

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 1056  
T.A. No.

1987.

DATE OF DECISION 5.9.1988

Shri Jivan Krishna, Petitioner

In person. Advocate for the Petitioner(s)

Versus

Union of India & Another, Respondent

Shri K.C. Mittal, Advocate for the Respondent(s)

**CORAM :**

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judicial)

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? Y
2. To be referred to the Reporter or not ? Y
3. Whether their Lordships wish to see the fair copy of the Judgement ? N

*S.P.M.* 5.9.88  
( S.P. Mukerji )  
Administrative Member

*P.K.K.*  
( P.K. Kartha )  
Vice Chairman (Judl.)

13

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI

Regn. No. OA-1056/87

Date of Decision: 5.9.1988

Shri Jivan Krishna

... Applicant,

Vs.

Union of India & Another

... Respondents.

For applicant

... In person.

For respondents:

... Shri K.C. Mittal, Advocate.

CORAM: Hon'ble Mr. P.K. Kartha, Vice Chairman(Judl.)  
Hon'ble Mr. S.P. Mukerji, Administrative Member.

JUDGEMENT

(Judgement of the Bench delivered by  
Shri P.K. Kartha, Vice Chairman(Judl.)

The applicant who was an Assistant Director of Inspection in the Directorate General of Inspection, Customs and Central Excise filed this application under Section 19 of the Administrative Tribunals Act, 1985 against the Union of India represented by the Chairman, Central Board of Excise and Customs (Respondent No.1) and the Deputy Director of Inspection, Directorate General of Inspection, Customs and Central Excise (Respondent No.2), praying that the respondents may be directed to pay to him his pension with effect from 1.5.1987 alongwith other sums due to him with interest and that the respondents may be directed to issue to him a certificate of his voluntary retirement with effect from 1.5.87 which is necessary to enable him to submit the same in Delhi Bar Council, New Delhi.

2. The facts of the case are as follows. The applicant joined the Indian Customs and Central Excise Service Class I as a direct recruit through the IAS etc. examination held in 1964. After completing 20 years of qualifying service he gave a notice dated 29.1.1987

to the President of India who is the appointing authority for voluntary retirement with effect from 1.5.1987 under Rule 48A of the Central Civil Services (Pension) Rules 1972 (hereinafter referred to as Pension Rules). At the time of serving the notice, the applicant was working as Assistant Director of Inspection in the Directorate of Inspection, Customs and Central Excise, West Regional Unit, Bombay.

3. Rule 48A which deals with retirement on completion of 20 years of qualifying service, in so far as it is relevant for the purpose of this case, reads as follows: -

"(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.

(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."

4. It will be seen from the above Rule that the notice should be given in writing to the appointing authority and the acceptance is also to be given by the appointing authority. The expression 'appointing authority' has been defined in the explanation under this Rule to mean: the authority which is competent to make appointments to the service or post from which the Government servant seeks voluntary retirement. According to Rule 9 of the Central Civil Services (Classification, Control and Appeal), Rules 1965, the President is the appointing authority in respect of all appointments to Central Civil Services, Class I and Central Civil Posts, Class I.

5. With reference to the notice of voluntary retirement dated 28.1.1987, the Deputy Director of Inspection at Bombay wrote to the applicant on 15th of April, 1987

as follows:

" Please refer to your notice of Voluntary retirement dated 28.01.1987.

In this connection Dy. Director of Inspection DGICCE, New Delhi has conveyed under their letter F.No.1041/24/80 dated 8.4.1987 that the Ministry has not accepted the notice of Shri Jivan Krishna, Assistant Director of Inspection for voluntary retirement under Rule 48A of Central Civil Service (Pension) Rules, 1972."

6. With reference to the aforesaid letter dated 15.4.1987, the applicant wrote to the Deputy Director of Inspection on 14.5.1987 stating that the appointing authority in his case was the President and, therefore, the order of the Ministry which was an authority lower than the appointing authority, was not a valid order of refusal to grant permission of retirement within the meaning of sub Rule (2) and proviso thereto of Rule 48A of the Pension Rules. Since the appointing authority had not refused to grant the permission for retirement before the expiry of the period specified in his notice dated 28.1.87, the applicant stated that the retirement had become effective with effect from 1.5.1987. He, therefore, requested that action for payment of pension and other sums due to him should be initiated quickly.

7. With reference to the aforesaid letter dated 14.5.87, the Deputy Director of Inspection wrote to the applicant on 25.5.87 stating that an omission had taken place in the earlier communication dated 15.4.87 and that the word 'Ministry' was wrongly typed therein instead of the word 'President'. The relevant portion of the said letter reads as follows: -

"In communicating the contents of DGICCE's letter dated 8.4.87 a fortuitous omission had taken place to refer to the word 'President' and by mistake the word 'Ministry' was typed in this office letter dated 15.4.87. In order to correct the position beyond all doubts, I enclose a copy of DGICCE's letter F.No.1041/24/80 dated 8.4.1987 to you for your information. It may therefore be seen that your retirement notice was not accepted by the

referred to in this office letter dated 15th April, 1987,

President. This office is not in a position to take cognizance of your notice as contained in your letter dated 14th May, 1987. Future references if any may be made with DGICCE, New Delhi."

8. The Deputy Director of Inspection had enclosed with his letter dated 25.5.1987 a copy of the Directorate addressed to the Deputy Director of Inspection, Bombay General of Inspection's letter dated 8.4.1987 which reads as follows: -

" Please refer to your letter F.No.11/25-1/87/84 dated 3rd February, 1987, on the above subject.

The Ministry has informed that the President has not accepted the notice of Shri Jivan Krishna, Assistant Director for voluntary retirement under Rule 48-A of the Central Civil Service (Pension) Rules, 1972. Shri Jivan Krishna, may be informed accordingly."

9. On 28.5.87 the applicant wrote to the Chairman, Central Board of Excise and Customs stating that since he stood retired from service with effect from 1.5.1987, arrangement should be made for the payment of his pension and other sums due to him expeditiously. He also requested for issuing to him a certificate of his retirement with effect from 1.5.1987 which was needed for the purpose of registration as an Advocate.

10. With reference to the aforesaid letter, the Under Secretary to the Government of India wrote to the applicant on 25.6.1987 stating that his notice dated 28.1.1987 seeking voluntary retirement under Rule 48A of the Pension Rules was not accepted by the President and the decision of the President was conveyed to him vide this Ministry's letter dated 2.4.1987 through the Director General of Inspection.

In view of this, it was stated that the applicant's presumption that he is deemed to have been retired is not correct. He was asked to resume duties forthwith in case he was on leave.

11. At this stage, it may be mentioned that the letter of the Ministry dated 2.4.1987 was addressed to the Director General of Inspection and was not endorsed to the applicant.

12. Thus the contention of the applicant is that the President who is the appointing authority in his case did not refuse the grant of permission for voluntary retirement before the expiry of the <sup>period of</sup> three months specified in his notice. Therefore, he stood voluntarily retired by operation of Rule 48A of the Pension Rules.

13. An Under Secretary to the Government of India, Ministry of Finance, Department of Revenue has filed the counter affidavit on behalf of the respondents. It has been stated in the counter affidavit that the notice dated 28.1.1987 served by the applicant was forwarded by the Directorate General of Inspection, Customs and Central Excise, New Delhi to the Secretary, Central Board of Excise and Customs, vide letter dated 17.2.1987 for further necessary action. The matter was examined in the Ministry of Finance, Department of Revenue. It has been stated that the applicant is involved in a case <sup>of disciplinary</sup> in which action is in process against him for production of forged medical/fitness certificates for taking leave from 5.9.72 to 20.1.1973. The certificates were purported to have been issued by a Medical Practitioner, New Delhi. On an enquiry conducted by the CBI, these documents were found to be forged. The CBI had launched a prosecution case against the applicant for forging the said documents but the case was dismissed on technical ground that permission for prosecution had not been obtained. Thereafter, the CBI/CVC recommended departmental action against the applicant and accordingly a charge-sheet for major penalty was served on him. The report of the Enquiry Officer has been received. The Enquiry Officer has come to the conclusion that the charges against the applicant stand proved. The Disciplinary Authority on consideration of the

report and findings of the Enquiry Officer came to the provisional conclusion to impose major penalty of dismissal from service on the applicant and the case was referred to the UPSC for advice as required under the relevant rules. In the meanwhile, the applicant filed a criminal complaint in the Court at Calcutta against the Investigating Officer of the CBI and the Medical Practitioner of New Delhi about alleged substitution of false and fabricated medical certificates in place of genuine ones. All the relevant records have been summoned by the Calcutta Court. The UPSC is of the opinion that since the issue for alleged substitution of false and fabricated medical certificates in place of genuine ones submitted by the applicant is under consideration of the Court in Calcutta, it would be pre-mature to consider the disciplinary case of the applicant before the Court passes its judgement regarding the genuineness or otherwise of the medical certificates which formed the basis of the disciplinary proceedings. The applicant had also filed a writ petition before the High Court of Delhi for quashing the disciplinary proceedings and the Court has passed an order that the result of the disciplinary proceedings after signing will be kept in sealed cover till the disposal of the writ petition.

The said writ petition has been transferred to this  
Tribunal and is pending as TA-698/85.

14. Since the disciplinary proceedings for major penalty are pending against the applicant and there is likelihood of imposition of penalty of dismissal or removal from service on him, it has been stated in the counter affidavit that the applicant's notice for voluntary retirement has not been accepted by the President

15. It has further been stated by the respondents that the order of the President refusing to grant permission

: 7 :

for retirement to the applicant was accorded on 25.3.87 i.e. before the expiry of the period specified in the notice given by the applicant. The Directorate General of Inspection, Customs and Central Excise under whom the applicant was posted as Assistant Director was apprised of the fact that the President has not accepted the notice of the applicant for voluntary retirement and was directed to inform the applicant accordingly, vide Ministry of Finance, Department of Revenue's letter dated 2.4.1987 which reads as follows: -

"The Director General,  
Directorate of Inspection,  
(Customs and Central Excise),  
New Delhi (By name)

Subject: Notice for voluntary retirement -  
Shri Jivan Krishna, Assistant Director,  
W.R.U., Bombay.

Sir,

I am directed to refer to your letter C.No.1041/24/80 dated the 17th February, 1987 on the above subject and to say that the President has not accepted the notice of Shri Jivan Krishna, Assistant Director for voluntary retirement under Rule 48-A of Central Civil Service (Pension) Rules, 1972. He may please be informed accordingly.

Sd/-  
( R.R.Bharati )  
Under Secretary to the Government of  
India."

16. The Directorate General of Inspection, Customs and Central Excise, ~~to the applicant~~, ~~conveyed~~ the aforesaid decision vide

their letter dated 15.4.1987 mentioned above. Therefore, *Q* it has been contended by the respondents that the applicant cannot be deemed to have retired from service with effect from 1.5.1987 and the question of payment of any pension and other retirement benefits to him does not arise.

17. The respondents have also contended that the applicant did not cease to be in employment under respondent No.1 after 30.4.1987. He continues to be posted as Assistant Director of Inspection at Bombay and he has not been transferred from there so far.

18. As regards the contention of the applicant that where the appointing authority does not indicate his refusal before the expiry of the notice period the Government service stands voluntarily retired by the operation of Rule 48 A of the Pension Rules, the respondents have contended in their counter affidavit that the rule only stipulates that where the appointing authority does not refuse to grant permission for retirement before the expiry of the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. It is the decision to refuse the grant of permission which is to be taken by the appointing authority before the expiry of the period specified in the notice. In the instant case the decision was also communicated to the applicant before the expiry of the notice through his Head of Office. There is no prescribed form for communicating the decision in such cases.

19. The respondents have denied the contention of the applicant that the letter of the Directorate of Inspection dated 15.4.1987 conveying the decision regarding non-acceptance of the notice for voluntary retirement under Rule 48A of the Pension Rules is honest for the purpose of voluntary retirement because it has been signed by Deputy Director of Inspection, Customs and Central Excise and mentioned that the Ministry had not accepted the applicant's notice for voluntary retirement. According to the respondents, the normal channel of communication between subordinate staff and the Government or the President is through the Head of the Department under which the officer is posted. In the instant case, the applicant had sent his notice through proper channel and the decision of the President had also been communicated to him through the same channel. The use of the word 'Ministry' in the communication dated 15.4.87 is a communication of the decision taken by the President. The Deputy Director of

Inspection posted at Bombay has only communicated the same to the applicant.

20. We have carefully gone through the records of the case and heard the applicant in person and the learned Counsel for the respondents. The applicant as an Advocate ~~as~~ has been practising in the Courts from 1.5.1987. The respondents still consider that he is on ~~an~~ unauthorised absence from duty. The Bar Council of Delhi permitted him to practice as an advocate pending the production of a certificate of his retirement from Government service. The applicant as well as learned Counsel for the respondents have cited before us numerous rulings in support of their respective contentions. The main point for consideration is whether in the facts and circumstances of the case, it can be concluded that the refusal of the appointing authority to grant permission for voluntary retirement in the instant case was duly communicated to the applicant before the expiry of the notice period and whether the applicant stood voluntarily retired by operation of Rule 48A of the Pension Rules.

21. It is clear from Rule 48A of the Pension Rules that the notice regarding retirement from service should be in writing and addressed to the appointing authority. It is also clear that the notice shall require acceptance by the appointing authority. Where the appointing authority does not refuse to grant the permission for retirement within the period specified in the notice, the retirement shall become effective from the date of expiry of the said period. It would be a case of deemed retirement.

22. There is a ~~similar~~ ~~deeming~~ provision in Rule 10 of the Pension Rules dealing with commercial employment after retirement. If a pensioner wishes to accept any commercial employment before the expiry of 2 years from

the date of his retirement, he shall obtain the previous sanction of the Government to such acceptance. Where within a period of 60 days of the receipt of such application, the Government does not refuse to grant the permission applied for or does not communicate the refusal to the applicant, the Government shall be deemed to have granted the permission applied for.

23. The underlying object of the aforesaid provisions contained in Rules 10 and 48A of the Pension Rules is ~~statutory and grounded on public policy and good administration.~~ In the case of Rule 10, the pensioner who intends to accept any commercial employment before the expiry of two years from the date of his retirement ~~not~~ <sup>not</sup> should be made to wait indefinitely for the decision of the Government, one way or the other. If the refusal is not communicated within a period of 60 days, it will be deemed that permission has been granted. Similarly, in the case of voluntary retirement under Rule 48A, a provision has been made for deemed retirement to ensure that the Government servant who has given the notice is not kept ~~a~~ waiting indefinitely for the decision of the Government. The very fact that a Government servant gives a notice for voluntary retirement under Rule 48A indicates that he has other plans in life to pursue.

24. In the instant case, the President being the appointing authority of the applicant, the notice of voluntary retirement was addressed to him. The grant of permission or refusal to grant permission should also be communicated for and on behalf of the President.

25. Article 77(1) of the Constitution provides that all executive actions of the Government of India shall be expressed to be taken in the name of the President. Clause(2) of this Article provides that orders and other instruments made and executed in the name of the President

shall be authenticated in such manner as may be specified in the rules to be made by the President, and the validity of any order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.

26. Article 53(1) of the Constitution provides that the executive power of the Union shall be vested in the President and shall be exercised by him in accordance with the constitution.

27. The applicant and the learned Counsel for the respondents have cited before us the interpretation of the aforesaid constitutional provision in support of their respective contentions.

28. The learned Counsel for the respondents contended that the constitution does not require any particular formula of words for compliance with Article 77(1) of the Constitution. He contended that what the Court has to see is whether the substance of its requirement had been complied with, because the provision is only directory. As the provisions of Article 77 are directory and not mandatory in character, it was argued that non-compliance with those provisions did not render the order a nullity. Strict compliance with the requirement of Article 77(1) gives immunity to the order that it cannot be challenged in a Court of law on the ground that it is <sup>not</sup> an order of the President. If the requirements of that Article are not complied with, the resulting immunity cannot be claimed by the State but this will not invalidate the order itself, if it appears from ~~other evidence~~ that such a decision was in fact taken by the Government.

29. In this context the learned Counsel for the respondent relied upon a decision of the Supreme Court <sup>in</sup> ~~of~~ Major E.G. Barsay Vs. State of Bombay, AIR 1961 SC 1762.

30. In the case of Major E.G.Barsay, the Supreme Court held that the provision of Article 166 of the Constitution (which corresponds to Article 77) are only directory. Though the impugned order was not issued in strict compliance with the provision of Article 166(1), it could be established by evidence aliunde that the order was made by the appropriate authority. If an order is issued in the name of the Government and is duly authenticated in the manner prescribed in Clause(2) of the said Article, there is an irrebuttable presumption that the order or instrument is made or executed by the Government. The non-compliance with the provisions of the said Article does not invalidate the order but it precludes the drawing of any irrebuttable presumption. This does not prevent any party from proving by other evidence as a matter of fact that the order has been made by the appropriate authority.

31. The Supreme Court in Major E.G.Barsay's case followed its earlier decision in State of Bombay Vs. Purushottam Jog Naik, AIR 1952 SC 317, and in Dattatreya Moreshwar Vs. State of Bombay, AIR 1952 SC 181. In Naik's case, the Supreme Court had observed as follows: -

"In our opinion, the Constitution does not require a magic incantation which can only be expressed in a set formula of words. What we have to see is whether the substance of the requirement is there."

32. In the instant case, the Deputy Director of Inspection at Bombay, had written to the applicant on 15th April, 1987 to the effect that the notice of voluntary retirement dated 28.1.1987 given by the applicant has not been accepted by the "Ministry". After the notice period of three months had expired, another communication was sent to the applicant on 25.5.87 by the Deputy Director of

Inspection wherein it was stated that ~~an~~ omission had taken place in the earlier communication dated 15.4.87 and that the word 'ministry' was wrongly typed therein instead of the word 'President'. The learned Counsel for the respondents contended that the wrong mention of the word 'ministry' in the order dated 15th April, 1987 would not vitiate <sup>the order.</sup> In this context, he relied upon the decision of the Supreme Court in Gurpratap Singh Bedi Vs. State of Punjab and another, 1976(1) SLR 399. In that case, the appellant who had been compulsorily retired by the State of Punjab challenged the order of compulsory retirement on the ground that ~~a~~ wrong rule was quoted in the order. The Supreme Court negatived this contention and held that there was no infirmity in the order of compulsory retirement ~~on~~ that score.

33. The Minister of State in the Ministry of Finance had approved the proposal not to grant permission to the applicant for voluntary retirement as prayed for. The Minister had approved the proposal of 25.3.87 which was within the notice period. According to the learned Counsel for the respondents, the communication of the decision of the President would become complete the moment the orders are despatched and went out of the control of the President. In this context he relied upon the decision of the Supreme Court in State of Punjab and Others Vs. Balbir Singh, 1976(1) SLR 37.

34. On the other hand, the applicant contended that the letter written to him by the Deputy Director of Inspection on 15th April, 1987 did not comply with the constitutional provisions of Article 77 as it was not issued for and on behalf of the President of India and it was not authenticated in the manner specified in the rules made by the President. According to the Authentication

: 14 :

( Orders and other Instruments) Rules 1958 made in exercise of the powers conferred by the President under Article 77(2) of the Constitution, the general mode of authentication of orders and other instruments made and executed in the name of the President is that "it shall be authenticated by the signature of a Secretary, Special Secretary, Additional Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India." Besides, in the case of Ministries <sup>Ministries</sup> different <sup>other</sup> officers could also, if specifically authorised, execute such orders and instruments. In the instant case, there was nothing on record to establish that the Deputy Director of Inspection who had sent the letter to the applicant on 15th April, 1987 had been specially authorised to execute the order in the name of the President. The order also did not indicate that it was issued for and on behalf of the President. An Under Secretary to the Government of India, vide his letter dated 2.4.87, had informed the Director General, Directorate of Inspection, New Delhi that the President had not accepted the notice of the applicant for voluntary retirement. With regard to this letter, the applicant stated that though the said letter indicated that the President had not accepted the notice given by him, a copy of the said letter was <sup>not</sup> endorsed to him and that the said letter was only in the nature of an inter-departmental correspondence and had no legal effect. It may be mentioned in this context that a copy of the letter of the Under Secretary dated 2.4.87 was not endorsed to the applicant within the period stipulated in the notice or even thereafter.

35. The applicant has relied upon the decision of the Supreme Court in Commissioner of Police Vs. Gordhan Das Bhanji, AIR 1952 SC 16. In that case, the Commissioner of Police had issued a communication of cancellation of permission to erect a cinema at a certain site. The question arose whether the order of cancellation was his order or that of the State Government. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. In this context, the Supreme Court observed as follows: -

"We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

36. The applicant also referred to the decision of the Supreme Court in Mohinder Singh Vs. Chief Election Commissioner reported in AIR 1978 SC 851. In that case the Supreme Court had observed that the validity of an order passed by a statutory functionary has got to be judged by the reasons mentioned in the order. It cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, the order bad in the beginning, may by the time it comes to the Court on account of a challenge, get validated by additional ground later brought out.

Q. 37. In M/s. Gaianda Mal and Sons Vs. State of Delhi and Others, AIR 1959 SC 65, which was also relied upon by the applicant, the Supreme Court was concerned with Rule 1 of Chapter 5 of Delhi Liquor Licence Rule 1935 framed under Section 59 of the Punjab Excise Act as extended to Delhi. The Chief Commissioner, Delhi was

the only competent authority empowered to grant L-2 licence for wholesale and retail vendors of foreign liquor to the public. In that case a certain inter-departmental letter was addressed <sup>by</sup> ~~to~~ the Under Secretary, Finance (Expenditure) to Government, Delhi State, to the Commissioner of Excise who was also competent to authenticate an order and instrument of the Government ~~merely informing him that the~~ Chief Commissioner was pleased to approve the grant of L-2 licence to M/s. Gaipta Mal Hem Raj, New Delhi in place of the L-2 licence surrendered by M/s. Army and Navy Stores, New Delhi. The question arose whether the said letter would constitute an order by the Commissioner who alone was empowered to issue a licence under the Rules. The Court found that in the first place it was an inter-departmental communication. In the second place it was written with reference to an earlier communication made by the Excise Commissioner and purported to be a reply to the latter's letter of 31st August, 1954. In the third place, the writer had stated that he had been directed to say something but it was not stated - by whom. According to the Court, the said document was not the order of the Commissioner but only purported to be a communication at the direction of some unknown person - of the order which the Chief Commissioner had made. In para 7 of the respondents's statement filed in the High Court, the said letter was stated to have "conveyed the sanction of the Chief Commissioner to the grant of licence." The Court found that the document which conveyed the sanction could ~~not~~ be equated with the sanction itself. Finally, according to the Court, the document did not purport to have been authenticated in the form in which authentication was usually made. There was no statement at the end of the letter that it had been written "by order of the

Chief Commissioner." The Court, therefore, found it was impossible to read the said document as the order of the Chief Commissioner.

38. The applicant also referred to the decision of the Calcutta High Court in D.C.Das Vs. Union of India, AIR 1969 Cal. 180. In that case it was held that under Article 53(1) of the Constitution, the President can exercise his executive powers either directly or through officers subordinate to him. However, the act must be done in accordance with the constitution. Consequently, when the President instead of acting directly acted through subordinate officers, their action must be expressed to be taken in the name of the President as required by Article 77(1) and must also comply with Article 77(2).

39. Finally, the applicant also referred to the decision of the Bombay High Court in Vigyan Bhushan Aggarwal Vs. Union of India and Another, 1977 SLJ (Bombay) 645. In that case the impugned order of termination of services of an employee had been issued for and on behalf of the President by the Chairman of the Canteen Stores Department <sup>under the control of</sup> ~~under the control of~~ the Ministry of Defence. The Bombay High Court held that the Chairman was not one of the officers authorised to authenticate an order or instrument on behalf of the President. The respondents had produced before the Court documents to indicate that the Defence Minister had accorded his approval to the retrenchment notices given to the employees. The High Court, however, observed that the documents did not show that the notice of termination was issued by an officer authorised to do so on behalf of the President.

40. In the instant case, the respondents have no doubt shown to us during the hearing the relevant file in which the Minister concerned had given his approval to the refusal to grant permission to the applicant for voluntary retirement. An Under Secretary to the Government of India had also embodied

this decision in his letter dated 2nd April, 1987 (vide annexure R-1 at page 42 of the paper-book). However, the letter of the Under Secretary was only addressed to the Director General, Directorate of Inspection, New Delhi and not to the applicant, as already mentioned above. The only letter which was addressed to the applicant within the notice period was that of the Deputy Director of Inspection dated 15th April, 1987 conveying that 'Ministry' has not accepted the notice. Under Section 3(8) of the General Clauses Act, 1897 the expression "Central Government" shall, in relation to anything done or to be done after the commencement of the Constitution, mean the President. In other words, the expression 'President' has the same meaning as the Central Government. The expression 'Ministry', used in the letter of the Deputy Director of Inspection dated 15.4.87 cannot be equated with the President or the Central Government. It was only after the applicant brought to the notice of the Department, vide his letter dated 14.5.87, that the letter dated 15.4.87 was not a valid refusal to grant permission for retirement as it was not issued by the President who was his appointing authority, the Department sent their letter dated 25.5.87 referring to the fortuitous omission to refer to the word 'President' instead of word 'Ministry' in the earlier letter dated 15.4.87. The letters of the applicant dated 14.5.87 and of the Department dated 25.5.87 were issued after the notice period had expired. The subsequent correction of the avowed and misleading error by the letter dated 25.5.87 will not have any legal effect.

41. The respondents have also not placed before us any document to show that the Deputy Director of Inspection who served the letter dated 15.4.87 to the applicant was ~~not~~ specially authorised to execute orders in the name of the President under Article 77(2) of the Constitution.

42. The learned Counsel for the respondents contended that the communication to the applicant became complete on 3.4.87 when the Deputy Director of the Directorate General

: 19 :

of Inspection at New Delhi wrote to his counter-part at Bombay stating that the 'Ministry' had informed that the President has not accepted the notice of the applicant and that the applicant may be informed accordingly. The contention is clearly untenable. The communication of the order dated 8.4.1987 should have been to the applicant and not to his Head of the Department. A copy of the said letter dated 8.4.87 was sent to the applicant only on 25.5.87 which was after the expiry of the notice period on 1.5.87. The legal position is that an order of the Government will become binding only when it is communicated to the person to be affected by it. In Bachhittar Singh Vs. State of Punjab, AIR 1963 SC 395, the Supreme Court had observed: -

"It is of the essence that the order has to be communicated to the person who would be affected by that order before the State and that person can be bound by that order. For, until the order is communicated to the person affected by it, it would be open to the Council of Ministers to consider the matter over and over again and, therefore, till its communication the order cannot be regarded as anything more than provisional in character."

42. In the light of the foregoing discussion, we are of the opinion that the refusal to grant permission for voluntary retirement was not communicated to the applicant by the appointing authority within the period specified in the notice. Consequently, by virtue of the proviso under Sub Rule (2) of Rule 48A of the Pension Rules, the retirement shall become effective from the date of expiry of the notice period by operation of law. In view of this, the applicant would be entitled to pension and other retirement benefits with effect from 1.5.1987.

43. We, therefore, order and direct that the applicant shall be paid pension and other retirement benefits with effect from 1.5.1987, together with ~~an~~ ten per cent

interest till the date of payment. The respondents shall comply with this order within a period of three months from the date of its communication to the parties. There will be no order as to costs.

44. Before parting with this case, it may be mentioned that the applicant had filed C.W.P.771/81 in the Delhi High Court praying for quashing the disciplinary proceedings initiated against him by the Respondents and the charge-sheet dated 7.7.1980. The petition stood transferred to this Tribunal (T-698/85). The respondents have alleged that their refusal to grant permission to the applicant for voluntary retirement under Rule 48A of the Pension Rules is due to the pendency of the aforesaid disciplinary proceedings. This has been dealt with in paras 13 and 14 hereabove. This Tribunal vide judgement delivered on 5-9-88 has allowed the petition in T-698/85 and quashed the disciplinary proceedings as also the charge-sheet dated 7.7.80. This is being mentioned even ostensible here to indicate that the basis for refusal to grant permission to the applicant in the instant case has ceased to exist by view of judgement in T-698/85.

  
S.P. Mukerji  
Administrative Member

  
P.K. Kartha  
Vice Chairman (Judl.)