaded that since her request for withdrawal of VRS was denied based on Rule 48 (a) (4) without giving any reasons thereof, such denial is not acceptable and she is required to be treated as on duty w.e.f., 10.03.2018 with all consequential relief.

7. The applicant also pleaded that Hon'ble Apex Court has also held that in these conditions, even if the employee was already retired, it was the administration who had stopped him or her from performing duty and accordingly when the employee was to be taken back on duty, he/she should also be paid his or her due salary and allowances for the intervening period. A similar request was made by the

applicant.

8. Per contra, the respondents opposed the OA. It was pleaded that the applicant had given a request for voluntary retirement on 21.12.2017 wherein as per the request of the applicant three months time was to be counted from 11.12.2017 as she had already proceeded on leave from this date. The three months time was to end on 10.03.2018. The voluntary retirement request was already accepted vide order dated 23.02.2018 wherein it was clearly indicated that VRS came into force w.e.f. 10.03.2018 afternoon.

9. It was admitted that the applicant had preferred an application dated 26.02.2018 wherein her request for seeking voluntary retirement was sought to be withdrawn. This withdrawal request was rejected by the Director General, All India Radio, New Delhi vide their letter dated 09.03.2018. This letter reads as under:-

“डॉ नीरजा माधव, सहायक (कार्यक्रम) (तदर्थ) ने दिनांक 21.12.2017 के अपने आवेदन में स्वैच्छिक सेवानिवृत्ति के लिए तीन महीने का नोटिस दिया था।

जबकि डॉ नीरजा माधव, द्वारा दिए गए स्वैच्छिक सेवानिवृत्ति के उपर्युक्त नोटिस की इस निदेशालय में जांच की गई और सक्षम प्राधिकारी यानी महानिदेशक, आकाशवाणी ने डॉ नीरजा माधव की स्वैच्छिक सेवानिवृत्ति के नोटिस को स्वीकार कर लिया था।

जबकि दिनांक 10.03.2018 (अपराह्न) से डॉ नीरजा माधव द्वारा दी गई स्वैच्छिक सेवानिवृत्ति के आवेदन को दिनांक

23.02.2018 के आदेश के तहत स्वीकार कर अधिकारी को सूचित कर दिया गया था।

जबकि डॉ नीरजा माधव, ने दिनाक 26.02.2018 के अपने आवेदन के तहत दायर अपने स्वैच्छिक सेवानिवृत्ति के आवेदन को वापस लेने का अनुरोध किया है।

जबकि डॉ नीरजा माधव, द्वारा दायर स्वैच्छिक सेवानिवृत्ति के आवेदन को वापस लेने के अनुरोध की इस निदेशालय में नियम 48 - ए (4) के तहत की गई और सक्षम प्राधिकारी यानी महानिदेशक, आकाशवाणी ने वापसी के इस अनुरोध को स्वीकार नहीं किया है।

इसीलिए उपरोक्त को देखते हुए अब डॉ नीरजा माधव, सहायक निदेशक (कार्यक्रम) (तदर्थ) दिनाक 23.02.2018 को जारी आदेश के अनुसार इनकी स्वैच्छिक सेवानिवृत्ति स्वीकार किए जाने पर दिनाक 10.03.2018 (अपराह्न) से कार्यमुक्त किया जाता है।

इसे महानिदेशक, आकाशवाणी के अनुमोदन से जारी किया जाता है।"

(Emphasis supplied)

10. In follow up of the acceptance of the VRS request, the local Akashwani Office at Rewa also issued a letter on 09.03.2018 which reads as under:-

"महानिदेशालय, आकाशवाणी, नई दिल्ली के आदेश क्रमांक 08 /39 /2016 - एस-1 (ए)/194 एवं आदेश क्रमांक 08 /39 /2016 - एस-1 (ए)/227 दिनाक 23 - 02 - 2018 एवं 09 -03 -2018 (छायाप्रति संलग्न) के द्वारा डॉ नीरजा माधव, सहायक निदेशक (कार्यक्रम) (तदर्थ) का स्वैच्छिक सेवा निवृत्ति नोटिस स्वीकार करने के परिणामस्वरूप डॉ नीरजा माधव, सहायक निदेशक (कार्यक्रम) आकाशवाणी, रीवा को स्वैच्छिक सेवा निवृत्ति आधार पर दिनाक 10.03.2018 (अपराह्न) से उनके पद से कार्यमुक्त किया जाता है।

डॉ नीरजा माधव को सलाह दी जाती है कि वे शासकीय सामग्री एवं परिचय पत्र आदि जो कार्यालय द्वारा यदि प्रदाय किये गये हैं उन्हें वापस कर कार्यालय से नो - डयुज प्रमाण पत्र कर ले।"

(Emphasis supplied)

11. It was pleaded by the learned counsel for the

respondents that the request for withdrawal of the VRS was made subsequent to the date when the voluntary retirement request was already approved and accordingly it could not be given credence. In any case, detailed order was passed on 09.03.2018 rejecting the withdrawal request relying upon Rule 48 (a) (4) which is quoted below:-

"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/her notice except with the specific approval of such authority: Provided that the request for withdrawal shall be made before the intended date of his/her retirement."

12. It was further pleaded by the learned counsel for the respondents that a perusal of the withdrawal request made on 26.02.2018 indicates that it was not a clear withdrawal but it was conditional withdrawal and a conditional withdrawal request cannot be agreed to. Accordingly, it was the VRS request dated 21.12.2017 which was effective and was approved.

13. It was further brought out in the counter affidavit that out of 26 years of service rendered by the applicant she was posted at Varanasi for 24 years and while withdrawing the application for VRS, the applicant has also given a condition that she needs to be posted at Varanasi as it was not possible for her to continue her service at Rewa. In this

connection, the respondents drew our attention to the letter dated 26.02.2018 for withdrawal of VRS request. It reads as under:

“विनम्रतापूर्वक अवगत करना है की अपनी स्वास्थ एवं परिवार सम्बन्धी कतिपय समस्याओं के कारण मैं जुलाई 2017 से अर्जित अवकाश पर थी जिसका आवेदन पत्र एवं अवकाश बढ़ाए जाने की सुचना भी मैंने समय पर दे दी थी, परन्तु फिर भी बिना किसी पूर्व सुचना के मेरा वेतन नवंबर 2017 से रोक दिया गया था। इस सम्बन्ध में मैंने रिश्ति स्पष्ट करते हुए कई पत्र आपकी सेवा में उचित माध्यम द्वारा भेजा परन्तु कोई उत्तर न पाकर और अपमान से आहात होकर आवावेश में मैंने 21 दिसंबर 2017 को अपना रवैचित सेवा निवृति का आवेदन पत्र उचित माध्यम द्वारा भेज दिया था जिसका प्राप्ति के बारे में आज तक मुझे कोई सुचना नहीं मिली है।

जनवरी 2018 में आपके आदेश से मेरा वेतन रिलीज़ कर दिया गया है। मैं आभारी हूँ।

इसी स्नार्डर्भ में पुनः अवगत कराना है की मैंने अगस्त 2016 में आकाशवाणी, शीवा में अपना पदभार छोड़ा किया था। मेरे पति अस्थानांतरणीय सेवा में वाराणसी में प्राचार्य पद पर कार्यरत हैं। एक पुत्री मुंबई में ONGC में भूगर्भ वैज्ञानिक हैं। एकमात्र किंशोर वय पुत्र बी.एच.यू.वाराणसी में अध्ययनरत है। मेरे पेट के दो ऑपरेशन अभी हाल में हुए जिसके कारण स्वास्थ कभी कभी गड़बड़ हो जाता है। अकेली शीवा मैं रहते हुए कई प्रकार की समस्याएँ होती हैं।

अपने स्वास्थ एवं परिवारिक समस्याओं की ओर आपका ध्यान आकृष्ट कराते हुए मैंने 01 मार्च 2017 को उचित माध्यम द्वारा अपना ट्रांसफर आकाशवाणी, वाराणसी में कर देने का निवेदन-पत्र भेजा था। आकाशवाणी, वाराणसी में ADP के दो पद रिक्त भी हैं जिससे किसी को असुविधा नहीं होगी।

पुनः 02 नवंबर 2017 को भी मैंने उचित माध्यम द्वारा ई-मेल और स्पीड पोस्ट द्वारा ट्रांसफर कर देने का निवेदन-पत्र भेजा परन्तु दुख है की आपने एक महिला अधिकारी के अनुरोध पर ध्यान नहीं दिया जबकि 17 अक्टूबर 2017, 03 नवंबर 2017 एवं 29 दिसंबर 2017 को भी अन्य अनेक मेरी श्रेणी के अधिकारियों के ट्रांसफर, जिनमें अनुरोध पर भी ट्रांसफर थे, किये गए। कुछ लोगों की सुविधा का ध्यान रखते हुए बंगलौर से बंगलौर, कटक से कटक ट्रांसफर किये गए, देखे सलनक -1, 2 एवं 03।

आपसे निवेदन है की अकारण वेतन रोक दुए जाने के कारण आवावेश में आकर मैंने रवैचित्र सेवा निवृति का जो आवेदन पत्र दे दिया था उसे निरस्त करते हुए मेरा ट्रांसफर (1) स्वास्थ्य कारणों से (2) परिवारिक दायित्वों (3) रपाउस-केस अथवा (4) छप्पन वर्षीया महिला को इस उम्र में परिवार से दूर न रखने जैसे कारणों पर सहृदयतापूर्वक विचार कर, आकाशवाणी, वाराणसी में करने की कृपा करे ताकि मैं अपनी शेष चार वर्षों की नौकरी ठीक से कर सकू। पूर्व प्रेक्षित आवेदन की कॉपी सलनक।

आपसे यह भी अनुरोध है की मेरा VRS निरस्त करते हुए जब तक मेरा स्थानांतरण आकाशवाणी, वाराणसी में नहीं हो जाता, मुझे अवकाश स्वीकृत करने की कृपा करे तथोकि शीवा में अकेले रह पाना संभव नहीं है।”

(Emphasis supplied)

14. It was pleaded that in view of the foregoing, there is no

merit in the OA. As per the applicant's request, the VRS was accepted and it had come into force w.e.f., 10.03.2018 afternoon which has already been implemented also. Accordingly, OA needs to be dismissed.

15. The applicant countered the arguments put forth by the respondents and following was pleaded:-

(a) The pleading by the respondents that the withdrawal request was conditional cannot be accepted. If the withdrawal request was taken to be conditional, the respondents were required to indicate in their decision 09.03.2018 (quoted in para 9 supra) that the withdrawal request was conditional and hence it cannot be accepted. As against this, the respondents indicated that withdrawal request is being rejected on the basis of Rule 48 (a) (4). There is not even a whisper that the rejection was on account of withdrawal request being conditional.

Further, even in the written averments submitted by the respondents there is no whisper anywhere that the withdrawal request was conditional. The only reason for rejecting the

withdrawal request was under Rule 48 (a) (4).

Accordingly, the respondents cannot be granted any liberty to add more grounds for rejection of the withdrawal request now. In this regard, the applicant relied upon the following judgments to plead that the respondents cannot be allowed to add arguments beyond the pleadings already on records:-

- (i) **Mohinder Singh Gill & Anr vs The Chief Election Commissioner, New Delhi & ors** delivered by Hon'ble Apex Court on 02.12.1977 1978 AIR 851, 1978 SCR (3) 272
- (ii) **Bachhai Nahar vs Nilima Mandal & Anr.** (Civil Appeal Nos. 5798-5799 of 2008) delivered by Hon'ble Apex Court on 23.09.2008 and reported as (2008) 17 SCC 491
- (iii) **Mukesh Singh and 4 Ors Vs Saurabh Chaudhary And another** delivered on 03.05.2019 by Hon'ble Allahabad High Court - First Appeal No. 594 of 2018

16. Accordingly, it was pleaded by learned counsel for the applicant that the VRS request was submitted on 21.12.2017. It was also accepted also vide order dated 23.02.2018. However, before voluntary retirement was to come into effect on 10.03.2018 afternoon, the applicant had already submitted her request for withdrawal of the VRS on

26.02.2018. This was received in time by respondents as is clear from their rejection dated 09.03.2018, without assigning any except making a bald statement of Rule 48 (a) (4).

Accordingly, in terms of various judgments of various Courts, this withdrawal cannot be denied, unless there are adequate reasons and this also in a very narrow compass of "if an alternative arrangement has been made". In the instant case, no such reason of alternative arrangement having been made, was advised. Accordingly there is no reason to deny the withdrawal request. Accordingly, the OA is required to be allowed with consequential benefits.

17. The matter has been heard at length. Shri Shyamal Narain, Advocate represented the applicant and Shri L P Tiwari, Advocate represented the respondents.

18. Position, as it has emerged in this case, is as follows:

(a) Applicant was posted at Varanasi for 24 years of her service out of total 26 years and she was posted as Assistant Director (Programmes) at AIR Station Rewa since August 2016 and she proceeded on earned leave w.e.f. 11.12.2017.

(b) While on such leave, she tendered her application

dated 21.12.2017 seeking voluntary retirement and requested for mandatory three month notice period to be counted from 11.12.2017 which was to end on 10.03.2018.

(c) The Voluntary Retirement request was agreed to vide DG, Prasar Bharti letter dated 23.02.2018 and as per this approval, the voluntary retirement was to take effect from 10.03.2018 (AN). This was dispatched by Dak on 27.02.2018.

(d) The applicant submitted another letter dated 26.02.2018, seeking to withdraw her request for voluntary retirement which was submitted on 21.12.2017. This was received by respondents well within the three month notice period and before retirement came to take effect on 10.03.2018 (AN), as seen from a letter issued by DG, Prasar Bharti on 09.03.2018 wherein the withdrawal request was rejected. The only reason indicated in this letter was that withdrawal request was examined under Rule 48 (A) (4) and the competent authority has not agreed.

(e) The local AIR office at Rewa issued a letter on 09.03.2018 that applicant stands voluntary retired and she stands relieved from duties w.e.f. 10.03.2018 (AN).

18.1 Thus, it appears that she was voluntarily retired while

she was still continuing on her leave w.e.f. 11.12.2017.

19. In this context, it needs examination whether she could have withdrawn her request on 26.02.2018, to proceed on voluntary retirement after it was already accepted on 23.02.2018, as respondents had received such a request before voluntary retirement was to become effective from 10.03.2018 (AN).

This question was examined by Hon'ble High Court of Delhi in WP (C) No.9304/2019, **Poonam Garg vs. IFCI Venture Capital Funds through its Managing Director and others**, and judgment was delivered on 27.09.2019.

The background of this case as noted by Hon'ble High Court and the judgment thereupon is reproduced below:

"2. the petitioner offered to voluntarily retire by way of her notice dated 07.06.2019 addressed to the respondent no.3/Managing Director of the Company, in accordance with the IFCI Venture Capital Funds Limited Staff Regulations, 2019 („Regulations“ for short), and requested to be relieved from service w.e.f. 07.09.2019.

Xxx xxx xxx

3. Within six days of submitting her notice, on 13.06.2019, the petitioner sought to withdraw her request for voluntary retirement from the Company while expressing her willingness, in the interest of the organisation, to accept any role/responsibility assigned to her by the Company. In the meanwhile, as the petitioner had requested to be relieved from service only w.e.f. 07.09.2019, she continued to discharge her duties without any interference. On 04.07.2019 however, the Company issued the impugned order to the petitioner

informing her that while her request for voluntary retirement had been accepted by the Competent Authority, her letter dated 13.06.2019 seeking withdrawal of her request for voluntary retirement had not been considered favourably and that, resultantly, she would be relieved from service on 06.09.2019....."

19.1 The Hon'ble Court relied upon several judgments by Hon'ble Apex Court and reproduced the rulings by Apex Court. Relevant parts of judgment by Hon'ble High Court are reproduced as under:

"16. The question as to when an employee can be allowed to withdraw his request for resignation or voluntary retirement and the employer's right to reject such request for withdrawal has been considered by the Supreme Court from time to time and the common thread running through all these decisions is that in normal circumstances, an employee can withdraw its resignation before it comes into effect or operation. In this regard, reference may be made to paragraph 41 of Union of India Vs. Gopal Chandra Misra (1978) 2 SCC 301.

"41. The general principle that emerges from the foregoing conspectus, is that in the absence of anything to the contrary in the provisions governing the terms and conditions of the office/post, an intimation in writing sent to the competent authority by the incumbent, of his intention or proposal to resign his office/post from a future specified date can be withdrawn by him at any time before it becomes effective, i.e. before it effects termination of the tenure of the office/post or the employment."

17. The Apex Court in Air India Express Limited and Ors. Vs. Gurdarshan Kaur Sandhu 2019 (11) SCALE 310 has in paragraph 17 of its decision, after considering its earlier decisions in Gopal Chandra Misra (supra), Balram Gupta (supra), Punjab National Bank Vs. P.K. Mittal 1989 Supp (2) SCC 175 and J.N. Srivastava (supra), summarised the circumstances in

which withdrawal of a request for voluntary retirement can be permitted by observing as under:

"17. 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 paragraphs 41 and 50 in Gopal Chandra Misra, "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, as laid down in Balram Gupta, "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."

19.2 The Hon'ble Court relied upon another decision of Hon'ble Apex Court in **Punjab National Bank vs. P.K. Mittal**, 1989 Supp.(2) SCC 175, wherein following observations were made:

"Since the withdrawal letter was written before the resignation became effective, the resignation stands withdrawn, with the result that the respondent continues to be in the service of the bank."

19.3 The Hon'ble High Court gave following directions and allowed the Writ:

"21. Thus, when looked at from any angle it is evident that the petitioner was well within her right to seek withdrawal of her request for voluntary retirement before its effective date. If paragraph 33(2)(v) is taken as not being applicable to the petitioner's case, then her

request had to be considered as per the general principles laid down by the Supreme Court, which as noted hereinabove prescribe that a request for resignation can be withdrawn anytime before it becomes effective. The petitioner's voluntary retirement was to be effective from 07.09.2019, not only as per her application but even as per the alleged acceptance of the respondent. Her withdrawal application, therefore, having been made much earlier, was liable to be accepted. On the other hand, if paragraph 33(2)(v) is taken as being applicable to the petitioner's case, the only rider therein is that the leave of the Competent Authority was required before seeking such withdrawal, but as rightly contended by the petitioner the Competent Authority cannot be permitted to exercise its discretion in this regard in a wholly whimsical and arbitrary manner. The petitioner has served the Company for 24 years without any complaint whatsoever against her and had been promoted as a General Manager, yet its impugned order assigns no reason whatsoever for rejecting her request. There is also no reason as to why the Company should not permit the petitioner to seek withdrawal of her request, especially since she sought the same within barely 6 days of her making the application for voluntary retirement. It is not even the case of the Company that they had appointed any new person to assume the duties of the petitioner or had in any manner invested in training any new employee for the post which she was holding. Merely because the respondent No.1 had issued an order on 11.06.2019 redistributing the duties of its employees, would not be a ground to deprive the petitioner of the right available to her under law. ...

Xxx xxx xxx

... In the facts of the present case, when the withdrawal was sought within a short span of time when neither any new personnel had been appointed nor any substantial reorganisation of personnel had been carried out by the Company, the rejection of the petitioner's request for withdrawal was wholly unjustified. ...

Xxx xxx xxx

22. I also find merit in the petitioner's contention that even if the respondent's plea that her request for voluntary retirement made on 07.06.2019 had been accepted on 08.06.2019 is taken on its face value, the same itself clearly records that her retirement was to be effective from 06.09.2019 (07.09.2019 being a holiday) and, therefore, she was entitled to withdraw the same

before the effective date mentioned in the alleged acceptance order dated 10.06.2019. The Apex Court has, in *Air India Express Limited* (supra), reiterated that it is open for an employee to withdraw his resignation at any time until the same becomes effective. This right, no doubt, is subject to there being a specific bar in the regulations or upon the employer demonstrating that it had made alternative arrangements after accepting the employee's request for voluntary retirement. In the present case, neither has any provision in the Regulations prohibiting such withdrawal been pointed out nor have the respondents been able to demonstrate that they had appointed any other employee in place of the petitioner."

20. In the instant case, withdrawal request was made on 26.02.2018, i.e., well before the voluntary retirement was to come into effect on 10.03.2018 (AN) and it was in the knowledge of respondents. Accordingly, respondents were required to consider it and allow it unless there were adequate reasons to reject the same. The only reason advised was non-acceptance by competent authority under Rule 48 (a) (4) without assigning any reason thereof. (This rule is reproduced in para 11 supra).

20.1 This specific question was examined by Hon'ble Apex Court in **Balram Gupta** (para-3 supra). In this case petitioner sought voluntary retirement vide his letter dated 24.12.1980 w.e.f. 31.03.1981. This was approved vide letter dated 20.01.1981 and was to come into effect on 31.03.1981 (AN). However, petitioner changed his mind

and represented on 31.01.1981 to withdraw his notice of voluntary retirement. This was not agreed to and he was retired w.e.f. 31.03.1981 (AN). The reason given for such rejection was that his withdrawal request "has also been considered and found not acceptable". The observation by Hon'ble Apex Court and decision thereon is reproduced below:

"The facts, therefore, are that the appellant offered to resign from his service by the letter dated 24th December, 1980 with effect from 31st March, 1981 and according to the appellant his resignation would have been effective, if accepted, only from 31st March, 1981. Before the resignation could have become effective the appellant withdrew the application by the letter dated 31st of January, 1981, long before, according to the appellant, the date the resignation could have been effective. In the meantime, however, prior thereto on the 20th of January, 1981 the respondent has purported to accept the resignation with effect from 31st March, 1981. The appropriate rule sub-rule (4) of Rule 48-A of the Pension Rules as set out hereinbefore enjoins that a government servant shall be precluded from withdrawing his notice except with the specific approval of such authority. The proviso stipulates that the request for withdrawal shall be made before the intended date of his retirement. That had been done. The approval of the authority was, however, not given. Therefore, the normal rule which prevails in certain cases that a person can withdraw his resignation before it is effective would not apply in full force to a case of this nature because here the Government servant cannot withdraw except with the approval of such authority.

Xxx xxx xxx

What is important in this connection to be borne in mind is not what prompted the desire for withdrawal but what is important is what prompted the government from withholding the withdrawal. In this respect the government affidavit certainly lacks candour. In appropriate cases where the Government

desires that public servant who seeks voluntarily to resign should not be allowed to continue, it is open to the Government to state those reasons.

Xxx xxx xxx

We are unable to accept this submission and this position. The dissolution would be brought about only on the date indicated i.e., 31st of March, 1981, upto that the -appellant was and is a Government employee. There is no unilateral termination of the same prior thereto. He is at liberty, and entitled independently without sub-rule (4) of Rule 48-A of the Pension Rules, as a Government servant, to withdraw his notice of voluntary retirement. In this respect it stands at par with letter of resignation.

Xxx xxx xxx

that there should not be arbitrariness and hostile discrimination in Government's approach to its employees. On behalf of the respondent it was submitted that a Government servant was not entitled to demand as of right, permission to withdraw the letter of voluntary retirement, it could only be given as a matter of grace. Our attention was also drawn to the observations of this Court in Raj Kumar v. Union of India, [1968] 3 S.C.R. 857. There the Court reiterated that till the resignation was accepted by the appropriate authority in consonance with the rules governing the acceptance, the public servant concerned has locus poenitentiae but not thereafter. Undue delay in intimating to the public servant concerned the action taken on the letter of resignation may justify an inference that resignation had not been accepted. But in the facts of the instant case the resignation from the Government servant was to take effect at a subsequent date prospectively and the withdrawal was long before that date. Therefore, the appellant, in our opinion, had locus.

Xxx xxx xxx

It may be a salutary requirement that a Government servant cannot withdraw a letter of resignation or of voluntary retirement at his sweet will and put the Government into difficulties by writing letters of resignation or retirement and withdrawing the same immediately without rhyme or reasons. Therefore, for the purpose of appeal we do not propose to consider the question whether sub-rule (4) of Rule 48-A of the

Pension Rules is valid or not. If properly exercised the power of the government may be a salutary rule. Approval, however, is not ipse dixit of the approving authority. The approving authority who has the statutory authority must act reasonably and rationally.

Xxx xxx xxx

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 so quick succession that it cannot be said that any administrative set up or management was affected.

Xxx xxx xxx

We hold, therefore, that there was no valid reason for withholding the permission, by the respondent. We hold further that there has been compliance with the guidelines because the appellant has indicated that there was a change in the circumstances, namely, the persistent and personal requests from the staff members and relations which changed his attitude towards continuing in Government service and induced the appellant to withdraw the notice. In the modern and uncertain age it is very difficult to arrange one's future with any amount of certainty, a certain amount of flexibility is required, 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 in the facts and circumstances of this case. Much complications which had arisen could have been thus avoided by such graceful attitude. The court cannot but condemn circuitous ways "to ease out" uncomfortable employees. As a model employer the government must conduct itself with high probity and candour with its employees.

In the aforesaid view of the matter, we are unable to sustain the judgment and order of the High Court of Delhi dated 13th of July, 1981 and the same are, therefore, set aside. The appeal is accordingly allowed with costs and the appellant is entitled to be put back to his job with all the consequential benefits being treated as in the job from 31st of March, 1981."

20.2 This question was again considered by Hon'ble Apex Court in **Air India Express Limited and ors. vs. Capt. Gurdarshan Kaur Sandhu**, Civil Appeal No.6567/2019 decided on 22.08.2019. Hon'ble Court held:

"11. 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 paragraphs 41 and 50 in Gopal Chandra Misra⁴, "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, as laid down in Balram Gupta⁵, "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."

20.3 In the instant case, applicant was denied permission to withdraw her voluntary retirement request on non-acceptance by competent authority under Rule 48 (a) (4) simpliciter. No reasons were advised. The denial therefore cannot be held as reasonable.

21. Respondents have also pleaded in arguments in Court that the withdrawal request was conditional and hence

could not have been agreed to. The withdrawal request dated 26.02.2018 has been seen (para-13 supra). Following issues emerge as narrated in this request:

- (a) She had applied for voluntary retirement under certain emotional stress for which certain incidents were narrated.
- (b) She was 56 years of age and should not be kept away from her family who stay at Varanasi.
- (c) She requested to cancel her voluntary retirement request dated 21.12.2017 and till such time she is not transferred to Varanasi she be granted leave as she could not stay alone at Rewa any more.

21.1 It is clear from above, that even though applicant has contended that this request was unconditional in respect of withdrawal of voluntary retirement and it was only a further request for transfer to Varanasi, this withdrawal request is actually conditional as her reporting for duty was contingent upon her being transferred from Rewa to Varansi.

In this context, whether such conditional request can be considered or not, was gone into by Hon'ble High Court of Gujarat in **Nalinikant J. Baxi v. Chairman & Managing**

Director, [(1987) ILLJ 388 Guj]. The observations made by Hon'ble Court are as under:

"9. However, the argument of the Bank that the application for withdrawal of the notice of voluntary premature retirement has to be unconditional one, may be examined. The regulation governing the notice of voluntary retirement for officer employees and grant of approval in case the withdrawal thereof is sought, does not say that an application for withdrawal of voluntary retirement notice should not contain any condition whatsoever. An application for withdrawal of notice of voluntary retirement may be conditional also. It may contain certain terms and conditions for the purpose of withdrawal of the notice of voluntary retirement. Such an application cannot be thrown away on the ground that it contained certain terms and conditions for the withdrawal of the notice of voluntary retirement. The Competent Authority of the Bank will have to consider the same on merits. It may be that there may be certain conditions which may not be acceptable to the Bank and therefore, the Bank may not grant the approval sought for. But there is nothing in the Regulation which restricts the right of an employee/officer to make an application together with certain conditions. **Even if the application for withdrawal of notice of voluntary retirement contained certain conditions, the Competent Authority will have to consider the same on merits and decide accordingly.** On consideration of the merits, it may be that the Bank may come to the conclusion that the condition attached was such that the approval cannot be granted. But that is altogether a different thing. Simply because the application contained certain conditions, it cannot be said that the application was not maintainable at all and that it was not required to be considered on merits. Moreover, the petitioner contends that his letter of withdrawal of notice of retirement was not conditional, but it was coupled with a request to post him at Ahmedabad. Such construction may be possible. But in above view of the matter, it is not necessary to go into details on this point."

(Emphasis supplied)

The Hon'ble High Court relied upon a judgment by Hon'ble Court. The case reference and the observations made are reproduced below:

"12. Similar question arose in Special Civil Application No. 913 of 1983 decided on Feb. 3, 1984 (Coram : R. C. Mankad, J.). In that case a State Government Resolution dated Feb. 3, 1978 which contained similar provision regarding notice of premature voluntary retirement came up for interpretation. The Resolution provided for voluntary retirement after giving three months' notice by the employee concerned. As regards the withdrawal of notice, it was provided as follows:

"Notice for voluntary retirement can be subsequently withdrawn with the approval of the competent authority, provided the request for withdrawal is made before the expiry of the period of notice." This provision is almost identical with the provision contained in Regulation 19 of the Regulations of Bank. In that case, the questions which arose were as follows :

1. When can the competent authority refuse to grant approval ?
2. Has the authority unrestricted or arbitrary power of discretion to refuse to grant approval ?
3. Can the authority, without assigning any reason or ground whatsoever, withhold approval ?

The Court answered all the three questions in negative and observed :

"Primary object of making this provision seems to be to bring it to the notice of the competent authority that the employee who had given notice to voluntarily retire from service was withdrawing the notice. **Since the retirement sought was voluntary, ordinarily the competent authority is expected to accord its approval to the withdrawal of retirement notice.** It is only in exceptional or extraordinary cases or circumstances that the competent authority can refuse to grant its approval. **In other words, grant of approval is a rule, refusal is an exception.**

Again exception can be made only on rational or reasonable grounds. It is only to safeguard against exceptional or extraordinary cases or circumstances that the provision for approval is made. This provision is not made to clothe the competent authority with unrestricted, unbridled or arbitrary powers to grant or refuse approval. **It cannot refuse to accord its approval at its whim or caprice.** Therefore, if the notice of retirement is withdrawn within the prescribed time, that is, before the expiry of the period of notice, ordinarily the competent authority has to accord its approval."

The Court has further observed as follows :

"Whenever the competent authority refuses to accord its approval, it can do so only for valid and rational reasons revealing or disclosing exceptional circumstances for such action and these reasons must be reflected in its order refusing the approval. The order passed by the competent authority and reasons recorded by it would always be subjected to judicial review. In other words, the order must be a speaking order which would be open to scrutiny by a competent judicial authority or Court. **If the order refusing approval gives no reasons or the reasons stated are not valid reasons, the refusal would be void and the employee would continue to be in service as if the approval was granted, the normal rule being to grant approval.**

I am in respectful agreement with the aforesaid principle laid down by R.C.Mankad J."

(Emphasis supplied)

22. In view of the above, Tribunal is of the view that it was for respondents to take a decision on the withdrawal request and advise reasons for not accepting it. This, however, was not done. Thus, the rejection of withdrawal vide letter dated 09.03.2018 (para-9 supra) cannot be sustained either for "non-acceptance by competent

authority on the basis of Rule 48 (a) (4)" as reasons were not given or on account of request being treated as "conditional" as has been argued now.

23. However, no useful purpose will be served by issuing any direction to respondents at this stage, to pass a fresh order on the applicant's request dated 26.02.2018 as she was already retired w.e.f. 10.03.2018 (AN). And more so as by now the ground realities may have undergone vast change due to passage of time e.g. the post at Rewa and Varanasi may otherwise have been filled or redistributed or abolished etc. or even applicant may have reconsidered the whole issue afresh and requests made earlier may no more be relevant.

24. Applicant herein had also pleaded that the voluntary retirement, which has been enforced by the respondents w.e.f. 10.03.2018 (A/N), was unjust in view of the request made by her for withdrawal of the voluntary retirement and this request was very much prior to 10.03.2018 and it was in the knowledge of the respondents and the same was rejected without assigning any reasons.

Accordingly, taking reliance from Hon'ble Apex Court judgment in **J.N. Srivastava v. Union of India & Another**,

[(1998) 9 SCC 559], applicant is required to be paid full salary starting from 10.03.2018 onwards till date.

24.1 This plea has been considered by the Tribunal. However, the arguments put-forth by the instant applicant are not acceptable since in the said case of **J.N. Srivastava** (supra) the petitioner therein was willing to work at the place he was posted and was stopped by the respondents from performing duties. As against this, in the instant case, the applicant was already on leave from her posting place at Rewa from 10.11.2017 and while submitting her request for withdrawal of voluntary retirement on 26.02.2018, she had put a condition for transferring her to Varansi and till this happens she had requested to continue on leave. It, therefore, follows that she practically refused to perform duty at her place of posting at Rewa.

Having been an employee for the last 26 years, it was well within the knowledge of the applicant that such a request for transfer may be acceptable or may not be acceptable. Thus, putting in a request for remaining on leave, makes her case distinguishable from that of **J.N. Srivastava** (supra).

Accordingly, the pleadings in respect of payment of salary for the entire period w.e.f. 10.03.2018 onwards are not acceptable, except to the extent leaves were due to the applicant.

25. In view of the foregoing and peculiar circumstances of this case, the OA is disposed off with following directions:

- (i) The order dated 23.02.2018 by Director General, Prasar Bharati accepting the voluntary retirement w.e.f. 10.03.2018 (AN) is set aside. Consequently, the letter issued by AIR, Rewa dated 09.03.2018 ordering voluntary retirement w.e.f. 10.03.2018 is also set aside.
- (ii) The order dated 09.03.2018 by Director General, Prasar Bharati rejecting the request to withdraw voluntary retirement w.e.f. 10.03.2018 (AN) is also set aside.
- (iii) The applicant is taken to be in the employment of AIR and is restored to her status as it prevailed before she was voluntarily retired. This status is to the effect that she was on leave from Rewa w.e.f. 11.12.2017 and even on 26.02.2018 also, while withdrawing her earlier plea for voluntary retirement, requested to be continued on leave till she was posted to Varanasi.

(iv) Accordingly, the respondents are at liberty to decide her posting to a place as per exigency of service, keeping in mind any written request if made by applicant within two weeks of this order, and are directed to issue her posting order indicating as to where she needs to report for duty. This posting order shall be issued within eight weeks from the date of receipt of certified copy of this order and also grant her reasonable time thereafter to carry out such orders.

The time spent w.e.f. 11.12.2017 till the reasonable time so allowed now by respondents, in the posting order to be issued, shall be treated to be firstly on leave for the duration as was due to her on 11.12.2017 (for which she will be paid also, if not paid already) and balance period being on Leave Without Pay (LWP). However, while she will not be entitled to payment for such LWP period, the entire period shall count towards continuity of service and for working out qualifying service for pensionary benefits whenever calculated.

In case the applicant reports for duty prior to the time so allowed by respondents in the posting orders, the

leave/LWP period, as the case may be, shall be curtailed to that extent.

No order as to costs.

(PRADEEP KUMAR)
MEMBER (A)

(RAKESH SAGAR JAIN)
MEMBER (J)

Arun