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**Central Administrative Tribunal  
Principal Bench**

**OA No.1325/2001**

New Delhi this the 4<sup>th</sup> day of May, 2006.

***Hon'ble Mr. Shanker Raju, Member (J)***

Shri Bipin Behari Dass,  
S/o late Dadhibaman Dass,  
At Pujari Put,  
P.O. Koraput,  
Orissa.

-Applicant

(By Advocate Shri A.P. Mohanty)

-Versus-

1. Union of India & Ors. -Respondents

(By Advocate Shri A.K. Shukla)

1. To be referred to the Reporters or not? Yes

2. To be circulated to outlying Benches or not? Yes

S. Raju  
(Shanker Raju)  
Member (J)

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(By Advocate Shri A.P. Mohanty)

***-Versus-***

1. Union of India through  
The Secretary,  
Rehabilitation Division,  
Department of Internal Security,  
Union Ministry of Home Affairs,  
Jaisalmer House,  
Man Singh Road,  
New Delhi.

2. The Secretary,  
Ministry of Personnel, Grievances and  
Pension, Department of Pension and  
Pensioners Welfare, Govt. of India,  
3<sup>rd</sup> Floor,  
Lok Nayak Bhawan,  
Khan Market,  
New Delhi-3.

-Respondents

(By Advocate Shri A.K. Shukla)

**ORDER (ORAL)**

By virtue of this OA, applicant seeks retiral benefits with 12%  
interest per annum w.e.f. 21.2.1976, till the date of actual payment.

2. Factual matrix, with a long history, is relevant to be highlighted. Applicant while working as UDC under Dandakaranya Development Authority Project, which was taken up by the Government for rehabilitating disabled persons. Applicant, due to his illness, intended to seek voluntary retirement after being declared permanent and surplus on completion of 25 years of service in July 1975. On examination and being declared fit by the Medical Board, his request for voluntary retirement and letter of conditional resignation dated 9.2.1976 were sent to the Chief Administrator of the Project. As no reply was received he withdrew the resignation on 21.2.1976. On 7.4.1976 it was communicated that the resignation was accepted w.e.f. 18.2.1976. On appeal to the then Union Minister the dispute was referred to Central Industrial Tribunal as to the issue whether letter of conditional resignation dated 9.2.1976 is withdrawn by letter dated 21.2.1976 and whether applicant is deemed to have retired voluntarily. A finding in favour of applicant resulted in filing of Writ Petition before the High Court of Orissa in OJC No.2502/1990 and 82/1991, which were disposed of on 2.2.1995 by the High Court of Orissa on Item No.4, with the following observations:

“Item No.4: The demand under this item relates to the question of grant of permanency relates to the question of grant of permanency from 1972 and grant of permission for retirement from 1976 to Shri B.B. Das, former Branch Secretary of Class-III and Class-IV employees Association and former General Secretary and present President of Rehabilitation Employees Union by accepting his letter dated 21.2.76 withdrawing the conditional resignation.

Under this item also the Tribunal has discussed the case pleaded by the parties, the oral and documentary evidence led on their behalf and on consideration of the same has declined to accept the contentions of the second party union that the resignation tendered by Shri B.B. Das was not voluntary and was the outcome of coercion; that it was not possible for the Tribunal to record a finding that Shri Das should be granted permanency in his post from 1972 and would be permitted to retire from service pursuant to his letter dated 21.2.76 withdrawing the letter of resignation submitted by him; that no direction can be issued to the DDA to rescind the order passed on 17.2.76 accepting the resignation of Shri Das with effect from 18.2.76 on the basis of his withdrawal letter dated: 21.2.76.

From the discussions in the award the relevant factual positions that emerge are that Shri Das had applied to the Chief Administrator of the Project in July, 1975 (Ext.118) seeking voluntary retirement after being declared permanent and surplus; since he had completed 25 years of service since his appointment in the Central Govt. on 1.4.50; in November, 1975 he submitted another application (Ext.119) giving one month notice for voluntary retirement; Shri Das submitted another application (Ext.120) to the Chief Administrator of the Project requesting him for getting him medically examined for cardiac trouble as he wanted to go on retirement on medical ground, but the Medical Board on examining him did not find him unfit for continuing in Govt. service; then he again wrote to the Chief Administrator in December, 1975 requesting for re-examination by Medical Board and stated in the letter that if he was not permitted to retire on medical ground he would resign from service with effect from 10<sup>th</sup> February, 1976, Ext.121. This was followed by his letter dated: 9.2.76(Ext.123) to the Chief Administrator giving three months' notice for resignation with the further statement that the period of three months' notice could be reduced and acceptance intimated to him. On 9.2.76 he sent the letter (Ext.124) to the Chief Administrator withdrawing the letter of resignation on the advice of his relations, friends and well wishers. Thereafter on 7.4.76 he received the intimation that his resignation had been accepted with effect from the forenoon of 18.2.76 (Ext.125). He submitted an appeal to the then Union Minister for rehabilitation praying for withdrawal of the letter dated 17.2.76 (Ext.125) which yielded no result. Regarding withdrawal of resignation, the plea of the

management was that the resignation had been accepted before the letter of withdrawal reached the concerned authority. The Tribunal has accepted the reasoning and held that since the relationship of employer and employee had ceased on acceptance of the resignation, its withdrawal was of little consequence. But it appears from the letter of resignation (Ext.123) that Shri Das had made three alternative proposals for consideration of the management, i.e., either to declare him permanent and permit him to retire voluntarily since he had completed 25 years of service or to permit him to retire on medical ground, or to treat the letter as three months' notice for resignation. The very tenor of the letter suggests that it was not an unconditional resignation, if any of the other two alternatives had been accepted his resignation would not have arisen. Concerning retirement on medical ground, the case of the management is that the Medical Board on examination had not found Shri Das unfit for continuing in service, but so far as the other alternative of allowing him to retire voluntarily on making him permanent in service, it is not the case of the management that any specific order had been communicated to him declining to make him permanent in service or that on receiving the letter (Ext.123) that proposal was examined by the competent authority. Of course when the dispute was referred to the Tribunal some evidence was led that his service had not been found to be satisfactory, but no specific evidence has been referred in the award showing any such contemporaneous decision holding Shri Das to be unfit or unsuitable for being declared permanent. It appears that seeing the three alternatives given in the letter of resignation the management readily took the opportunity to accept the resignation immediately reducing the period of notice. Such conduct on the part of the management of the D.D.A., a Central Govt. establishment was unfair, and improper. There seems to be a ring of truth in the case of the second party Union that the decision to do away with the service of Shri Das was due to his active role and deep involvement in union activities. We are therefore of the view that it should be taken that Shri Das retired voluntarily with effect from 21.2.76 treating him as a permanent employee. It is however made clear that he will not be entitled to any other service benefits excepting retirement benefit".

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3. Applicant being aggrieved by the aforesaid, preferred WP (C) No.88/2000 before the Apex Court for implementation of the orders as to grant of retiral benefits which were withheld even after the decision of the High Court. The aforesaid writ petition was allowed to be withdrawn on 27.4.2001 with liberty to applicant to take appropriate steps either before the Central Administrative Tribunal or before the High Court.

4. Simultaneously, the decision by the High Court was assailed in CA No.22-23/1997 before the Apex Court. However, the Additional Solicitor General, appearing for the respondents restricted challenge to Item Nos.1 and 3, i.e., the issue dealt with by the High Court of Orissa and as to the findings arrived at in case of grievance of applicant, as awarded by the Tribunal, was not assailed and had attained finality. The Apex Court made the following observations:

“Leave granted.

This appeal by special leave is granted against the award passed by the Industrial Tribunal, Bhubaneswar in Industrial Disputes Case No.13 of 1988 and the judgement of the Orissa High Court in O.J.C. No.2502 of 1990, whereunder the Orissa High Court refused to interfere with the award of the Industrial Tribunal in exercise of power under Article-226 of the Constitution. Though award relates to different items of demand but in this appeal Mr. Reddy, the Additional Solicitor General restricted his submissions to the direction of the Tribunal to regularize 425 N.M.R. Workers which were items Nos.1 and 3 of the Workers Union.”

5. A brief history also indicates that earlier the issue regarding the house accommodation was dealt with in TS case

No.21/1978 in respect of applicant in the court of S.D.J.M, Jeypore-cum-Civil Judge (Junior Division) which was dismissed in default and against the order passed by the High Court of Orissa on 14.7.1978, the Apex Court by an order dated 24.4.1979 directed execution of the eviction passed against applicant.

6. However, applicant preferred the present OA, which was turned down; by an order dated 11.1.2002 on the ground that the Court after the matter has been settled cannot act as an executive authority. However, the aforesaid order on being assailed before the High Court in WP(C)-3164/2002 was sent back to the Tribunal by an order dated 30.5.2002 for re-consideration.

7. On re-consideration of the aforesaid matter an order passed on 8.10.2002 turned down the claim of applicant on account of non-interference as to attainment of finality of the issue was again challenged in WP No.1787/2003 before the High Court of Delhi, wherein by an order dated 5.12.2005 holding that on liberty accorded by the Apex Court (supra) the Tribunal was at liberty to consider the grievance of applicant on its own merit; set aside the order and remanded back the case for re-consideration. Accordingly, the same is now being considered on merits.

8. Learned counsel of applicant states that the decision as to whether tendering of letter dated 7.2.1976 was a request for resignation or voluntary retirement is no more *res integra*, as there has

been a categorical finding of the High Court, according to which, applicant is deemed to have been permanent and voluntarily retired, the direction to accord retiral benefits when not challenged before the Apex Court had attained finality. Accordingly, on liberty to raise the grievance before the Tribunal applicant is not seeking implementation of the order of the High Court but grant of benefits being retired voluntarily, which has to follow as an implication under Rule 48 of the CCS (Pension) Rules, 1972.

9. On the other hand, respondents' counsel vehemently opposed the contentions and by placing reliance on a decision of the Apex Court in *Union of India v Braj Nandan Singh*, 2005 (7) SCJ 678, stated that where a statute is clear in terms, court cannot add to make up deficiencies which are left there. It is the contention of respondents that applicant who resigned by virtue of Rule 26 of the CCS (Pension) Rules, 1972 forfeits his right to pension and the directions issued by the High Court are contrary to rules and cannot be given effect to.

10. I have carefully considered the rival contentions of the parties and perused the material on record.

11. In the hierarchy of judicial system doctrine of precedent and *stare decisis*, being a public policy is to be respected and to be followed. A decision of the High Court for want of the decision of the High Court under whose jurisdiction the Bench of the Tribunal is



functioning is binding. The Apex Court in a constitution Bench decision in *Central Board of Dawoodi Bohra Community v State of Maharashtra*, (2005) 2 SCC 673, observed as under:

“The doctrine of binding precedent has the merit of promoting certainty and consistency in judicial decisions, and enables an organic development of the law, decides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs.”

12. If one has regard to the above, the principle of *stare decisis* is based on a public policy on the assumption that certainty, predictability and stability in the law are the major objectives of legal system, i.e., parties should be able to regulate their conduct and enter into relationships with reasonable assurance of the governing rules of law. Frequent change of views brings uncertainty in law and is not good for the health of the nation. Accordingly, the doctrine of precedent has been observed to be cardinal.

13. In the light of the above, an award by the Industrial Tribunal on the issue as to whether applicant has resigned or letter be treated as voluntary retirement, a finding arrived at by the Industrial Tribunal has been affirmed by the High Court of Orissa by a categorical observation as to what has been tendered by applicant is voluntary retirement, necessary implication of which as per the statutory rule 48 of the CCS (Pension) Rules, 1972 is grant of retiral benefits. In this view of the matter, by treating applicant as a permanent employee and deeming his retirement w.e.f. 21.2.1976 High Court has ruled

✓ treatment of letter of applicant dated 9.2.1976 instead of resignation a request for voluntary retirement. In that view of the matter I do not find applicability of Rule 26 of the Rules *ibid*, which, on resignation, entails forfeiture of past service and disentitlement to the pensionary benefits. A legal fiction cannot be created in the wake of a definite finding by the High Court, which is binding on the Tribunal. I cannot treat the request of applicant as resignation instead of voluntary retirement because the finding to this effect is categorical by the High Court, which has attained finality and is binding on me.

✓ 14. As regards challenge to this finding before the Apex Court, law had taken its own course. The learned Additional Solicitor General did not raise as a grievance item No.4 adjudicated by the High Court and by restricting the submissions to other items the finding arrived at by the High Court in respect of applicant as to his voluntary retirement and grant of benefits is no more *res integra* and has attained finality without any challenge before the Apex Court.

15. The Apex Court's liberty to applicant to take appropriate steps before the Tribunal when viewed by the Tribunal as an executive authority, the matter stood remanded back by the High Court of Delhi to the Tribunal and on second occasion when such a view was reiterated resulted in second remand, the liberty accorded by the Apex Court is taking cognizance of the decision in CA-23/1997 rendered prior to 24.2.2001. Applicant is now coming before the Tribunal to seek implementation of Rule 48 of the CCS (Pension) Rules, 1972 the

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High Court has made him entitled as a permanent employee with a declaration of his being retired voluntarily w.e.f. 21.2.1976. He was also made entitled to retiral benefits.

16. The issue regarding resignation, as now raised by respondents, if considered by the Tribunal would amount to <sup>be</sup> ~~infiltrate~~ <sup>be</sup> into the ~~arena~~ of the High Court and assuming the role of the High Court once the matter is finally settled from there, the only scope of interference on merits in the present case is the implication of Rule 48 of the Rules *ibid.*

17. Section 19 of the Administrative Tribunals Act, 1985 allows a grievance of holder of a civil post raised and adjudicated. In the present case the grievance of non-payment of pension and other retiral benefits to which there is no specific directions of the High Court except entitlement.

18. It is trite law that even if applicant had gone for contempt before the High Court a contentious matter would have been allowed to be raised afresh in an appropriate forum after the decision to promulgate Administrative Tribunals Act, 1985 the jurisdiction lies with the Tribunal towards original side.

19. In my considered view, applicant who has been voluntarily retired being a permanent employee, any grievance relating to non-payment of retiral benefits is a service matter within the definition of

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Administrative Tribunals Act, 1985, to which redressal has to be effected from the Tribunal.

20. Rule 48-A allows one who is voluntarily retired as a consequence thereof payment of pension and other retiral dues, which cannot be withheld without any justification. I do not find any justification tendered by the respondents to withhold the retiral dues of applicant.

21. Accordingly, having regard to the discussion made above, this OA is partly allowed. Respondents are directed to accord payment of pension and other retiral benefits to applicant with a simple interest of 12% p.a. w.e.f. 21.2.1976 till it is actually paid, with arrears thereof, within a period of two months from the date of receipt of a copy of this order. No costs.

*S. Raju*  
**(Shanker Raju)**  
**Member (J)**

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